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

JUL 10 2009

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail #7004-1160-0002-3622-6680

In Reply Refer To:
EPA File No. 02R-08-R9

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

Re: Rejection of Administrative Complaint

Dear Mr. Brittle:

On January 15, 2008, the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) received an administrative complaint from Don't Waste Arizona (DWAZ). The complaint alleges that the Arizona Department of Environmental Quality (ADEQ) 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 found at 40 C.F.R. Part 7. After careful review, OCR is rejecting your administrative complaint.

Pursuant to EPA's nondiscrimination 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 an alleged discriminatory act that, if true, would 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 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act.

Your original complaint asserts that ADEQ has never:

1. conducted environmental sampling needed to determine the risk to public health and safety in Hayden and Winkelman,

2. intervened to stop night time activities of ASARCO,

3. conducted an environmental assessment of the communities,

4. resolved any issues raised in previous civil rights complaints or

5. conducted an environmental justice assessment of the Hayden and Winkelman communities.

In a letter dated July 7, 2008, OCR sought clarification from DWAZ about the administrative complaint. EPA's nondiscrimination regulations require complaints to be filed within 180 days of any alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Your original complaint failed to provide the date(s) for any of the allegations described in your complaint. Therefore, in its clarification letter, OCR requested that DWAZ provide "the date associated with each alleged discriminatory act(s) listed in your complaint."

OCR received your clarification response via a July 22, 2008, e-mail. The e-mail, however, did not provide dates for any of the alleged discriminatory acts in your complaint. As stated earlier, the date of each specific act or omission by ADEQ must be identified in your complaint. Allegations are considered timely if filed within 180 days of the alleged discriminatory act. Since you did not provide any dates as requested, OCR must reject the allegations for investigation.

If you have any questions, please contact Thomas Walker, of OCR's External Compliance Program, by telephone at (202) 343-9680, via e-mail at walker.tom@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460-1000.

Sincerely,

Karen D. Higginbotham
Director

cc: Benjamin H. Grumbles, Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

Bridget Coyle, EPA Region 9

Stephen G. Pressman, Associate General Counsel
Civil Rights and Financial Law Office (MC2399A)