INTERIOR BOARD OF INDIAN APPEALS

Vicki Her Many Horses v. Great Plains Regional Director, Bureau of Indian Affairs

52 IBIA 154 (10/08/2010)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

VICKI HER MANY HORSES, Appellant,	)	Order Docketing and Dismissing Appeal
v.	)	
	)	Docket No. IBIA 10-127
GREAT PLAINS REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	October 8, 2010

Vicki Her Many Horses (Appellant) appealed to the Board of Indian Appeals (Board) from alleged inaction by the Great Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), after Appellant wrote to the Regional Director complaining about new construction by the Lower Brule Sioux Tribe (Tribe) of a convenience store near the West Brule housing area on the Tribe's reservation.[1] The Board construed the appeal as having been filed pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official), but noted two threshold issues. First, Appellant had not certified that she had served her notice of appeal on the Assistant Secretary - Indian Affairs and the Tribe, as required by 43 C.F.R. §§ 4.310(b) and 4.332(a). Second, it appeared that Appellant's letter of complaint to the Regional Director did not comply with the procedural requirements of 25 C.F.R. § 2.8.[2] To address these issues, the Board ordered Appellant, on or before August 31, 2010, to comply with the service requirements and also to show cause (i.e., explain) why the Board should not dismiss her appeal for failure to comply with the procedural requirements of

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[1] Appellant apparently owns a convenience store in the area, and her letter of complaint to the Regional Director, dated June 30, 2010, raised various questions about compliance with environmental laws, including the National Environmental Policy Act (NEPA). Appellant contended that the NEPA process was not being followed for the construction.

[2] Section 2.8 is an action-prompting mechanism, but requires a party to comply with certain procedural requirements before the alleged inaction by a BIA official becomes appealable. *See id.* § 2.8(a); *Migisew-Asiniwiin Ojibwa Grand Council of Clans v. Director, Office of Self-Governance*, 41 IBIA 139, 140 n.1 (2005); *Hawkins v. Rocky Mountain Regional Director*, 40 IBIA 56, 56 (2004).

§ 2.8. The Board advised Appellant that if she failed to respond to the Board's order, her appeal might be dismissed without further notice.

The Board has received no response from Appellant.

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dockets this appeal but dismisses it for failure to prosecute.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge