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

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OFFICE OF
CIVIL RIGHTS

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In Reply Refer to:

EPA File No. 08R-01-R5

Mr. Thomas W. Stevens, Esq.
Maurice and Jane Sugar Law Center for Economic and Social Justice
733 St. Antoine, 3rd Floor
Detroit, Michigan 48226

Re: Closure of Administrative Complaint

Dear Mr. Stevens,

This letter concerns the administrative complaint dated June 25, 2001, filed by the Maurice and Jane Sugar Law Center for Economic and Social Justice, on behalf of Flint-Genesee United for Action, Safety and Environmental Justice (FGUA). The complaint alleges that the Michigan Department of Environmental Quality (MDEQ) violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et. seq.* (Title VI) and the U.S. Environmental Protection Agency's (EPA) Title VI implementing regulations at 40 C.F.R. Part 7. Generally, the complaint stated that MDEQ violated Title VI when it issued a permit on December 27, 2000, to the S & S Metal Processing (S&S) for the installation of a scrap metal shredder in Flint, Michigan. As explained below, the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) has concluded that MDEQ has taken the appropriate steps to resolve the two allegations accepted for investigation, and is now closing this administrative complaint.

Under Title VI, a recipient of Federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI administrative regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). EPA accepted two allegations of adverse, discriminatory impacts for investigation by letter dated January 2, 2002[1]. The first allegation stated that the permit issued by MDEQ for the installation and operation of a scrap metal shredder at S & S did not provide adequate controls for mercury emissions,

[1] Letter of Acceptance of Administrative Complaint from Karen Higginbotham, Acting Director, Office of Civil Rights to Alma Lowry, , Environmental Justice Staff Attorney, NLG/Sugar Law Center for Economic and Social Justice regarding EPA OCR File No. 08R-01-R5 (January 2, 2002).

which would adversely impact the African-American community.[2] The second allegation stated that MDEQ's failure to allow public review and comment on a Waste Management Compliance Plan (WCMP) designed to limit the amount of mercury in the source material for the shredder prevented public participation in regulating the most critical terms of the permit.[3] Upon acceptance, MDEQ and FGUA agreed to resolve the accepted allegations through the informal resolution process.[4]

FACTUAL BACKGROUND

On March 30, 2000, S & S Metal Processing, located in Flint, Michigan, applied to MDEQ for a permit to install a metal shredder in an existing metal salvage yard.[5] S & S Metal Processing's new scrap metal shredder proposed to process 60 tons per hour of vehicles, appliances, and industrial machinery. All gas tanks, batteries, mercury switches and automotive fluids, such as gas, oil, antifreeze, and Freon would be removed before the items entered the shredder. Cyclone collectors and a wet scrubber would be installed to minimize the particulate emissions from the shredder. Further, all toxic air contaminants related to the permit would be evaluated using EPA and recycling industry guidance documents and sources.[6]

MDEQ held a public hearing on November 2, 2000[7], about the proposed installation and operation of the scrap metal shredder. The draft permit application was also available for public comment. Comments were filed by FGUA, the Guild Law Center (GLC) and many other concerned members of the Flint and Genesee communities. As a result of the public comments on the draft permit, MDEQ agreed to place emission limits on toxic air contaminants and fugitive emissions from the shredder hood. MDEQ issued the permit on December 27, 2000.[8] FGUA was still dissatisfied with the controls placed on the proposed shredder, as well as with MDEQ's public review and comment process. On June 25, 2001, FGUA filed a Title VI administrative complaint with OCR.[9]

Soon after filing a Title VI administrative complaint, FGUA sent OCR a letter on November 29, 2001[10], asserting that their "concerns were focused on the effectiveness of a waste management compliance plan that they believe is central to controlling mercury

