



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF THE FIELD SOLICITOR

U.S. Department of the Interior
Bishop Henry Whipple Fed. Bldg.
1 Federal Drive, Room 686
Fort Snelling, MN 55111-4030



2008 APR 29 PM 1:23

EPA REGION VIII
HEARING CLERK

2008-0496

April 25, 2008

Ms. Tina Artemis
Regional Hearing Clerk (8RC)
US Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

Re: *In re Bureau of Indian Education Bus Garage, Turtle Mountain Reservation Docket*
No. R.C.R.A.-08-2008-0004--Complaint and Notice of Opportunity for Hearing

Dear Ms. Artemis:

This office provides legal services to the Bureau of Indian Education (BIE), Turtle Mountain Reservation and has been designated to represent BIE in this matter. Thus, enclosed for filing in accordance with 40 C.F.R. § 22.7 is the United States Department of the Interior, Bureau of Indian Education's Response, Request for a Settlement Conference, and Request for a Hearing if necessary to contest penalties in the above-referenced matter

Please feel free to contact this office via telephone (612/713-7100), facsimile (612/713-7121), or mail¹, should you have questions about this filing.

Sincerely,

Jean W. Sutton
For the Field Solicitor

cc: Amy Swanson, Enforcement Attorney (via facsimile 303/312-6953)

¹ Because of a court order in Indian trust fund litigation, this office does not have access to the internet. Therefore we cannot send or receive electronic mail via the internet.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)	
)	
)	Docket No. R.C.R.A. 08-2008-0004
)	
United States Department of the Interior, Bureau of Indian Education)	UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN EDUCATION's
)	
Bus Garage Facility Fish Lake Road North, Belcourt, ND 58316 Turtle Mountain Reservation Respondent.)	RESPONSE, REQUEST for SETTLEMENT CONFERENCE, and to RESERVE HEARING

NOW COMES the United States Department of the Interior, Bureau of Indian Education (formerly Bureau of Indian Affairs, Office of Indian Education Programs) by and through its attorneys, Office of the Solicitor, Jean W. Sutton, Twin Cities Field Solicitor's Office, Ft. Snelling, Minnesota, pursuant to 40 C.F.R. § 22.7 and, for its Response, answers, and denies, unless specifically admitted herein, all factual allegations in the Complaint by numbered paragraphs, requests a settlement conference, and respectfully reserves the right to request a hearing for the purpose of preserving its right to contest the penalties proposed.

RESPONSE

- 1. through 6. Paragraphs 1 through 6 of the Complaint contain Complainant's assertions as to jurisdiction and authority rather than allegations of fact, and as such need no response.
- 7. Admit.
- 8 and 9. Paragraphs 8 and 9 of the Complaint contain Complainant's regulatory definitions and as such need no response.
- 10. Admit.

11. Deny, except to admit only that Complainant apparently contacted an employee of either the Belcourt School District (Joe Herman), or the Turtle Mountain Band of Chippewa Indians (Don DeCoteau), not any BIE employee, about an inspection of the BIE UST at the bus garage. The contact alleged to have been made June 11, 2007, was after the end of the school year, when the BIE employee responsible for UST compliance and monitoring, Peter Davis, BIE Transportation Director, was not available because he is an education contract employee, whose contract and tour of duty is for the academic year, when school is in session. Accordingly, Respondent denies that any employee of BIE received notice or other information with respect to the proposed inspection until after the inspection had taken place.

12. Deny, except to admit only that EPA inspector Christopher Guzzetti apparently conducted an inspection of the facility and to state that BIE is without knowledge to admit or deny who accompanied Mr. Guzzetti, or the how the inspection was conducted. Respondent further denies that any BIE official was aware of, present for, or consented to the inspection in the role of "facility representative."

13. Respondent BIE is without knowledge to admit or deny any statement(s) made by the "facility representative" referred to in this paragraph, as the "facility representative" is not identified by either name or title, and no BIE official was aware of or present for the inspection. To the extent a response is required, deny.

14. Deny. Respondent BIE is without knowledge to admit or deny any statement(s) made by the "facility representative" referred to in this paragraph, as the "facility representative" is not identified by either name or title, and no BIE official was aware of or present for the inspection. To the extent a response is required, deny.

15. and 16. These paragraphs contains mixed allegations of fact and conclusions of law which require no response, but to the extent a response is required, the respondent BIE admits the Complainant's conclusions in these paragraphs.

17. Admit that as an agency of the federal government, BIE is self-insured. to the extent there is an authorizing waiver of the sovereign immunity of the United States.

18. Deny. Respondent BIE is without knowledge to admit or deny any statement(s) or actions attributed to the "facility representative" referred to in this paragraph, as the "facility representative" is not identified by either name or title, and no BIE official was aware of or present for the inspection. To the extent a response is required, deny.

19. Respondent BIE is without direct knowledge to admit or deny the substance of this allegation except to admit that a copy of a settlement agreement executed in November and December, 2000 was provided to the undersigned by Complainant via facsimile on April 15, 2008.

20. Through 23. These paragraphs of the Complaint contain citations of law rather than factual allegations, and as such no response is required.

24. Deny.

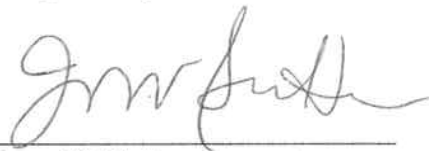
25. This paragraph contains Complainant's mixed allegation of fact and legal conclusions to which no response is required, but to the extent a response may be deemed to be required, deny.

WHEREFORE, the respondent BIE having responded to the allegations and having specifically denied factual allegations recited by Complainant as necessary elements of the alleged violations, the respondent, Department of the Interior, Bureau of Indian Education

pray that this action be dismissed, or in the alternative, requests a settlement conference to resolve this matter and reserves the right to request as hearing if necessary to contest the alleged violations.

Dated: April 25, 2008

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "JWS", written over a horizontal line.

Jean W. Sutton
Attorney, Office of the Solicitor
Department of the Interior