

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE
HONORABLE _____

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SOUTH CAMDEN CITIZENS IN ACTION,
GENEVA SANDERS, PAULINE WOODS,
BARBARA PFEIFFER, JULITA GILLIARD,
OSCAR LISBOA, SHIRLEY RIOS, PHYLLIS
HOLMES, GWEN PETERSON, LATOYA
COOPER, JULIO LUGO,
Plaintiffs,

vs.

THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
ROBERT C. SHINN, JR., Commissioner
of the NJ Dept. of Environmental
Protection, in his official
capacity,
Defendants

Case No. _____

VERIFIED COMPLAINT
FOR DECLARATORY
JUDGMENT AND
INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is a civil rights action brought by African-American and Hispanic residents of the Waterfront South neighborhood in the City of Camden, NJ to challenge the decision of the New Jersey Department of Environmental Protection ("DEP") to issue permits to the St. Lawrence Cement Company, allowing it to operate a blast furnace slag grinding facility in their neighborhood, on the grounds that the grant of the permits violates the civil rights of the plaintiffs pursuant to Title VI of the Civil Rights Act of 1964, the U.S. Environmental Protection Agency's Title VI regulations, Title VIII of the Civil Rights Act of 1968, and the 14th Amendment of the U.S. Constitution. The facility will release a significant amount of air pollution into the environment and is situated in a neighborhood which already contains many contaminated sites, polluting industries, and waste disposal facilities. The permits must be rescinded because the DEP, a recipient of federal financial assistance subject to Title VI and the EPA regulations, knowingly and intentionally discriminated against plaintiffs and because the permits have a disparate impact on the plaintiffs on the basis of race, color, and national origin. African-American and Hispanic residents comprise 91% of the Waterfront South neighborhood.

2. Plaintiffs seek: (1) to have the permits granted by the DEP declared invalid and rescinded; (2) to have the DEP's policies and procedures for evaluating the permit application declared unlawful; (3) to require the DEP to develop a protocol for reviewing permit applications in compliance with Title VI and to apply that protocol to conduct a valid analysis of the disparate adverse impact that would be created by the siting of the SLC facility.

JURISDICTION

3. This is an action pursuant to Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. §§2000d, 2000d-1; the EPA civil rights regulations, 40 CFR Part 7; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604; and the 14th Amendment of the U.S. Constitution. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1343 as a case arising under the laws of the United States.

VENUE

4. The events which give rise to this action occurred in the District of New Jersey and venue lies in the District of New Jersey pursuant to 28 U.S.C. §1391(b)(2).

PARTIES

5. Plaintiff South Camden Citizens in Action ("SCCIA") is an unincorporated community organization that is composed of residents of the neighborhood known as Waterfront South. Its address is 1636 Ferry Avenue, Camden, NJ 08104. It brings this action on its own behalf and on behalf of its members. The individual plaintiffs are members of SCCIA.

6. Plaintiff Geneva Sanders lives at 1821 South 4th St., Camden, NJ 08104. She is African-American.

7. Plaintiff Pauline Woods lives at 1806 South 4th St., Camden, NJ 08104. She is African-American.

8. Plaintiff Barbara Pfeiffer lives at 1701 South 4th St., Camden, NJ 08104. She is White.

9. Plaintiff Julita Gilliard lives at 1608 Fillmore St., Camden, NJ 08104. She is African-American.

10. Plaintiff Oscar Lisboa lives at 1713 South 4th St., Camden, NJ 08104. He is Hispanic.

11. Plaintiff Shirley Rios lives at 1865 South 4th St., Camden, NJ 08104. She is African-American.

12. Plaintiff Phyllis Holmes lives at 422 Viola St., Camden, NJ 08104. She is African-American.

13. Plaintiff Gwen Peterson lives at 1614 Fillmore St., Camden, NJ 08104. She is African-American.

14. Plaintiff Latoya Cooper lives at 717 Everett St., Camden, NJ 08104. She is African-American.

15. Plaintiff Julio Lugo lives at 437 Winslow St., Camden, NJ 08104. He is Hispanic.

16. Defendant New Jersey Department of Environmental Protection ("DEP") is the department of the executive branch of state government which implements and enforces the environmental laws and regulations of the state of New Jersey. Its central offices are located at 401 East State St., P.O. Box 402, Trenton, NJ 08625.

17. Defendant Robert C. Shinn, Jr. is named in his capacity as the Commissioner of the DEP. His address is 401 East State St., P.O. Box 402, Trenton, NJ 08625. Commissioner Shinn oversees the operations of the DEP and is responsible for developing and implementing its policy and procedures, including its air quality permit review protocols.

