VIA EMAIL

July 11, 2011

Karen Higginbotham
EPA Office of Civil Rights
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Lisa Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: *Don't Waste Arizona, Inc. and Concerned Residents of South Phoenix (CRSP) v City of Phoenix (COP)*

Dear EPA Office of Civil Rights Director Higginbotham and Lisa Jackson, EPA Administrator:

Don't Waste Arizona, Inc. is a non-profit environmental organization dedicated to the protection and preservation of the environment in Arizona. DWAZ is especially concerned about environmental justice issues. . DWAZ is headquartered at 6205 South 12th Street, Phoenix, AZ 85042, and may be reached at (602) 268-6110. DWAZ has members in the affected area.

The Concerned Residents of South Phoenix (CRSP) is a non-profit environmental justice organization concerned about air pollution, emissions and releases of hazardous chemicals into the community, and disparate impacts caused by inept government environmental bureaucracies. CRSP is headquartered at 4203 South 19th Place, Phoenix, AZ 85040, and may be reached at (602) 268-4475. CRSP has members in the affected area.

The City of Phoenix (COP) has violated Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency's ("EPA") implementing regulation, 40 C.F.R. § 7.35, by discriminating on the basis of race in its administration of the Del Rio Area Brownfields Project grant it solicited and received from the USEPA. (The EPA grant number is TR83490701.) The violations were intentional, deliberate, and planned. All of the violations occurred within the last 180 days, commencing in March 2011 and are ongoing.

The City of Phoenix applied for and received federal funds in the form of a grant from USEPA for something named the Del Rio Area Brownfields Project. This is an EPA brownfields grant purporting to fund a series of meetings to determine what people who

live near the Del Rio Area (site of closed landfills) would like to see developed there. This is specifically the area in Phoenix, Arizona, south of the Salt River bed between 7th Avenue on the west to 16th Street on the east. This area is almost entirely and exclusively made up demographically of people of Hispanic heritage. Census data from 2010 indicates that over 90% of the inhabitants of this area are Hispanic.

The terms of the grant states that the COP "will facilitate community involvement in developing an area-wide plan for the Del Rio Area, which will inform assessment, cleanup and subsequent reuse of brownfields sites and identify next steps and resources needed to implement this plan. The City will accomplish this work by conducting research on brownfields subjects related to development of the brownfields area-wide plan, by providing education/training and technical **assistance to the community within the Del Rio Area** on brownfields subjects and the goals, objectives and work associated with this grant." (Emphasis added.)

But, instead, the COP did not actually reach out at all to the local Hispanic community that is the subject of the grant. The COP intentionally pretended to do so, but instead, in a clear pattern of activity, did exactly the opposite of this by never actually informing the subject community of the grant and the workshops. Instead, the COP conducted a clever diversion that pretended to do the proper outreach, to create a false impression that it was doing what the terms of the EPA grant would require.

The COP started this by recruiting a nine-member "advisory committee" of white people almost exclusively to assist with this grant, and all of the recruited advisory committee members live outside the subject area. The advisory committee was stacked with developers, real estate brokers and agents, and a certain industrial interest that had been provided favors and subsidies by the COP previously to locate into the same area. The COP even admits and states in its grant work plan that it will not seek others than those initially recruited for the "advisory committee," and carried out the plan to not add anyone else to the advisory committee, even if one of the ethnic minority people who reside in the subject area actually found out about the project and asked to join this advisory committee. This written plan to exclude new people who live in the subject area from being members of the advisory committee is <u>discriminatory on face value</u>, and clearly signals the COP's intentions.

And despite suggestions by the advisory committee offered and documented at the April 21st meeting on how to conduct outreach and get the invitation out to the affected subject community, the COP did not act on this. There is no evidence of fliers dropped off at churches or distributed at local outlets that were suggested by the advisory committee, no printing or distribution costs after a public records review of advertisements and receipts for costs related to the meetings related to the grant, and no Hispanic residing within the subject area has shown up at the meetings held so far. No one who attended had ever seen any purported flier.

At the meetings that were held, when the questions were raised about how to do the outreach, COP was misleading about even having had these same suggestions made by the Advisory Committee, and feigned surprise when the same ideas were suggested.

