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

APR 22 2010

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail #7009-2820-0002-1759-3470

In Reply Refer To:
EPA File No. 2SAr-10-R8

[redacted]

Re: Rejection and Referral of Administrative Complaint

Dear [redacted]:

On January 11, 2010, the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) received your administrative complaint referred to us by the U.S. Department of Justice (DOJ). Your complaint alleges that several private companies – Atlantic Richfield Company (ARCO), ARCO Environmental Remediation LLC, Anaconda Local Development Corporation, and Rarus Railroad Company – along with several government agencies – Anaconda Deer Lodge County, Anaconda Law Enforcement, Montana Secretary of State, Montana Department of Revenue, Montana Department of Environmental Quality, and the US Environmental Protection Agency Region 8 (hereinafter "entities") – violated the Age Discrimination Act of 1975, Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (CWA), and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7.

You allege that these entities discriminated and retaliated against you and your privately owned business, RDM Multi-Enterprises, Inc., which processed slag from the former Anaconda Smelter facility into roofing and sand blasting material. (The former Anaconda Smelter site is currently listed on EPA's National Priority List.). After careful review, OCR is referring one allegation to US DOJ and rejecting for investigation the rest of the allegations.

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, age, 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.

Generally, your complaint states that there was a "clear pattern of discriminatory misconduct" involving both your age and sex (gender) by the entities named in your complaint, and that these entities conspired and retaliated against you and your business. In a letter dated January 28, 2010, OCR sought clarification from you 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). Specifically, your original complaint failed to provide the specific date(s) for any of the allegations committed by any specific entity listed in your complaint.

After careful review OCR is rejecting your complaint due to issues relating to timeliness, EPA financial assistance status, and alleged discriminatory acts that violate EPA's nondiscrimination regulations as discussed below.

Timeliness

In your complaint, you mention March 2009, as the latest date of alleged discrimination. However, in your clarification response you made no mention of any alleged discrimination occurring in March 2009, and the alleged discriminatory acts that you did list all occurred outside of the 180-day filing requirement. Allegations are considered timely if they are filed within 180 days of the alleged discriminatory act. Since you did not provide a date that occurred within 180 days of the filing of your complaint, your complaint is untimely.

EPA Financial Assistance Status

You state in your complaint that the following entities conspired and retaliated against you and your business on the basis of your age and gender: Atlantic Richfield Company (ARCO), ARCO Environmental Remediation LLC, Anaconda Local Development Corporation, and Rarus Railroad Company, along with the following government agencies: Anaconda Deer Lodge County, Anaconda Law Enforcement, Montana Secretary of State, Montana Department of Revenue, Montana Department of Environmental Quality, and the US Environmental Protection Agency Region 8.

As mentioned above, one of OCR's jurisdictional requirements to be accepted for investigation is that the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act(s). The entities listed in your complaint that are recipients of or applicants for EPA financial assistance are Anaconda Deer Lodge County (ADLC) and Montana Department of Environmental Quality (MTDEQ) Thus, they are the only entities potentially under EPA OCR

jurisdiction. Your complaint however, does not describe a discriminatory act committed by ADLC or MTDEQ that occurred within 180 days of the filing of the complaint.

Additionally, you allege that EPA Region 8 violated Federal nondiscrimination statutes. The Federal nondiscrimination statutes apply only to applicants for, or recipients of federal financial assistance therefore, EPA Region 8 is not within EPA OCR jurisdiction to investigate.

Alleged Discriminatory Acts

Your complaint states that there was a "clear pattern of discriminatory misconduct" based upon your age and sex (gender) by the entities listed in your complaint. As OCR stated above, only ADLC and MTDEQ are recipients of EPA financial assistance, and thus they are the only entities potentially under EPA OCR jurisdiction. None of the allegations in your affidavit or information provided in your exhibits describe a specific action by either ADLC or MTEQ that could be considered a discriminatory act on the basis of age or gender.

Alleged Retaliatory Acts

You allege that the entities listed in your complaint conspired and retaliated against you and your business. EPA's nondiscrimination regulations provide, "No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group for the purpose of interfering with any right or privilege guaranteed by the Acts or this part". 40 C.F.R. § 7.100. You specifically mention in your clarification letter "that retaliation through increased financial burdens, permitting requirements, and additional and/or amended regulations were imposed upon me and coerced into being, by big business and big government." In addition, you allege that your slag processing facility was vandalized in an act of retaliation. (Photo Exhibit 17).

Accordingly, OCR has determined from the information you have provided in your affidavit and exhibits that § 7.100 of EPA's nondiscrimination regulations does not apply to your situation. Your complaint does not describe any activity that would be protected under 40 C.F.R. §7.100. The actions mentioned in your complaint and clarification letter (permitting requirements, financial burdens, amended regulations on your slag processing business) do not specifically describe a retaliatory act. In addition, the vandalism you describe is a criminal matter and would be beyond OCR's scope of investigation. This matter should be referred to your local enforcement agency. Your clarifying information does not state what right or privilege was interfered with and the facts presented do not support an allegation of retaliation. Therefore, OCR is rejecting the complaint for investigation.

Other Allegations:

Additionally, in your original complaint you listed that your son and daughter were also discriminated against but there was no reference as to the basis of the

discrimination (*i.e.* race, color, national origin, gender, etc.). In the clarification response, your son, [redacted], submitted an affidavit as to his history of alleged discrimination in his dealing with various government agencies. The descriptions of the alleged events do not describe discriminatory acts committed by either ADLC or MTDEQ that would be under the jurisdiction of EPA regulations and fall outside of the 180-day filing requirement.

Referral of New Allegation:

However, one allegation mentioned in your son's affidavit is listed as occurring on May 20, 2009, one month after the original complaint was filed with the federal government. This alleged act involved the local law enforcement department. Although the allegation is not under the jurisdiction of EPA OCR it may be under US DOJ jurisdiction. EPA therefore, will refer the May 20, 2009, allegation to US DOJ. The contact person in DOJ OCR for this allegation referral is DOJ Investigator, Linda King.

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: [redacted]

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