18. The defendants are given the authority under New Jersey law to make, and did make, the permitting decisions challenged in this case.

FACTUAL ALLEGATIONS

A. THE NEIGHBORHOOD

19. The Waterfront South neighborhood, corresponding to U.S. Census Tract 6018, is located in the City of Camden, NJ. It contains a total of 2,132 people. Of these residents, 63.0% are African-American, 28.3% are Hispanic, and 9.0 % are non-Hispanic white.

20. Waterfront South is surrounded by other predominately minority neighborhoods. The census tracts immediately adjoining Waterfront South to the west are: Liberty Park, U.S. census tract 6016, Centerville, U.S. census tract 6017, and Morgan Village, U.S. census tract 6019. The combined total population of these census tracts is 10,426, with 81.0% African-American, 11.8% Hispanic, and 9.1% non-Hispanic white residents. Immediately to the north of Waterfront South are Bergen Square, census tract 6004, and the Central Waterfront District, census tract 6005, which have a combined total population of 5,284, with 70.6% African-American, 22.3% Hispanic, and 6.6% non-Hispanic white residents. Waterfront South is located at the southernmost end of Camden City, with Newton Creek separating it from an industrial area that is part of the neighboring municipality of Gloucester City.

21. Camden City has a population of 87,492, of which 56.3% are African-American, 22.7% are Hispanic, and 15.2% are non-Hispanic white.

22. Camden County, the county in which Waterfront South and the City of Camden are located, has a population of 502,824, of which 16.3% are African-American, 6.6% are Hispanic, and 75.1% are non-Hispanic white.

23. The State of New Jersey has a population of 7,730,188, of which 13.4% are African-American, 9.3% are Hispanic, and 74.2% are non-Hispanic white.

24. Most of the residents of Waterfront South are very low-income. The median household income is \$15,082, per capita income is \$4,709, and 51% of residents have incomes at or below the federal poverty line.

25. A significant number of the Hispanic residents of Waterfront South and the adjoining census tracts have limited proficiency in the English language.

26. The Waterfront South neighborhood is an extremely polluted area. There are two Superfund sites, numerous other contaminated sites, and many operating industrial facilities, including but not limited to four scrap metal companies, a petroleum coke transfer station, chemical companies, machine shops, and food processing companies.

27. The DEP has granted permits to facilities in Waterfront South which generate significant amounts of pollution, including, but not limited to the following: the Camden Cogen Plant, a power cogeneration facility; the Camden County Resource Recovery facility, a trash-to-steam incinerator; and the Camden County Municipal Utilities Authority, a regional sewage treatment plant.

28. Two of the facilities permitted by the DEP, the Cogen Plant and the county incinerator, are sources of substantial amounts of PM-10, an EPA criteria air pollutant consisting of fine particulates 10 microns or less in size.

29. Each of these facilities granted permits by the DEP has a disparate impact upon African-American and Hispanic residents on the basis of their race, color, and national origin.

30. The industrial and waste facilities and contaminated sites in Waterfront South emit pollution that affects the health, safety, and quality of life of residents. They also require a large volume of diesel truck traffic, which in addition to emitting carcinogenic diesel fumes, creates noise and safety hazards, and damages streets and the foundations of residential buildings.

31. Waterfront South and the adjoining predominately minority census tracts have a proportionately greater concentration of waste processing, waste storage, waste disposal and waste transfer facilities than predominantly white census tracts in New Jersey.

32. Waterfront South and the adjoining predominately minority census tracts have a proportionately greater concentration of pollution releasing industrial facilities than predominantly white census tracts in New Jersey.

33. Waterfront South and the adjoining predominately minority census tracts have a proportionately greater concentration of contaminated sites than predominately white census tracts in New Jersey.

34. Enforcement of air quality, odor, noise, health, traffic, and other regulations at Waterfront South has been ineffectual and inadequate for many years.

35. The result of these permitting and enforcement decisions by the DEP and local governmental agencies is that Waterfront South has become a severely blighted neighborhood, with environmental pollution and hazards that are proportionately more dangerous to the residents' health than is the case in census tracts in New Jersey where the residents are predominately white.

36. Camden City and especially Waterfront South residents experience numerous health problems, including high levels of asthma and other respiratory diseases. They therefore are likely to suffer more immediate and long-term negative effects from environmental pollution than communities where the residents enjoy better health.

B. THE FACILITY

37. The St. Lawrence Cement Company, L.L.C. ("SLC") is a multinational company which manufactures cement and other similar concrete materials. SLC has leased 11.7 acres of land at Broadway Terminal, 2500 Broadway, Camden, NJ 08104, located within the Waterfront South neighborhood.

