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

AUG 14 2013

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
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In Reply Refer to:
EPA OCR File No.: 01R-11-R9

Stephen M. Brittle
President
Don't Waste Arizona, Inc
6205 South 12th Street
Phoenix, AZ 85042-4327

Re: Partial Acceptance of Title VI Administrative Complaint

Dear Mr. Brittle:

This letter is in response to your administrative complaint received by the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), on January 26, 2011. Your complaint alleges that the Maricopa County Air Quality Division (MCAQD) violated Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination against persons on the basis of race, color, or national origin in federally assisted programs or activities, and, EPA's nondiscrimination regulations implementing Title VI found at 40 C.F.R. Part 7.

Under EPA's nondiscrimination regulations, a recipient of Federal financial assistance may not discriminate on the basis of race, color, national origin, sex, or disability. Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of complaints to determine acceptance, rejection, or referral.[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, disability, or gender). Third, it must be filed within 180 calendar days of the alleged discriminatory act.[2] Finally, it must be filed against a recipient of EPA assistance that committed the alleged discriminatory act.[3]

After careful consideration, OCR is accepting the following allegation for investigation:

1. MCAQD discriminated against the "ethnic minority"[4] residents of South Phoenix by

[1] 40 C.F.R. § 7.120(d)(1).
[2] 40 C.F.R. § 7.120(b)(2).
[3] 40 C.F.R. § 7.15.
[4] This is the term used by the Complainant. During the investigation OCR will seek clarification to determine the specific nature of "ethnic minority."

failing to impose an adequate penalty against Fisher Sand and Gravel for air quality violations.

This allegation is accepted for investigation because it meets all four of EPA's jurisdictional requirements as outlined above. First, the complaint is in writing. Second, the complaint describes a discriminatory act. Your complaint states that in June 2009, the MCAQD issued Fisher Sand and Gravel 1,368 Notice of Violations (NOV) and that the $1 million dollar penalty that MCAQD recently imposed ignores the penalty calculation methodology set forth in MCAQD's published penalty policy. Your complaint also states that excess emissions from the Fisher Sand and Gravel facility are not considered as serious a violation because they occur in the "ethnic minority community adjacent to the facility."[5] Third, the complaint was filed within 180 days of the alleged discriminatory act. On March 23, 2011, OCR sent you a clarification request to determine the timeliness of this allegation. You submitted a response to OCR explaining that the MCAQD entered into a penalty settlement with Fisher Sand and Gravel on January 25, 2011 which is within 180 days of January 26, 2011, when the complaint was filed. Finally, the MCAQD is a recipient of EPA financial assistance.

2. MCAQD has failed to properly enforce the applicable conditions of both the air pollution permits issued to Fisher, including its Title V and synthetic minor air permits, which result in illegal and unhealthy emissions of particulate matter, carbon monoxide, Volatile Organic Compounds (VOCs), Hazardous Air Pollutants (HAPs), and strong chemicals odors in an "ethnic minority" community adjacent to the Fisher Sand and Gravel Facility.[6]

This allegation is rejected for investigation because it does not meet all four of EPA's jurisdictional requirements as outlined above. Your complaint states that MCAQD's inadequate enforcement of the air pollution permits for Fisher Sand and Gravel and applicable sections of the Clean Air Act (CAA) has led to unhealthy emissions and hurtful effects on the health of local "ethnic minorities." On April 18, 2013, OCR sought clarification regarding the timeliness of this allegation via email. Your response via email did not provide dates for the allegation because you claim that MCAQD's failure to enforce its Title V and synthetic minor air permits program "occurred throughout the time that Fisher Sand and Gravel operated under the MCAQD's permit."[7] Your explanation suggests that the allegation was timely based on a continuing violation theory.

The allegation concerns a general lack of enforcement of air pollution permits. Enforcement decisions are discrete acts that occur on particular dates and are independently actionable. You did not identify any new enforcement action that allegedly should have been taken within 180 days of when this complaint was filed. In addition, it is clear from your email that you suspected discrimination ever since the facility received its operating permit, which is

[5] U.S. E.P.A. Administrative Complaint No. 01R-11-R9 (January 26, 2011).
[6] U.S. E.P.A. Administrative Complaint No. 01R-11-R9 (January 26, 2011).
[7] Brittle, Stephen M. "Seeking Clarification for EPA File No. 01R-11-R9" to Helena Wooden-Aguilar, April 18, 2013.

well before this complaint was filed. Accordingly, you have not alleged a new discriminatory act that occurred within 180 days of when the complaint was filed, so this allegation is untimely and OCR will not investigate it.[8]

If you have any questions, please contact Ms. Waleska Nieves-Muñoz, Case Manager, on my staff by telephone at (202) 564-7103, by e-mail at nieves-munoz.waleska@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460. Thank you in advance for your cooperation and attention to this matter.

Sincerely,

for

Vicki Simons
Acting Director

Enclosure

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

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[8] It is noted that this allegation of disparate impact enforcement is essentially the same allegation raised in complaint number 03R-07-R9 where Complainant alleged that MCAQD had failed to take adequate enforcement actions which were having a disparate impact on communities. As a result, even if the allegation had been timely, it would have been duplicative as it was the same allegation raised in a pending complaint which would have caused OCR to dismiss it.