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[2] Id.
[3] Id.
[4] Letter from Alma Lowry, Environmental Justice Staff Attorney, NLG/Sugar Law Center for Economic and Social Justice to Mirza Baig, Case Manager, Office of Civil Rights regarding EPA File No. 08R-01-R5. (November 29, 2001)
[5] Air Use Permit Application, Permit Application No. 92-00, March 29, 2000.
[6] MDEQ Public Participation Documents for S & S Metal Processing, Permit Application No. 92-00, Fact Sheet. (October 5, 2000)
[7] Notice of Air Pollution Comment Period and Public Hearing, Notice of Informational Meeting, MDEQ. (November 2, 2000)
[8] Letter from Dennis Drake, Chief, Air Quality Division, MDEQ to FGUA regarding issuance of Permit No. 92-00. (December 27, 2000)
[9] Administrative Complaint, filed by Alma Lowry on behalf of FGUA and GLC, pg. 2. (June 25, 2001)
[10] See fn. 4.
[11] Id.

emissions from the shredder."[11] FGUA asserted that they would provide the "specific terms and operating procedures that they believe should be included in the waste management compliance plan to ensure adequate protection for the surrounding community."[12] At this time, FGUA expressed interest in working toward a negotiated resolution of their Title VI complaint. On December 21, 2001, FGUA sent MDEQ a letter thanking them for a copy of the draft WMCP for review. FGUA also provided MDEQ with comments and recommendations to the S & S Metal Processing draft WMCP.[13] On January 2, 2002, OCR notified the parties involved that the Title VI complaint had been accepted.[14]

On January 16, 2002, FGUA sent OCR a letter with comments and proposed revisions regarding the draft WMCP. They proposed that "mercury containing devices [...] are removed from the shredder source."[15] On May 10, 2002, FGUA sent MDEQ and OCR additional comments entitled, "Proposed Revisions to S & S Waste Management Compliance Plan".[16] In that letter, FGUA proposed eight specific revisions to the WMCP to ensure that prohibited materials are removed from shredder source material and enable the public to effectively monitor compliance. One of the proposed revisions was for "S & S Metals to provide annual reports to MDEQ documenting its compliance with the Waste Management Plan, including a summary of all loads rejected, the date of rejection, the name of the supplier, and the reasons the load was rejected, including the type and amount of prohibited materials found in each load; summaries of all annual inspections for major suppliers; summaries of all re-inspections conducted as a result of the random daily inspections; and a summary of all prohibited materials collected from the S & S Metals Processing site and their disposal."[17]

In response to FGUA's proposed revisions, on May 17, 2002,[18] MDEQ sent OCR and FGUA an e-mail stating that MDEQ had received and considered the comments from FGUA. MDEQ stated that all of the comments and proposed revisions had been addressed and satisfied in the final version of S&S Metal Processing's draft WMCP, with two exceptions. First, FGUA wanted a condition added to the draft WMCP requiring specific information on the amount and type of prohibited materials included for each rejected load. In response, MDEQ provided an additional requirement that a general

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[12] Id.

[13] Letter from Alma Lowry, Environmental Justice Staff Attorney, NLG/Sugar Law Center for Economic and Social Justice to Mirza Baig, Office of Civil Rights regarding comments to S & S Metal Processing Waste Management Compliance Plan. (December 21, 2001)

[14] See fn. 1.

[15] Letter from Alma Lowry, Environmental Justice Staff Attorney, NLG/Sugar Law Center for Economic and Social Justice to Mirza Baig, Office of Civil Rights regarding comments to S & S Metal Processing Waste Management Compliance Plan. (January 16, 2002)

[16] Letter from Alma Lowry, Environmental Justice Staff Attorney, NLG/Sugar Law Center for Economic and Social Justice to Mirza Baig, Office of Civil Rights regarding proposed revisions to S & S Metals Waste Management Compliance Plan. (May 10, 2002)

[17] Id. at 5.

[18] Email from John Fordell Leone, Assistant Attorney General, Environment, Natural Resources and Agriculture Division, Michigan Department of Environmental Quality to Mirza Baig, Case Manager, Office of Civil Rights regarding comments to S & S Metal Processing Waste Management Compliance Plan. (May 17, 2002)

description of any prohibited materials be added to the draft WMCP. Secondly, FGUA wanted S & S Metal Processing to prepare and submit an annual report. MDEQ explained that only major facilities were required to produce and submit annual reports to MDEQ. Since S & S Metal Processing was not a major facility, they would not be required to produce an annual report.