38. The State of New Jersey, acting through its agencies, the Economic Development Authority and the South Jersey Port Corporation ("SJPC"), was actively involved in the selection of this site. SJPC owns the land on which the facility will be located and has leased it to SLC.

39. SLC has proposed to construct and operate a granulated blast furnace slag (GBFS) grinding facility at the Broadway Terminal site. GBFS is a by-product of the iron manufacturing process composed of oxides of silicon, aluminum, calcium, magnesium and sulfur, with traces of other metallic oxides. The SLC cement factory will grind the GBFS into a fine powder which can be used as a partial substitute for portland cement in concrete.

40. SLC proposes to transport raw materials of GBFS, gypsum, and portland cement by cargo ship to a port terminal three miles north of the grinding facility. SLC would then use trucks to transport the raw material to the Broadway facility. SLC would

store GBFS in open piles, move it through a series of conveyors to a roller mill, mix it with gypsum, and grind it to the desired powder size and consistency. The ground powder would then be conveyed to storage silos and transported from the facility by trucks.

41. The facility will operate 24 hours a day, 365 days a year, processing 848,771 tons of GBFS annually.

42. Because the operations are highly mechanized the SLC facility will only employ approximately 15 people.

43. The facility will emit almost 60 tons per year of PM-10, most of which will be PM-2.5, particulate matter of less than 2.5 microns.

44. Fine particulate emissions constitute a serious health hazard. Increase in PM-10 levels is linked to increase in cardiopulmonary disease, aggravation of respiratory symptoms, and higher area death rates. The PM-2.5 portion of PM-10 is the most dangerous to health.

45. The allowable level of fine particulates in the ambient air is regulated by the U.S. Environmental Protection Agency ("EPA") pursuant to the Federal Clean Air Act. The National Ambient Air Quality Standards ("NAAQS") currently in effect regulate PM-10 but not PM-2.5.

46. In 1997 the EPA proposed new, stricter standards for particulates that would regulate PM-2.5, on the basis that new standards are necessary to protect public health. These standards were challenged on legal grounds by industry groups and have not yet been put in effect.

47. Many regions in the state of New Jersey, most likely including the Waterfront South area, would not be in compliance with the EPA's proposed PM-2.5 standards.

48. The PM-2.5 emissions that would be released by the SLC facility would cause even greater exceedance of the EPA's proposed PM-2.5 standards.

49. SLC operations will also cause the emission of toxic and hazardous substances such as manganese, radioactive materials, silica, lead, mercury, nitrogen oxides, carbon monoxide, volatile organic compounds, sulfur oxides, and other air pollutants.

50. The SLC operations will require 77,116 diesel truck trips per year to make deliveries or distributions of the facility's products.

51. Diesel trucks from the facility will release diesel exhaust fumes, which release hydrocarbons, carbon monoxide, particulate matter, benzene, butadiene, and formaldehyde, and other toxins, many of which are carcinogenic.

52. The diesel trucks will also emit nitrogen oxides and volatile organic compounds, which are precursors to ground level ozone. Waterfront South is in a region that is already rated under the federal Clean Air Act as in severe non-attainment of the health-based standards for ground level ozone.

53. Ground level ozone irritates the lungs and breathing passages, causing coughing and pain in the chest and throat, and increases the susceptibility to respiratory infection. The effects of ozone are more severe in persons with asthma.

54. The trucks will also cause traffic congestion, and further degradation of the quality of life and safety of the neighborhood through noise, damage to streets and building foundations, and danger to pedestrians and other drivers.

55. The emissions generated by the SLC facility will injure the health of the plaintiffs and other area residents, particularly those with respiratory and cardiac ailments.

56. The operation of the facility will affect the quality of life, interfere with sleep, cause property damage, and lower the self-esteem of plaintiffs and other Camden residents.

57. Because of the SLC plant, certain housing stock in Waterfront South is being or will be demolished. Because of the emissions of the SLC plant, other nearby residents – who are overwhelmingly people of color – will be constructively evicted from their homes. Still others will lose the quiet enjoyment of their housing. The presence of the facility and its impact on the quality of life will therefore result in loss of housing, decrease in property values, greater deterioration and abandonment of houses, and an even greater degree of racial segregation in the neighborhood.

58. The operation of the SLC facility will increase the existing disparity in environmental quality and public health between Waterfront South and communities in New Jersey where residents are predominately white.

C. THE DEP PERMITTING PROCESS

59. Because the SLC facility will emit significant amounts of particulate matter and other pollutants, it was required to obtain various air permits from the defendant DEP to operate the facility.