Placing doorhangers on homes in the subject area was suggested on June 7, 2011, at the first public meeting, and when asked about this at the June 28, 2011 meeting, doorhangers were characterized by the COP as too expensive, despite it costing just a few hundred dollars at most. In fact, the COP spent less than 0.005% of its $175,000 budget to contact the public it was supposed to contact regarding the grant, and nothing at all specifically targeting Hispanic members of the affected community. Ads for the project were placed in newspapers that did not service the population and geographic area, despite there being well known Hispanic newspapers available, *La Voz*, *Prensa Hispana*, and others. In fact, no press releases or ads were sent out in Spanish. The ads were placed in the *South Mountain Villager*, a Chamber of Commerce publication that is not at all delivered in the subject community, and the *South Mountain District News*, a new newspaper based in Laveen, several miles way that serves mostly white people. There is no evidence that this latter newspaper has anyone who subscribes to it within the boundaries of the subject area. The ads in the *South Mountain Villager* and the *South Mountain District News* did not state that the meetings were for people who live and/or work in the subject area.

However, ads placed in the local African American publication, *The Arizona Informant*, which was recommended by the advisory committee, specifically stated it was an invitation to attend and participate that was for people who live or worked in the subject area, <u>which is also discriminatory on face value</u>, as African Americans don't live in that area near the brownfield. It was designed to discourage their attendance.

The COP did issue press releases about the project, but they were not specifically about this project. The information about the brownfields grant and project was sent out in a periodic COP general press release that covered a long list of COP related events, and placed at or near the end of the long list. The state's largest newspaper, the *Arizona Republic*, the one most likely to be read by residents of the subject area, was also not contacted by the COP and no ads were placed in it either.

The information about the brownfields grant and project was placed on the City of Phoenix' website, but placing the information on a COP website is useless in a community where few have Internet access, and when those that do would have no reason to look for an event in their community. The COP has lists of people who reside in the subject area who get invited to other COP matters and events, and none of them were contacted either.

The motive for the COP actions in this deliberate discriminatory pattern of action is betrayed in its notes from the first meeting held with the "advisory committee." From the Meeting Summary of the April 21, 2011 "Kick-off" meeting for the pre-selected advisory committee, the COP informed the advisory committee, **"The City's brownfields program has funded $200,000 for a feasibility evaluation for the redevelopment of**

the park as a landfill, a grading plan, evaluation of the stockpiled soil, and demolition of park structures." (Emphasis added.) An advisory committee member asked **"about the status of the proposed park."** (Emphasis added.) This had the effect of convincing the advisory committee that what the process was all about was an endorsement of the park, not a real visioning session that allowed any other alternatives. Predictably, the advisory committee all showed up on June 28th to suggest the park, with no other ideas. Since none of the local people had been actually notified or invited, they were not allowed to participate in the process.

The point of the COP's discriminatory behavior is clear. It wants to secure EPA funds to do what it plans to do, what it in fact has been planning all along to do, which is to develop a park using EPA funds, and pretend to have asked and engaged the subject community, as required in its grant, in reaching the decision. Rather than risk a different idea from emerging as a work product, the COP planned and executed a way to make certain no one who had not been told what to ask for, i.e. a park, would be informed and attend. To do so, the COP had to intentionally act, and its acts were discriminatory.

EPA's Program to Implement Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 is a federal law that prohibits discrimination on the basis of race, color, or national origin in all programs or activities receiving federal financial assistance. Title VI itself prohibits intentional discrimination.

The Supreme Court has ruled, however, that Title VI authorizes federal agencies, including EPA, to adopt implementing regulations that prohibit **discriminatory effects** as well as intentional discrimination. Frequently, discrimination results from policies and practices that are neutral on their face, but have the *effect* of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative."

I. PARTIES

A. Complainants

Don't Waste Arizona, Inc. (DWAZ), and Concerned Residents of South Phoenix, (CRSP) are environmental justice organizations with affected members residing in west and South Phoenix, and in the subject area, are filing this complaint against the MCAQD and the ADEQ.

The City of Phoenix is the recipient of an EPA brownfields grant for the Del Rio Area Brownfields Project.

II. RIPENESS

This complaint is timely filed since the COP started in March 2011 with an intentional plan of discrimination against the Hispanic residents of the Del Rio Area, which is bordered by the Salt River bed on its north side to 7th Avenue on the west, 16th Street on the east, and the COP still do not comply with the requirements of Title VI, and there has been no final COP action on these issues.

