VIA EMAIL AND CERTIFIED MAIL

May 29, 2012

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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.

DWAZ and CRSP had filed a civil rights complaint regarding the City of Phoenix deliberate discriminatory activities in its administration of an EPA 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.

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However, the City of Phoenix (COP) continues in new ways to violate 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 January 2012 and are ongoing.

The COP applied for and received federal funds in the form of this EPA grant, which 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.** (Emphasis added.) 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 of providing complete disclosure regarding the Del Rio Landfill's air emissions, local regional air quality issues, and any technical information that would make an informed public uncomfortable with the COP's determination to make this project a ploy to get federal funds to redevelop what would be a toxic park, the COP refused to provide any information about this *until the very last thing on the agenda* at the April 24, 2012 agenda, effectively placing this on the agenda **AFTER** all decisions had been made.

Starting with the January 31, 2012 Del Rio Brownfields Redevelopment meeting, the COP systematically dodged the issues that had been raised about toxic emissions from the landfill and other toxic air quality issues, as well as particulate matter questions. (The area is noted for exceedances of the PM 10 standards.)

In the report regarding the meeting, the COP website offers, "In follow-up to a request for further information on air quality and dust control, a representative from Maricopa County Air Quality Department presented information on this topic. In addition, city of Phoenix staff presented an overview of city dust control programs." But no discussion was offered or allowed about local area concentrations of toxic or hazardous air pollutants.

The COP did show its real agenda for the project. In the report regarding the meeting, the COP website offers, "At the Jan. 31 Del Rio Brownfields Community Planning Meeting, Ms. Cynthia Peters, Phoenix Parks and Recreation Department discussed the Parks desire to begin the master planning process for the former Del Rio Landfill." Yes, before any decision has been made, and because the COP will deliberately and knowingly withhold any relevant information that would cast doubt on its decision to redevelop a park at the Del Rio Landfill, the COP will bring in the Parks Department to get the process started.

And the disinformation and misinformation continued.

At the February 28, 2012, Del Rio Brownfields Redevelopment meeting, the COP purported to inform affected area residents about landfill redevelopment.

In the report regarding the meeting, the COP website offers, "The focus of this meeting was to continue to provide participants with information that is relevant to the project and will aid in the development of the area plan. Presentations were given by experienced environmental professionals on the basics of environmental due diligence and landfill redevelopment."

But the real truth, that the COP had to be sued by state regulatory agencies to get it to comply with RCRA, that the landfill is unlined and subject to inundation whenever there is water flowing in the Salt River bed, which is immediately adjacent to the landfill, that there have been serious and continuing subsidence problems with the landfill, and that the fact, according to an analysis prepared and paid for by COP, that there are several tons of toxic air emissions emanating from the Del Rio Landfill annually, including high amounts of HAPs, SOx, NMOCs, and VOCs, which would make any informed person unwilling to visit such a contaminated area, much less plan a toxic park for other people to get exposed, ***was knowingly and deliberately withheld from attendees***. Also, there would be dioxin and furan emissions created by the flaring of methane at this landfill when chlorinated solvents are present, which there are.

All of this is very pertinent, from an environmental regulatory perspective, and the withholding of that information is unprofessional, unconscionable, unethical, and **an ongoing civil rights violation**. Federal funds were spent by COP to pay the engineers that made the presentation at this meeting that excluded this information that any properly trained environmental professional would know is very critical.

When people in the audience asked to be informed about the area's air pollution problems and raised specific questions about the toxics, HAPs, and other air pollution issues, Roseanne Albright, City of Phoenix' Office of Environmental Programs and "facilitator" of the meetings, refused to allow any discussion or presentation, stating that not enough people there at the meeting wanted to discuss it. A complaint was made via telephone to Debbie Schecter, EPA Region 9 Brownfields Programs, regarding this.

Despite Albright's stating that she would not allow any further questions regarding these issues, she put some of that into the March 27, 2012 meeting.

In the report regarding the meeting, the COP website offers, "In follow-up to a request for further information on air quality and dust control, a representative from Maricopa County Air Quality Department presented information on this topic. In addition, city of Phoenix staff presented an overview of city dust control programs." Still, there was no information provided or any discussion regarding the known toxic emissions from the Del Rio landfill's methane flares, despite the discovery by community activists of a COP

report titled, "Del Rio Landfill Flare and Fugitive Emissions NMOCs, VOCs, HAPs," which is the report that documents the air pollution.

Further, Phil McNeely, head of the COP Office of Environmental Programs, tried intimidation techniques to harass people who had raised these issues at this meeting.

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, and properly informed them, 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 City of Phoenix.

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 incidents and actions in the complaint have all occurred within the last 180 days, and 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).

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 the 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,

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