60. The DEP annually receives financial assistance from the United States Environmental Protection Agency ("EPA") to regulate and control air quality and enforce other environmental protection statutes in the state of New Jersey. One of the programs for which federal financial assistance is provided is the air quality permitting program.

61. Plaintiffs are among the intended beneficiaries of this federal financial assistance.

62. Pursuant to 40 C.F.R. §7.80(a), in accepting this assistance, the DEP provides assurances to the EPA of its compliance with the EPA's Title VI enforcing regulations, which include the following:

- a. The DEP will not use criteria or methods of administering its environmental programs which have the effect of discriminating on the basis of race, color, or national origin, in accordance with 40 CFR §7.35(b);
- b. The DEP will not choose a site for a facility which has the effect of discriminating on the basis of race, color, or national origin, pursuant to 40 CFR §7.35(c); and
- c. The DEP will adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the EPA's Civil Rights regulations, 40 CFR §7.90(a).

63. On or about August 5, 1999 SLC applied to the DEP for permits to construct and operate the facility at 2500 Broadway, Camden, NJ.

64. On September 7, 1999 the DEP issued six general permits to SLC which regulate the solid material receiving and storage systems such as silos, feeders, and bucket elevators.

65. On November 1, 1999 the DEP informed SLC by letter that it was allowed to commence construction of the facility.

66. New Jersey's Air Pollution Control Act, N.J.S.A. 26:2C-9.2j, and Administrative Regulations, N.J.A.C. 7:27-8.24, allow an applicant to construct during the pendency of the permit application review process "except as otherwise prohibited by federal law."

67. An applicant undertakes such construction "at-risk," without any assurance that the facility will be permitted. The DEP expressly informed SLC that the determination made by the DEP at the time that the permission to construct was granted only concerned the administrative completeness of the application and did not imply or guarantee that a permit will be issued. The statute and regulations state that the applicant may not use any costs incurred by an applicant in connection with such construction as grounds for an appeal of the department's decision on the permit application. N.J.S.A. 26:2C-9.2j; N.J.A.C. 7:27-8.24.

68. On November 1, 1999 DEP was still reviewing the permit applications. It had not issued any public notice, held a public hearing, or otherwise provided opportunity for the residents of the neighborhood to comment on the plans for the facility. The DEP also had not yet investigated whether the grant of permits would violate federal civil rights law, although the DEP officials knew or should have known that this is a predominately minority, heavily environmentally impacted area, and that the operation of

the SLC facility is likely to increase the existing disparate adverse impact on the basis of race, color, and national origin.

69. The SLC started construction of the facility in late 1999. The construction is near completion but the facility has not started operations.

70. The DEP issued a Waterfront Development permit, which regulates conditions for construction near waterways, to SLC on November 10, 1999.

71. On July 25, 2000, the DEP issued five proposed permits to construct and certificates to operate the SLC facility which regulate the air emissions, with proposed permit conditions. At this time, two documents regarding the permits were made available for public distribution, a Public Notice and a Fact Sheet.

72. Neither document was provided in Spanish although 28.3% of the residents of Waterfront South are Hispanic and a substantial part of the Hispanic population is of limited English proficiency.

73. The EPA, in June, 2000 and the U.S. Department of Justice, in August, 2000, issued Guidances to recipients of federal financial assistance advising them of their obligations to take reasonable steps to communicate in written documents and orally in languages other than English, so that persons of limited English proficiency could participate in the recipients' programs.

74. The DEP held a public hearing on the proposed permits on August 23, 2000. Over 120 people attended the hearing. Residents of Waterfront South, including plaintiffs Julita Gilliard, Phyllis Holmes, Geneva Sanders, and Barbara Pfeiffer, and other persons testified that there already were severe environmental problems in the neighborhood, that the neighborhood was predominately people of color, that many of the

residents suffered from poor health, and that the proposed facility would have an extremely negative impact upon their health and safety.

75. The documents that were distributed and the verbal statements made by the DEP officials at the public hearing demonstrate that the only criteria used by the DEP in evaluating the permit application, including compliance with Title VI and its enforcing regulations, was the application of the National Ambient Air Quality Standards (NAAQS) and related environmental standards.

76. The DEP has stated that there would be no adverse health effect from the operation of the SLC facility because there would be no violation of the current NAAQS.

77. The DEP knew at that time that the area was already in violation of the ozone NAAQS and of the EPA's proposed PM-2.5 NAAQS even before the SLC facility began operations. The DEP also knew that SLC emissions would further increase PM-2.5 and ozone levels. DEP did not make this information available to the public in its public notices or responses to the public comments.

