



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

MAY 04 2009

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7004-1160-0002-3622-5676

In Reply Refer To:

EPA File No. 03D-08-R6



Re: Rejection of Administrative Complaint

Dear [REDACTED]:

This letter is in response to your administrative complaint that was originally filed with the U.S. Department of Justice (DOJ). DOJ received the complaint on April 1, 2008, and referred the complaint to the U.S. Environmental Protection Agency (EPA) Region 6 Office. On June 3, 2008, the regional office forwarded the complaint to EPA's Office of Civil Rights (OCR), which is responsible for reviewing all complaints alleging discrimination. The complaint alleges that the Texas Commission on Environmental Quality (TCEQ) did not adequately evaluate the potential health effects on students attending nearby educational facilities prior to the issuance of an operating permit for the El Paso ASARCO smelter plant.

On January 13, 2009, OCR sent you a letter requesting clarification about your complaint. During a subsequent telephone conversation with you on March 9, 2009, OCR learned that TCEQ voided the operating permit for the El Paso ASARCO smelter plant (permit no. 20345). Since the permit discussed in your complaint has been voided and the smelter plant did not resume operations, the allegations in your complaint are not ripe for investigation. Therefore, OCR is closing this complaint.

OCR is committed to ensuring that recipients of EPA financial assistance operate their programs in compliance with EPA's nondiscrimination regulations. As such, if the permit status changes and you have future concerns about possible discriminatory impacts, a new complaint should be filed with OCR.

If you have questions regarding this letter, please contact Ericka Farrell of the OCR External Compliance Program at (202) 343-9224, via electronic mail at farrell.ericka@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen D. Higginbotham", written over a horizontal line.

Karen D. Higginbotham
Director

Enclosure

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

Manuela Roblez, EPA Region 6

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

February 9, 2009

Mr. Thomas L. Aldrich
Vice President Environmental Affairs
ASARCO LLC
5285 E. Williams Circle, Suite 2000
Tucson, Arizona 85711

Re: Air Permit Numbers: 4151, 20345, and Federal Operating Permit No. 2871
Ore Handling and Storage Facility and Smelter
El Paso, El Paso County
Regulated Entity Number: RN100219021
Customer Reference Number: CN602815524
Account Number: EE-0007-G

Dear Mr. Aldrich:

As requested in your letter dated February 6, 2009 we are voiding active New Source Review permit numbers 4151 and 20345. Accordingly, the pending Permit No. 4151 renewal application, revision request, and notification of qualified change request are also voided.

Additionally, as requested the pending application for Federal Operating Permit (FOP) No. 2871 for the Asarco El Paso Plant site authorized under Title 30 Texas Administrative Code (30 TAC) Chapter 122 is voided.

Thank you for informing us of the status of your site. If you have any questions regarding this notice, please contact Mr. Javier Maldonado, P.E. at (512) 239-6047 or Dois Webb, P.E. at (512) 239-1575.