The failure of the COP to properly administer this EPA brownfields grant is causing, and has caused, a disproportionate, adverse effect on the Hispanic residents of the Del Rio Area. The COP has been provided sufficient information and specific notice of the problems and deficiency; yet has not remedied the problem.

Claims

A. Title VI

Title VI of the Civil Rights Act of 1964 provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. 42 U.S.C. § 2000d.

The COP, a direct recipient of federal financial assistance from EPA, have violated Title VI as implemented through EPA's regulations by failing to properly administer the Del Rio Area Brownfields grant, and administering it in a deliberately discriminatory manner..

EPA must ensure that recipients of EPA financial assistance are not subjecting people to discrimination. In particular, EPA's Title VI regulations provide that an EPA aid recipient "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 C.F.R. § 7.35(b).

The failure of the MCAQD and ADEQ to properly administer this grant can bring about severe environmental and public health consequences in the subject area, which has some of the highest asthma rates in Maricopa County. There have been many exceedances of the NAAAQS for particulate matter in both west and South Phoenix, all in the midst and/or proximate these overwhelmingly ethnic minority communities, <u>and especially in this community in the subject area</u>. The COP has suggested a plan for redevelopment of this park that would entail trucking in enormous quantities of dirt to put on the closed landfill for the purposes of compacting the soils and allowing structures like lights to be erected without a risk of falling or collapsing later. The effect of transporting all this dirt there to the subject area would be to cause severe dust pollution and subsequent adverse health impacts, even deaths. Then, after a year, the COP would have the dirt removed, again causing the severe dust pollution and subsequent adverse health impacts, even deaths.

All complainants must show is that when applied in a particular manner, the COP's "methods of administering the grant" yield a discriminatory outcome. As the abovementioned sections demonstrate, the COP's method of administering the grant has resulted in discriminatory impacts throughout the low-income, ethnic-minority communities of the Del Rio Area Brownfields Project.

The effect of the COP's administration of the EPA brownfields grant is clear: Hispanic people living in the subject area will bear disproportionate risks and impacts from air pollution, and be denied access to a process that was supposed to be specifically for them and their participation.

The COP is and has been administering the EPA brownfields grant in such a way as to discriminate against people based on race, color, and national origin, in violation of Title VI.

Remedies

In order to provide effective remedies for the patterns of discrimination described in this complaint, the complainants request that EPA:

- Require that, as a condition of continuing to provide federal financial assistance, the COP immediately restart the process with proper outreach and notice;
- Select an advisory committee that is inclusive and representative of the residents of the subject area;
- Allow the free flow of ideas and drop the predetermined outcome of the endorsement of the park;
- Permit complainants to initiate and engage in active, collaborative investigation of the foregoing allegations, including the submission of written interrogatories to the COP;
- Provide complainants with copies of all correspondence to or from the respondent throughout the course of the EPA's investigation, deliberation and disposition of this complaint;
- Sue to compel compliance with the law, to the extent that imposition of the foregoing remedies proves in any way to be ineffectual; and
- Terminate its assistance to the COP, pursuant to 40 C.F.R. §7.25, if the COP fail to implement the above requested changes.

Conclusion

As this complaint makes clear, the Hispanic community in the Del Rio Area Brownfields Project has been systematically and intentionally discriminated against by the COP in the administration of the Del Rio Area Brownfields Project

The discriminatory impact created and sanctioned by the COP's actions are a clear violation of Title VI as implemented by EPA regulations. Because the COP receives federal funding from EPA in thr form of an EPA brownfields grant, it is subject to Title VI as implemented by EPA regulations. This complaint is timely filed since the COP still doe not comply with the requirements of Title VI, the discriminatory actions have all occurred within the last 180 days, and there has been no final COP action on these issues.

Don't Waste Arizona, Inc., Concerned Residents of South Phoenix, and the affected members of both organizations look forward to an active investigation by EPA.

The complainants will be pleased to file further documentation of these claims as needed within the next few weeks, once EPA has specified to whom the documentation should be sent, and what further documentation is needed.

Sincerely,

Stephen M. Brittle
President
Don't Waste Arizona, Inc
6205 South 12th Street
Phoenix, AZ 85042
602-268-6110

Michael L. Pops, Sr.
President
Concerned Residents of South Phoenix
4203 South 19th Place
Phoenix, AZ 85040
602-268-4475