78. The EPA's Title VI regulations, 40 CFR §7.90, require a recipient of federal funds to provide a procedure for hearing grievances arising out claims of violations of the regulations.

79. On October 4, 2000 Plaintiff SCCIA and other Waterfront South residents filed a request for a grievance hearing with the DEP pursuant to 40 CFR §7.90, alleging violations of the Title VI regulations with respect to the DEP's evaluation of the SLC permits. DEP has not responded to the request and has not provided a hearing or other forum to address these concerns. On that basis, plaintiffs believe and allege that the DEP has no Title VI grievance procedures.

80. On October 4, 2000 Plaintiff SCCA and other individual complainants filed a complaint with the EPA alleging that DEP's permit process violated the EPA's Title VI regulations because the SLC facility will have a disparate adverse impact on the basis of race, color, and national origin.

81. On October 31, 2000, the DEP issued the five permits to construct and certificates to operate the facility to SLC, despite the pending request for a hearing.

82. The permits allow the facility to emit more than 60 tons per year of total suspended particulates, 59.14 tons of which is PM-10. SLC's total maximum 24-hour impact of PM-10 will be 23.7 micrograms per cubic meter. Pursuant to New Jersey air pollution regulations, N.J.A.C. 7:27 and the EPA Prevention of Significant Deterioration regulations, 40 CFR §56.21, this significant level of PM-10 emissions uses up 92% of the allowable increments for increase of PM-10 emissions by a new stationary source in this vicinity.

83. The permits allow SLC to use up to a total of 77,116 truck trips per year to transport materials in and out of the facility. The permit conditions regulate the total number of trucks but do not require use of any particular truck routes, erection of sound barriers, or other measures to limit the effect of the truck traffic upon the residents.

84. The SLC was not required to obtain any municipal approvals for the facility because it is located on land owned by a state agency. There is therefore no other entity that is regulating the flow of traffic and its effects on the safety and health of Waterfront South residents.

85. The DEP did not provide for adequate notice and meaningful participation by the community in the permit review process.

86. The DEP did not at any time prior to issuing the permits conduct any investigation as to the racial and ethnic composition of the Waterfront South neighborhood, the history of siting polluting facilities that adversely affect that neighborhood, the current environmental condition of the neighborhood, or the health of the residents.

87. In its evaluation of the permit for compliance with Title VI and its enforcing regulations, the DEP looked only at whether the National Ambient Air Quality Standards (NAAQS) for certain air pollutants, particularly PM-10, and certain other air emission standards would be met.

88. The DEP did not investigate or consider the levels of SLC's PM-2.5 emissions and the resulting greater degree of non-attainment of the EPA's proposed PM-2.5 standards. The DEP also did not consider the effects on the non-attainment of the ozone NAAQS.

89. The DEP failed to consider all of the health and safety problems associated with the more than 77,000 annual truck trips to be generated by SLC operations, such as the impacts on air quality, noise levels, and safety, and evaluated only the effects of the truck traffic on the amount of PM-10 which could escape as fugitive emissions.

90. The DEP did not evaluate the total cumulative and synergistic effects from all of the various pollutants to which residents of Waterfront South are already exposed and the pollutants that would be added by SLC, including pollutants for which there is no set EPA standard.

91. The DEP failed to conduct any analysis to determine whether the siting of this facility in this neighborhood would have a disparate adverse impact upon the residents on the basis of race, color, or national origin.

92. Had the DEP conducted such an analysis, the investigation would show that Waterfront South has a much higher percentage of African-American and Hispanic residents than in Camden County outside of the City of Camden and in the state of New Jersey as a whole.

93. The investigation would also show that Waterfront South has a much greater concentration of polluting facilities, hazardous substance releases, contaminated sites, and diesel truck traffic, as well as a population with poorer health and greater susceptibility to harm from pollution exposure, as compared to the environmental conditions and health status of residents in communities in the state of New Jersey where residents are predominately white.

94. The DEP knew or had reason to know that Waterfront South was a predominately minority neighborhood and that an analysis was likely to show that the permitting of the facility in Waterfront South would have a discriminatory effect upon the residents.

95. The DEP knew or had reason to know that the process it used in evaluating the SLC permits and its exclusive reliance upon the NAAQS as a criteria was inconsistent with Guidances issued by the EPA, violated the EPA civil rights regulations, 40 CFR Part 7, and resulted in a discriminatory effect upon the Waterfront South residents on the basis of race, color, or national origin.

