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

NOV 9 2009

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certified Mail #7004-1160-0002-3622-6055

In Reply Refer To:
EPA File No. 06R-09-R9

Mr. Steven Brittle
Don't Waste Arizona, Inc.
6205 South 12th Street
Phoenix, AZ 85042

Re: Partial Acceptance/Partial Rejection of Administrative Complaint

Dear Mr. Brittle:

This is in response to your administrative complaint received by the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on August 12, 2009. The complaint was filed by Don't Waste Arizona, Incorporated (DWAZ) alleging 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. This is to notify you that after careful consideration, OCR is partially accepting and partially rejecting your administrative complaint for investigation.

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.

Complaint Allegations

1. MCAQD's failure to enforce a request for production of records from the Fisher Sand and Gravel facility resulted in a discriminatory impact on the local Hispanic residents who reside adjacent to the facility.

Your administrative complaint stated that in June 2009, MCAQD requested production records for the operation of the Fisher Sand and Gravel facility (hereinafter "facility"). You stated that the facility "has not provided these requested production records, despite specific permit conditions that require these records be provided to MCAQD upon request."[1] This allegation is accepted for investigation because it meets all of EPA's jurisdictional requirements. The complaint is in writing, MCAQD is an EPA financial assistance recipient, and the complaint was filed within 180 days of the alleged discriminatory act. (The complaint was filed on August 12, 2009, and the alleged discriminatory act occurred in or after June 2009.)

OCR will consolidate the investigation of this allegation with the ongoing investigation of administrative complaint No. 03R-07-R9, since the allegations involve the same area of Phoenix and the same recipient of EPA assistance.

2. MCAQD's failure to issue a Notice of Violation when the Fisher Sand and Gravel facility allegedly provided inaccurate asphalt production records resulted in a discriminatory impact on the local Hispanic residents who reside adjacent to the facility.

Your administrative complaint stated that MCAQD has not taken any enforcement action against Fisher Sand and Gravel when it provided inaccurate asphalt production records to MCAQD.[2] The complaint is in writing and MCAQD is an EPA financial assistance recipient. As stated earlier, EPA's nondiscrimination regulations require that a complaint be filed within 180 days of the alleged discriminatory act.

On October 14, 2009, OCR sought clarification regarding the date of occurrence for the alleged discrimination act described in your complaint.[3] You provided a response on October 15, 2009, stating that "the submission of the daily asphalt production records by Fisher Sand and Gravel was in June 2009, and the discovery of the duplicate and inaccurate records was immediately after that, which is within the 180 day timeframe for

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[1] Letter from Steven Brittle, President, DWAZ to Karen D. Higginbotham, Director, OCR, EPA regarding 06R-09-R9 at pg. 2. (August 12, 2009)

[2] *Id.* at pg. 2.

[3] Letter from Yasmin Yorker, Assistant Director, OCR, EPA to Steven Brittle, President, DWAZ regarding 06R-09-R9. (October 8, 2009)

the complaint to be valid."[4] While you provided an estimated range for the date when the Fisher Sand and Gravel facility allegedly provided inaccurate asphalt production records, OCR cannot assume any dates for the analysis of the timeliness jurisdictional criteria. Therefore, since the information provided did not provide a date of occurrence for the alleged discriminatory act described in your complaint OCR has determined that this allegation is not timely and is rejected for investigation.

3. MCAQD's failure to properly train staff to take appropriate civil and criminal action against Fisher Sand and Gravel facility resulted in a disproportionate impact on the Hispanic community members who reside adjacent to the facility.

Your administrative complaint stated that there is "either a failure on the part of MCAQD to properly train staff, or a deliberate order to inspection staff to not take appropriate civil and criminal action against Fisher for these violations."[5] The complaint is in writing and MCAQD is an EPA financial assistance recipient. As stated earlier, EPA's nondiscrimination regulations require that a complaint be filed within 180 days of the alleged discriminatory act.

On October 14, 2008, OCR sought clarification regarding the date of occurrence for the alleged discrimination act.[6] You provided a response on October 15, 2009, stating that "the allegation that there must be, or has been, a deliberate order to inspection staff to not look for these violations would have had to have been made about the same time, which is within the 180 day timeframe."[7] Your allegation describes a failure to properly train staff, the date you provided concerns the date MCAQD requested daily asphalt production records from Fisher. This date does not provide clarification for the specific allegation stated in your complaint. Therefore, OCR has determined that this allegation is not timely and is rejected for investigation.

Further, EPA's national compliance monitoring program, in the Office of Enforcement & Compliance Assistance, is responsible for maximizing compliance with federal environmental statutes dealing with prevention and control of air pollution, water pollution, hazardous waste, toxic substances and pesticides. If you suspect a possible violation of environmental laws and regulations, please go to http://www.epa.gov/compliance/complaints/index.html and report the suspected violation.

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

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[4] Email from Steven Brittle, President, DWAZ to Yasmin Yorker, Assistant Director, OCR, EPA and Helena Wooden-Aguilar, Senior Case Manager, OCR, EPA regarding 06R-09-R9. (October 14, 2009)

[5] *See* fn. 2 at pg. 3.

[6] *See* fn. 4.

[7] *Id.*

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,

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)