FGUA responded to MDEQ's May 17, 2002, email, by letter on June 25, 2002,[19] with two additional proposed revisions. The first proposal was to revise that WMCP to require S & S Metal Processing to remove not only mercury switches, but all mercury containing devices from vehicles, appliances, and industrial machinery prior to shredding. FGUA argued that the permit required S & S Metal Processing to remove all mercury-containing devices from vehicles, appliances, and industrial machinery prior to shredding.[20] Therefore, the draft WMCP should be amended to require the removal and inspection of all mercury-containing devices, not just mercury switches.[21] FGUA's second proposal stated that S & S Metal Processing should give citizens continual access to the company's performance and compliance records. FGUA argued that in order to ensure compliance, the public must be able to review the performance and compliance records of S & S Metal Processing.[22] Alternatively, FGUA argued, if the access provided to the records was inappropriate, FGUA would amend their initial proposal to include copies of all annual inspection forms, all daily inspection forms, and all load rejection forms.[23]

In response to FGUA's additional proposed revisions, MDEQ sent a letter on September 10, 2002, to S & S Metal Processing clarifying that Permit No. 92-00 prohibited the shredding of any and all mercury containing devices.[24] MDEQ also confirmed the commitment of S & S Metal Processing to supply the MDEQ Air Quality Division (AQD) with copies of all annual inspection forms, all daily inspection forms, and all lead rejection forms for the first full year of operation.[25] FGUA then responded on October 7, 2002, stating that they were dissatisfied with access for only one year. FGUA argued that "without continuing access to these records, the affected community cannot verify compliance, press for enforcement or otherwise protect themselves from non-compliance with the permit or the Waste Management Compliance Plan, which is at

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[19] Letter from Alma Lowry, Environmental Justice Staff Attorney, NLG/Sugar Law Center for Economic and Social Justice to Mirza Baig, Office of Civil Rights regarding proposed revisions to S & S Metals Waste Management Compliance Plan.(June 25, 2002)

[20] Permit to Install Scrap Metal Shredder with Cyclone Collectors and a Wet Scrubber, No. 92-00, Special Condition 15.

[21] Id at fn. 19.

[22] Id.

[23] Id.

[24] Letter from Michael J. Koryto, District Supervisor, Air Quality Division, MDEQ to Mr. Scott Spooner, S & S Metal Processing regarding Permit No. 92-00 and Approved Waste Management Plan. (September 10, 2002)

[25] Id.

[26] Letter from Alma Lowry, Environmental Justice Staff Attorney, NLG/Sugar Law Center for Economic and Social Justice to Mirza Baig, Office of Civil Rights regarding 08R-01-R5.(October 7, 2002)

the heart of controlling mercury emission from the shredder."[26] Subsequent to the October 7, 2002, letter from FGUA, discussions regarding the final proposed revision failed and efforts to informally resolve the complaint ended at the close of 2002.

On November 22, 2004,[27] OCR mailed a letter to FGUA to determine whether they were interested in resuming informal resolution of their complaint. On December 16, 2004, FGUA responded affirmatively and stated that they were still interested in the final proposed revision of meaningful and effective access to annual and random daily inspection records and load rejection information.[28]

DISCUSSION

I. Whether MDEQ failed to provide adequate controls for mercury in the permit for the installation and operation of a scrap metal shredder with cyclone collectors and a wet scrubber.

The first allegation contained in FGUA's administrative complaint was whether MDEQ failed to provide adequate controls for mercury in the permit for the installation and operation of a scrap metal shredder with cyclone collectors and a wet scrubber. In response to the complainants' concerns over adequate mercury controls, on September 10, 2002, MDEQ sent a letter to S & S Metal Processing clarifying that Special Condition 15 of Permit No. 92-00 prohibits the shredding of any and all mercury-containing devices in vehicles, appliances, and industrial machinery, and that such devices must be removed prior to shredding.[29] Similarly, MDEQ stated that although the WMCP uses the phrase mercury switches, S & S Metals must comply with the prohibition against the shredding of all mercury-containing devices. OCR is satisfied that MDEQ has taken the appropriate steps to resolve the complainant's first allegation.