96. The DEP has permitted a significantly greater proportion of polluting facilities in communities where most of the residents are African-American and/or Hispanic than in predominately white communities. The DEP's practice and method of administering its permitting program have resulted in discriminatory impacts upon these African-American and Hispanic residents on the grounds of race, color, and national origin.

97. On February 8, 2000 DEP Commissioner Shinn issued Administrative Order 2000-01, which states that the DEP shall provide fair and equitable treatment in environmental decision-making for all of the citizens of all New Jersey communities regardless of race, color, income or national origin. The DEP has not implemented this policy and did not utilize it in the permitting process for St. Lawrence Cement.

CLAIMS FOR RELIEF

FIRST COUNT

THE DEFENDANTS HAVE VIOLATED SECTION 601 OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000d (INTENTIONAL DISCRIMINATION)

98. All allegations made in this Complaint are incorporated by reference as if set forth in full below.

99. Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, provides that no person in the United States shall be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance on the grounds of race, color, or national origin.

100. Defendants, DEP and Commissioner Shinn, who are recipients of federal financial assistance and subject to the requirements of Title VI, intentionally

discriminated against the plaintiffs and other African-American and Hispanic residents of Waterfront and the adjoining communities on the basis of race, color, and national origin.

This intentional discrimination is made evident by the following:

- a. The DEP and Commissioner Shinn knew that the residents of Waterfront South and the surrounding neighborhoods were predominately African-American and Hispanic.
- b. The DEP and Commissioner Shinn knew that the siting of the SLC facility in Waterfront South would have an adverse impact upon these African-American and Hispanic residents.
- c. The DEP and Commissioner Shinn chose to use the NAAQS and related environmental standards as the criteria for determining whether a permit should be issued, knowing that such a limited analysis could not reveal that the permitting of the SLC facility would create a discriminatory impact upon plaintiffs.
- d. The DEP and Commissioner Shinn refused to conduct a disparate impact analysis because they contended that the operation of this facility would not have any negative impact upon the Waterfront South community.
- e. The DEP and Commissioner Shinn were fully aware of the requirements of Title VI and of their obligations, as recipients of federal assistance, to comply with their assurances to the EPA that they will meet such requirements. They knew that their use of the NAAQS and related environmental standards as the sole criteria was not consistent with the EPA's Guidances for recipients of financial assistance and was in violation of Title VI.

- f. The DEP and Commissioner Shinn knew of the region's non-compliance with the EPA's proposed standard for PM-2.5 and the scientific evidence on which the EPA proposed standard was based. The DEP and Commissioner Shinn also knew that SLC would emit significant levels of PM-2.5.
- g. The DEP and Commissioner Shinn failed to consider the health effects of SLC's PM-2.5 emissions in making its determination that there would be no adverse effects from SLC operations, and to inform the public about such health effects.
- h. The DEP and Commissioner Shinn knew of the region's non-compliance with the NAAQS for ozone and that the emissions from the diesel trucks and SLC's other emissions would tend to increase the level of non-compliance and cause adverse health effects on the residents.
- i. The DEP and Commissioner Shinn issued the permits to SLC even though they knew of the illegal discriminatory impact it would have upon the plaintiffs and other African-American and Hispanic residents.
- j. The DEP and Commissioner Shinn have engaged in a statewide pattern and practice of granting permits to polluting facilities to operate in communities where most of the residents are African-American and/or Hispanic to a greater extent than in predominately white communities, resulting in discriminatory impact on the grounds of race, color, and national origin.
- k. The DEP and Commissioner Shinn have failed to develop or implement a procedure that ensures there will be no discrimination in their permitting

decisions or to provide for meaningful public participation for residents of communities affected by the permitting decisions.

- l. The DEP and Commissioner Shinn failed to translate documents which were made available in English into Spanish, even though they knew or should have known that a significant number of the affected population are Hispanic and have limited English proficiency, so that they require Spanish language materials to be available for meaningful participation in the permit process.
- m. The DEP's and Commissioner Shinn's prior history of permitting decisions and their issuance of the permit to SLC despite knowledge of its discriminatory effects demonstrate that defendants intended to and did discriminate against plaintiffs on the basis of race, color, and national origin.

101. The DEP's issuance of the permits to SLC violated Title VI, 42 U.S.C. §2000d.

SECOND COUNT

THE DEFENDANTS HAVE VIOLATED THE EPA REGULATIONS, 40 CFR
PART 7, ISSUED PURSUANT TO SECTION 602 OF TITLE VI OF THE CIVIL
RIGHTS ACT OF 1964, 42 USC §2000d-1
(DISCRIMINATORY EFFECT)

102. All allegations made in this Complaint are incorporated by reference as if set forth in full below.

103. Section 602 of Title VI, 42 U.S.C. §2000d-1, authorizes every federal department and agency which is empowered to extend federal financial assistance to any program or activity to effectuate the provisions of Section 601 by issuing regulations.

