



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

JUL 30 2009

OFFICE OF
CIVIL RIGHTS

In Reply Refer To:

EPA File No: 15R-05-R9

EPA File No: 10R-07-R9

Return Receipt Requested

Certified Mail #7004-1160-0002-3622-6710

Mr. Steven Brittle

Don't Waste Arizona, Inc.

6205 South 12th Street

Phoenix, AZ 85042

Return Receipt Requested

Certified Mail #7004-1160-0002-3622-5720

Mr. Michael L. Pops, Sr.

Concerned Residents of South Phoenix

819 West Street Keteri Drive

Phoenix, AZ 85041

Re: Partial Acceptance of Administrative Complaints

Dear Mr. Brittle and Mr. Pops:

This is in response to your administrative complaints received by the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on July 18, 2005, and September 21, 2007. The complaints were filed by Don't Waste Arizona, Incorporated (DWAZ) and the Concerned Residents of South Phoenix (CRSP). Both complaints allege that the Maricopa County Air Quality Department (MCAQD) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations implementing Title VI, found at 40 C.F.R. Part 7. After careful consideration, OCR is partially rejecting and partially accepting your administrative complaints for investigation. OCR will consolidate the accepted allegations from both complaints (EPA File Nos. 15R-05-R9 and 10R-07-R9) into a single investigation, since the allegations involve the same area of Phoenix, the same facility, and the same recipient of EPA assistance.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of complaints to determine acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe alleged discriminatory acts that violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, or disability). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15.

Allegation I

MCAQD's issuance of Title V permit number V97-021 intentionally discriminated against the Latino residents who live adjacent to the Phoenix Brick Yard.

Your administrative complaint (15R-05-R9) states that MCAQD's issuance of its June 6, 2005, permit "would be an intentional violation of Title VI of the Civil Rights Act."¹ Specifically, you allege that MCAQD's allowance of a "major uncontrolled source of hydrogen fluoride emissions in a low-income community of color...is an intentional discriminatory act."² This allegation meets all of EPA's jurisdictional requirements. The complaint is in writing and describes an alleged discriminatory act that would violate EPA's Title VI regulations. The complaint also describes an alleged discriminatory act that occurred within 180 days of the filing of this complaint. (The complaint was filed on July 18, 2005 and the alleged discriminatory act occurred on June 6, 2005.) Finally, MCAQD is an EPA financial assistance recipient. Therefore, this allegation is accepted for investigation.

EPA's nondiscrimination regulations do not cover discrimination on the basis of low-income status. Since OCR does not have the authority to investigate allegations of discrimination based on income, any allegation in your complaint pertaining to low-income status will not be considered for investigation.

Allegation II

MCAQD's failure to administer its Hazardous Air Pollutant (HAP) air permitting program, specifically by failing to prevent unhealthy emissions of Hydrogen Fluoride, had a discriminatory effect on the Latino residents who reside adjacent to the Phoenix Brick Yard.

Your administrative complaint (10R-07-R9) states that MCAQD allowed unhealthy emissions of Hydrogen Fluoride (HF) in the Latino community adjacent to the

¹ Letter from Steven Brittle, President, Don't Waste Arizona to Stephen L. Johnson, Administrator, EPA regarding 15R-05-R9 at pg. 3. (July 17, 2005)

² *Id* at pgs. 3-4.

Phoenix Brick Yard.³ Specifically, your complaint states that MCAQD has “failed to require [Maximum Achievable Control Technology (MACT)] standards for a facility that emits more than 10 tons of a single Hazardous Air Pollutant, HF, despite the clearly stated requirements under the Clean Air Act...”⁴ In addition, you allege that the failure of MCAQD to administer its Title V HAP program has resulted in environmental and health related concerns for the community members living adjacent to the Phoenix Brick Yard.⁵

This allegation meets all of EPA’s jurisdictional requirements. The complaint is in writing and describes an alleged discriminatory act that would violate EPA’s nondiscrimination regulations. The complaint also describes an alleged discriminatory act that occurred within 180 days of the filing of this complaint. (The complaint was filed on September 21, 2007, and the alleged discriminatory act – a permit modification – occurred on April 12, 2007.) Finally, MCAQD is an EPA financial assistance recipient. Therefore, this allegation is accepted for investigation

Allegation III

MCAQD’s failure to provide public participation opportunities during the reopening of the Title V air permit for the Phoenix Brick Yard, had a disproportionate effect on the Latino community members.

Your administrative complaint (10R-07-R9) states that MCAQD entered into a settlement agreement with Phoenix Brick Yard prior without holding a public hearing.⁶ The complaint further states that MCAQD failed to announce the settlement agreement at either the January 16, 2007, or the March 1, 2007, public hearing, thereby, denying the community the opportunity for meaningful public involvement.⁷

This allegation is rejected for investigation because it does not meet all of EPA’s jurisdictional requirements. The complaint is in writing, describes an alleged discriminatory act that would violate EPA’s nondiscrimination regulations, and names an EPA financial assistance recipient (MCAQD). As stated earlier, EPA’s regulations require a complaint be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Here, the alleged discriminatory act (failure to announce a settlement agreement during the January 16, 2007 or the March 1, 2007, public hearing) occurred more than 180 days before the filing of this complaint on September 21, 2007. Therefore, this allegation is untimely, and OCR must reject this allegation for investigation.

³ Letter from Steven Brittle, President, DWA and Michael L. Pops, Sr. President, CRSP to Karen D. Higginbotham, Director, OCR, EPA regarding 10R-07-R9 at pg. 1. (September 21, 2007)

⁴ *Id.* at pg. 2.

⁵ *Id.* at pg. 6.

⁶ *Id.* at pg. 3.

⁷ *Id.* at pg. 4.

EPA's nondiscrimination regulations provide that OCR must attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process and the involvement of affected stakeholders.

If you have any questions, please contact Ms. Helena Wooden-Aguilar of my staff by telephone at (202) 343-9681, by e-mail at wooden-aguilar.helena@epa.gov, or by mail to U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen D. Higginbotham", with a stylized flourish at the end.

Karen D. Higginbotham
Director

cc: Mr. Lawrence Odle, Director
Maricopa County Air Quality Department
1001 N Central Ave, Suite 400
Phoenix, AZ 85004

Bridget Coyle, EPA Region 9

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