

**UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
ST. LOUIS DISTRICT OFFICE**

In Re The Matter Of:)	
)	
CAROL A. CLOPTON et al.,)	
)	
Class Agents,)	EEOC Case No. 280-A0-04324X
)	
v.)	
)	Agency Case No. 2000-0096-R7
STEPHEN L. JOHNSON,)	
ADMINISTRATOR, UNITED STATES)	
ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent Agency.)	

ORDER

This matter is before the Commission on Class Agents' motion to modify order on class notice to which the Agency responded in partial opposition as is discussed more fully below. Following the status conference of July 15, 2008, an Order was issued on July 17, 2008 directing the Agency to issue a notice contained in the Order. Class Agents' instant motion requests modification of the notice in three respects.

Two requests are unopposed. First, Class Agents request replacing the word, "denied" with the words, "not offered" in the section of the subject notice describing the class and issues for reason that "not offered" is consistent language used in prior decisions and rulings. The Agency does not oppose the requested modification. Second, Class Agents request that the e-mail address listed in the section of the notice providing the name and contact information for Class Counsel be changed from SSpiegelesq@verizon.net to sspiegel@spiegellaw.com. The Agency does not oppose the change in the e-mail address.

The third requested modification is contested. Class Agents seek to include Class Counsel's website in the section of the notice providing the name and contact information for Class Counsel for reason that it is "essentially" mandated by Commission guidance and for the further reason that the request for inclusion of the website, "has not been properly ruled upon." The Agency opposes inclusion of Class Counsel's website arguing that there is, "no sound support [for inclusion of the website]" and further arguing that the issue has been the subject of previous rulings.

For purposes of this Order, it will be assumed *arguendo* that the subject of website inclusion has not been addressed in prior ruling(s). It is found, however, that there is no legal authority mandating inclusion of a website in a class notice. Further, Class Agents fail to demonstrate how the inclusion will facilitate the Agency's requirement to provide notice to potential class members who will be notified electronically (in the case of current employees) and by United States Mail, Return Receipt Requested (in the case of former employees including the estates of deceased former employees). Nor have Class Agents shown any prejudice or harm that will result from non-inclusion of Class Counsel's website in the notice which will contain Class Counsel's name, business address, telephone number and e-mail address.

Accordingly, **it is hereby:**

ORDERED that Class Agents' motion to modify order on class notice is GRANTED in part (respecting Class Agents' requests (a) that the word, "denied" be replaced with the words, "not offered" in the section of the subject notice describing the class and issues and (b) that the e-mail address listed in the section of the notice providing the name and contact information for Class Counsel be changed from SSpiegelesq@verizon.net to sspiegel@spiegellaw.com.) and

DENIED in part (respecting Class Agents' request that Class Counsel's website address be included in the subject notice); and, **further:**

ORDERED that the following notice, as revised consistent with the foregoing rulings, with a copy of the referenced Order attached, should be issued by the Agency within fourteen (14) calendar days of receipt of this Order:

NOTICE

Date: [Month] [Day], 2008

From: Karen Higginbotham
Director
Office of Civil Rights
United States Environmental Protection Agency

Subject: Notice of Class Action: *Carol A. Clopton et. al v. Stephen L. Johnson, Administrator, United States Environmental Protection Agency*, EEOC Case No. 280-A0-04324X

To: Potential Class Members

Introduction

On January 9, 2007, the United States Equal Employment Opportunity Commission, Office of Federal Operations denied the United States Environmental Protection Agency's request for reconsideration of the decision in *Carol A. Clopton v. Environmental Protection Agency*, EEOC Appeal No. 01A62246 (October 12, 2006). EEOC Request No. 0520070139 (January 9, 2007). The decision denying the request for reconsideration requires the United States Environmental Protection Agency to notify potential class members of the United States Equal Employment Opportunity Commission's acceptance of the class complaint in accordance with 29 C.F.R. Section 1614.204(e).