104. Pursuant to Section 602, the EPA has promulgated regulations which provide that no person shall be excluded from participation in, be denied the benefits of,

or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin. 40 CFR §7.30. The regulations further specifically prohibit a recipient of financial assistance from using criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. 40 CFR §7.35.

105. The DEP and Commissioner Shinn violated Title VI and the EPA regulations by granting a permit to SLC because the permit has the effect of discriminating against plaintiffs on the basis of their race, color, and national origin, as the polluting air emissions, the diesel trucking, and other negative effects resulting from the SLC facility operations will:

- a. Cause the African-American and Hispanic residents of Waterfront South and the adjoining census tracts to be exposed to a substantially higher level of air pollution than most residents of predominately white communities in the state of New Jersey;
- b. Cause African-American and Hispanic residents of Waterfront South and the adjoining census tracts to suffer greater physical harm from the exposure to pollution than most residents of predominately white communities in the state of New Jersey;
- c. Endanger the health and safety of the African-American and Hispanic persons who live near the facility to a far greater degree than it will injure most residents of predominately white communities in the state of New Jersey;

- d. Increase the existing disparity between the health of African-American and Hispanic residents who live near the facility as compared to the health of most residents of predominately white communities in the state of New Jersey;
- e. Lower the quality of life, property conditions, real estate values, and self-esteem of African-American and Hispanic persons who live in the neighborhood as compared to the quality of life, property conditions, real estate values, and self-esteem of most residents of predominately white communities in the state of New Jersey.

106. The DEP and Commissioner Shinn violated Title VI and the EPA regulations because the permitting of this facility results from the statewide practice by DEP of permitting a significantly greater proportion of polluting facilities in communities where the residents are predominately African-American and/or Hispanic than in predominately white communities, creating discriminatory effects on persons on the basis of their race, color, and national origin.

107. The DEP and Commissioner Shinn have violated Title VI and the EPA regulations by using criteria and methods of administering its program which have the effect of subjecting plaintiffs to discrimination on the basis of their race, color, and national origin, as:

- a. The DEP failed to investigate whether there would be a disparate impact with regard to the siting of this facility, even though it knew that SLC would be located in a predominately minority community

and even though it had given assurances to the EPA that the DEP's practices would not result in any disparate impact;

- b. The DEP relied exclusively on compliance with the NAAQS and related environmental standards to determine whether any investigation of disparity was necessary;
- c. The DEP has not established any protocols for determining compliance with Title VI in its permitting decisions, including procedures for conducting investigations and analysis of disparate impact, and therefore cannot determine whether it is complying with the assurances that it gave the EPA that its practices do not violate Title VI and the EPA civil rights regulations;
- d. The DEP denied opportunity for persons with limited English proficiency to participate in the public process, and otherwise failed to provide for meaningful public participation;
- e. The DEP did not provide a grievance process to plaintiffs regarding their civil rights complaints, in violation of 40 CFR §7.90;
- f. The DEP allowed the facility to be constructed without a determination that it will be in compliance with federal law.

THIRD COUNT

THE DEFENDANTS HAVE VIOLATED THE RIGHT TO EQUAL PROTECTION AS GUARANTEED BY THE AMENDMENTS TO THE UNITED STATES CONSTITUTION

108. All allegations made in this Complaint are incorporated by reference as if set forth in full below.

109. Pursuant to the 14th Amendment to the United States Constitution, every person has a right to equal protection under the law.

110. The DEP and Commissioner Shinn have intentionally discriminated against plaintiffs on the basis of race, color, or national origin, in violation of the Equal Protection clause of the 14th Amendment and 42 U.S.C. §1983.

111. As a direct and proximate result of Defendants' actions, the plaintiffs will suffer injuries, including damage to their health, decrease in safety, exposure to pollution, excessive traffic, and noise, a blighting effect on their community, lowering of self-esteem, decrease in property values, and worsening of their quality of life.

FOURTH COUNT

THE DEFENDANTS HAVE VIOLATED THE FAIR HOUSING ACT, 42 U.S.C. §3601 ET SEQ.

