



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

FEB 21 2012

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail# (b)(6) Privacy, (b)(7)(C) Enf. Privacy

In Reply Refer to:

EPA File No. 10D-10-R3

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Union City, PA 16438 (b)(6) Privacy, (b)(7)(C) Enf. Privacy

Re: Request to Reconsider Decision to Dismiss Administrative Complaint

Dear (b)(6) Privacy, (b)(7)(C) Enf. Privacy:

This is in response to your August 29, 2011, letter to the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) requesting that OCR reconsider its decision to dismiss your complaint (EPA File No. 10D-10-R3). You submitted additional information to OCR on September 22, 2010, and November 23, 2011. Your complaint was filed with EPA on April 21, 2010. Your complaint alleges that the Pennsylvania Department of Environmental Protection (PDEP) intentionally discriminated against you by denying your handicapped privileges for a handicap-accessible permit to repair an existing handicap-accessible boat dock and sea wall, on your property at Canadohta Lake in Union City, Pennsylvania. After carefully reviewing the information submitted regarding your request for reconsideration, OCR has determined that the additional information does not alter its May 2, 2011, decision to dismiss your complaint.

OCR dismissed your complaint on May 2, 2011, due to insufficient evidence to support your allegation of intentional discrimination by PDEP. Specifically, OCR found that PDEP was not aware of your alleged disability at the time of the allegedly discriminatory acts. Thus, OCR concluded that PDEP's actions to initiate the civil action were in response to your non-compliance with the law based on PDEP's 2007 Order, not based on your alleged disability. In addition, OCR found no evidence that you were denied a handicap permit or that PDEP allowed non-disabled individuals to maintain sea walls that failed to comply with state law.

Your August 29, 2011, letter included the following new information: a copy of the General Permit Registration form indicating that you requested a GP-2 (Small Docks & Boat Launching Ramps) and GP-3 (Bank Rehabilitation, Bank Protection & Gravel Bar Removal) permit, stamped as received on March 4, 2002, which you signed on May 14, 2002; a copy of the General Permit Registration form for a GP-3 permit describing

your project to build/repair an existing handicap-accessible sea wall which you submitted to PDEP for approval on May 20, 2011; a copy of PDEP's response to your submittal; a copy of a Court Order, dated August 4, 2011, PDEP issued to you directing you to take certain measures to purge the adjudgement of being in contempt of the Court's June 4, 2010 Order; and, photographs of your lot and your neighbor's lot before and after you submitted your application for a GP-3 permit.

Your September 22, 2011, submittal to OCR states that PDEP knew about your disability since 2000. As evidence, you assert that (b)(6) Privacy, (b)(7)(C) Enf. Privacy an employee of the Conservation District, being aware of your disability revised your submitted GP-3 handicap sea wall permit application to repair the existing sea wall in March of 2002, to a GP-2 handicap boat dock permit, after PDEP review. Your submittal also included documentation of your hip surgery on April 9, 1997, a map showing Cold Spring Acres Plan Nos. 1, 2 and 3, indicating which lots on Canadohta Lake received GP-3 permits, and various documents regarding actions taken on your property regarding the sea wall and boat dock.

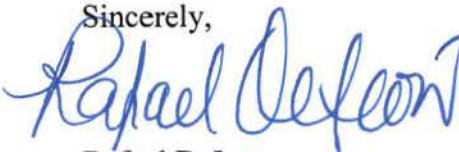
The information you submitted on November 23, 2011, included a copy of a completed Telephone or Verbal Conversation Record form dated May 11, 2001, stating that the inspected site was restored and in compliance, a copy of a partial transcript of the hearing you testified at regarding the sea wall and boat dock referred to in your complaint with PDEP, a January 15, 2002, newspaper article regarding new requirements for developers in wetlands areas, and photos of your lot before and after the new seawall was constructed, also showing flooding on your lot.

EPA may reconsider decisions to dismiss administrative complaints when new and significant information is provided that demonstrates OCR made a major substantive error in its resolution of a complaint. After careful review, OCR finds that the additional information you submitted does not meet this criterion; specifically that PDEP denied you a permit based on your disability. Your September 22, 2011, submittal states that PDEP had knowledge of your disability since March of 2000. It also explains (b)(6) Privacy, (b)(7)(C) Enf. Privacy actions of revising your GP-3 handicap sea wall permit to a GP-2 handicap boat dock permit after PDEP's review. However, if PDEP approved your submitted GP-3 handicap sea wall permit application prior to review by the Conservation District, a documented copy of PDEP's GP-3 handicap sea wall permit approval should have been recorded by PDEP, and a copy sent to OCR as requested in its September 10, 2010, letter to PDEP requesting information regarding this investigation. However, OCR has not received any documented evidence demonstrating that you applied for, were approved by PDEP, or were denied a GP-3 handicap sea wall permit in 2002.

OCR's May 2, 2011, decision determined that you were denied the permit because of your noncompliance with PDEP's 2007 Order. Although you state that the PDEP had knowledge of your disability in 2000, you do not provide any new evidence demonstrating that PDEP had this knowledge and therefore discriminated against you by denying you a permit. Accordingly, OCR has determined that the new information presented does not indicate a major, substantive error by OCR.

If you have any further questions, please contact Helena Wooden-Aguilar, Assistant Director, Office of Civil Rights by telephone at (202) 564-0792, via electronic mail at wooden-aguilar.helena@epa.gov, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460-1000.

Sincerely,

A handwritten signature in blue ink that reads "Rafael DeLeon". The signature is fluid and cursive, with the first name "Rafael" being more prominent than the last name "DeLeon".

Rafael DeLeon
Director

cc: John Hanger, Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101-2301

Stephen G. Pressman, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)