Receipt Of This Notice

You received this notice because you are a potential member of the class in the class complaint identified above which is now pending in the St. Louis District Office of the United States Equal Employment Opportunity Commission ("Commission") and which is captioned *Carol A. Clopton et. al v. Stephen L. Johnson, Administrator, United States Environmental Protection Agency*, EEOC Case No. 280-A0-04324X.

Description of the Class and Issues

The class was certified by an Administrative Judge of the Commission as all current and former employees of Region 7 of the United States Environmental Protection Agency (“Agency”) who were employed at anytime during the period May 11, 1998 to August 31, 2007, and who were at least 40 years of age when so employed (including a subset of Agency Black employees who were at least 40 years of age when so employed). The Administrative Judge also found that the issues to be determined are whether the Agency discriminated against the class members (a) when they allegedly were not offered, because of their age (or race and age) rotational assignment opportunities provided to newly-hired younger employees (which newly-hired younger employees were allegedly not required to backfill their positions while on assignments) and (b) when, allegedly as a result of not participating in these rotational assignments, the Agency provided an undue advantage to the newly-hired younger employees in such areas as promotions, accelerated leave accumulation, within-grade step increases “out of time” and placement in higher leave earning categories without having to meet tenure requirements. A copy of the Administrative Judge’s Order, dated February 7, 2008, is attached to this notice.

The Binding Nature of the Class Complaint

Class members are not permitted by the Commission’s regulations to “opt out” of the defined class; therefore, these class proceedings are binding on you. You do not have to file a claim or do anything else at this time to remain eligible to receive monetary and/or other relief should there be a decision that discrimination did occur or if there is a settlement. Class members may, but do not have to, participate in the litigation. Class members will receive notice of any proposed settlement and will have the opportunity to object to any proposed settlement. If there is a finding that discrimination did occur, class members will have the opportunity to file claims for individual relief.

The Class Agents

The Class Agents are Carol A. Clopton and Emajo Mayberry.

The Class Representative

The attorney for the Class Agents and the Class is as follows:

Steven M. Spiegel, Esq.
3917 Keller Avenue
Alexandria, VA 22302-1817
Tel: (703) 998-6780
E-Mail: sspiegel@vspiegellaw.com

Where To Direct Questions

Questions concerning this notice and/or the class complaint should be directed to the attorney for the Class Agents and Class at the addresses and/or telephone number listed above.

Retaliation Is Prohibited By Law

The law prohibits the Agency from retaliating against any current or former employee who opposes any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended ("Title VII") or the Age Discrimination in Employment Act, as amended ("ADEA"), or for participating in any stage of administrative or judicial proceeding under Title VII or ADEA including these class action proceedings.

It is **further:**

ORDERED that the methods of notification shall be (a) via e-mail to current employees and (b) via United States Mail, Return Receipt Requested to former employees inclusive of deceased employees in order that the estates of the deceased employees have an opportunity to participate in these proceedings through the duly authorized respective representative(s) of the estates; the undersigned is to be advised in writing by the parties not later than October 17, 2008 of the number, if any, of unopened e-mails and outstanding Return Receipts with joint or separate suggestion(s) of alternative methodology(ies) if deemed necessary; and **further:**

ORDERED that the parties may commence discovery 15 calendar days after issuance of the notice, and that all discovery shall be completed not later than March 20, 2009; the parties may, not later than September 5, 2008, submit a proposed joint discovery schedule to the undersigned, noting areas of dispute, if any, for approval with rulings on any disputed areas should the parties choose to do so; and, discovery may be conducted electronically in whole or in part if both parties consent.

Dated this 18th day of August, 2008

For The Commission:



Lloyd J. Vasquez, Jr.
Administrative Judge

Photocopies of the foregoing Order were mailed and faxed on the above date to:

Steven M. Spiegel, Esq.
3917 Keller Ave.
Alexandria, VA 22302-1817
@ (703) 998-7612

Charles G. Starrs, Esq.
Office of General Counsel (MC 2377A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
@ (202) 564-5432 [For Delivery, Room 7435,AR-North]