112. All allegations made in this Complaint are incorporated by reference as if set forth in full below.

113. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604(a) makes it unlawful to refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

114. The Fair Housing Act, 42 U.S.C. §3604(b) makes it unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

115. By granting the permits to SLC, DEP has caused a diminution in both the quantity and quality of the available housing stock in the Waterfront South neighborhood,

which has a discriminatory impact on Waterfront South residents on the basis of race, color and national origin. DEP's actions are thus a violation of Title VIII.

116. The DEP has discriminated in the provision of services to the residents of Waterfront South, in violation of Title VIII.

117. Further, DEP's actions will cause the perpetuation of segregation in the Waterfront South neighborhood, and thus violate Title VIII.

RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Find and declare that the defendants DEP and Commissioner Shinn have violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d *et seq.*, EPA civil rights regulations, 40 CFR Part 7, the 14th Amendment of the U.S. Constitution, and Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604;
- (2) Declare the operating permits and certificates granted to SLC invalid;
- (3) Issue an injunction rescinding the permits and certificates, and enjoining the DEP from taking any further action whatsoever to allow the operation of the SLC facility;
- (4) Enjoin the DEP from using its current procedures in evaluating this and other permit applications;
- (5) Order the DEP to develop and adopt a comprehensive protocol for reviewing permit applications that will prevent the granting of permits that have the effect of discriminating against persons on the basis of color, race, or national origin;

- (6) Order the DEP to adopt procedures for meaningful public participation in the permitting process, including a requirement that public notices and summary documents be translated and made available in Spanish and other languages when such translations are necessary in light of the demographics of the affected community;
- (7) Order the DEP to adopt a grievance procedure as required by 40 CFR §7.90;
- (8) Order the defendants to pay plaintiffs' costs;
- (9) Order the defendants to pay plaintiff's reasonable expert and attorney's fees, except that no attorney's fees are requested by Camden Regional Legal Services;
- (10) Order such other relief as the Court deems equitable and just.

CAMDEN REGIONAL LEGAL SERVICES, INC.

DATED: Feb. 12, 2001

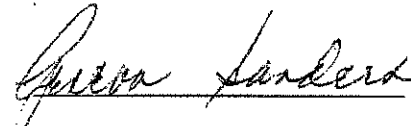
BY: Olga D. Pomar
OLGA D. POMAR
Attorneys for Plaintiffs

VERIFICATION

Geneva Sanders, of full age, being duly sworn, deposes and states as follows:

I live at 1821 South 4th Street, Camden, NJ 08104 and am a resident of Waterfront South. I am one of the founding members of South Camden Citizens in Action and am presently the acting vice-president of the group. I have personal knowledge about the conditions in my neighborhood and of the activities of SCCIA.

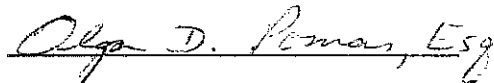
I have reviewed the attached Verified Complaint and know and believe the information contained in to be true.


GENEVA SANDERS

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 12th DAY

OF FEBRUARY, 2001.


Attorney at Law
State of NJ

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE
HONORABLE _____

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Attorneys for Plaintiffs

SOUTH CAMDEN CITIZENS IN ACTION,
et al.

Plaintiffs,

vs.

THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

ROBERT C. SHINN, JR., Commissioner of the
NJ Dept. of Environmental Protection,
in his official capacity,

Defendants

Case No. _____

CERTIFICATION OF
GENEVA SANDERS

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SOUTH CAMDEN CITIZENS
IN ACTION, *et al.*

Plaintiffs,

v.

THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
ROBERT C. SHINN, JR., Commissioner of the
NJ Dept. of Environmental Protection, in his
official capacity,

Defendants.


CIVIL ACTION NO.: _____

JUDGE _____

MOTION FOR SPECIAL APPOINTMENT TO SERVE PROCESS
(General Rule 9 C and FRCiv. P. 4(c))

Application is hereby made for an Order specially appointing John Partridge to serve the
Summons, Complaint and accompanying papers upon Defendants New Jersey Dept. of Environmental
Protection and Commissioner Robert C. Shinn, Jr. in this action, and it is represented that:

1. The person named is competent and at least 18 years old.
2. The person is not and will not be a party to this action.



Olga D. Pomar, Esquire
Camden Regional Legal Services, Inc.
745 Market Street
Camden, NJ 08102
Attorney for Plaintiffs

ORDER

The above application is ORDERED GRANTED.

FURTHER ORDERED that proof of such service shall be made by affidavit in accordance with
Rule 4(g), FRCiv. P., and filed with the Clerk together with the Original process.

FURTHER ORDERED that entry hereof implies no ruling on the validity of such service.

ORDER DATED: _____

[] U.S. District Judge
[] Clerk
[] Deputy Clerk