II. Whether MDEQ failed to allow public review and comment on a Waste Management Compliance Plan designed to limit the amount of mercury in the source material for the shredder prevented public participation in regulating the most critical terms of the permit.

The second allegation contained in FGUA's administrative complaint was whether MDEQ failed to allow public review and comment on a Waste Management Compliance Plan designed to limit the amount of mercury in the source material for the shredder prevented public participation in regulating the most critical terms of the permit. As stated in the above facts, MDEQ provided FGUA with an opportunity to review and comment on the WMCP. In particular, from December 21, 2001, to June 25, 2002, FGUA provided MDEQ with four letters that proposed comments and revisions to S & S Metal Processing draft WCMP. Additionally, in response to FGUA's proposed comments and revisions, MDEQ acknowledged that comments and proposed revisions had been addressed and satisfied in the final version of S&S Metal's WMCP, with two exceptions. The first exception was, FGUA wanted a requirement included in the WMCP for specific information on the amount and type of prohibited materials in a rejected load.

In response, MDEQ provided an additional requirement that a general description of any prohibited materials be added to the WMCP.

The second exception was, FGUA wanted S & S Metal Processing to submit an annual report. In response, MDEQ stated that because S & S Metal Processing was not a major facility, they were not required to produce an annual report. Additionally, MDEQ verified in their September 10, 2002, letter a commitment of S & S Metal Processing to supply certain documents after the first year of operations.[30] Specifically, S & S Metal Processing would provide to MDEQ AQD copies of all annual inspection forms, all daily inspection forms, and all lead rejection forms after the first full year of operation. OCR is satisfied that MDEQ took the appropriate steps to allow FGUA to review and comment on the draft WMCP, which resolved the complainant's second allegation.

On June 14, 2005,[31] OCR contacted MDEQ by letter requesting information pertaining to inspection and compliance data for the S & S Metal Processing facility. On September 2, 2005,[32] MDEQ responded by letter to OCR. The letter discussed a document entitled an Activity Report. MDEQ's Air Quality Division generates an Activity Report anytime there is significant activity relative to a facility. The Activity Reports are usually completed for all on-site inspections, complaint investigations, and occasionally for meeting notes and telephone notes. This document also contains operational information regarding load rejections and daily inspection. Additionally, Activity Reports are public documents that are available upon request under the authority of Michigan's Freedom of Information Act (FOIA).[33] OCR is enclosing a copy of the most recent Activity Report for the S & S Metals Processing facility, with all attachments (12 pages total) for your review.

OCR also learned that in the past 3 years, MDEQ has conducted six on-site inspections of the S & S Processing Facility. All six inspections have indicated that the S & S Metal Processing Facility is operating in compliance with the permit. Activity reports were generated by MDEQ for all six inspections.

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[27] Letter from Karen D. Higginbotham, Director, Office of Civil Rights, USEPA, to Thomas W. Stevens, Esq., National Lawyers Guild, Maurice and Jane Sugar Law Center for Economic and Social Justice regarding status of administrative complaint no. 08R-01-R5. (November 22, 2004)

[28] Letter from Thomas W. Stevens, Esq., National Lawyers Guild, Maurice and Jane Sugar Law Center for Economic and Social Justice to Karen D. Higginbotham, Director, Office of Civil Rights, USEPA regarding status of administrative complaint no. 08R-01-R5. (December 16, 2004)

[29] Letter from Michael J. Koryto, District Supervisor, Air Quality Division, MDEQ, to Mr. Scott Spooner, S & S Metal Processing regarding Permit No. 92-00 (September 10. 2002).

[30] Id.

[31] Letter from Karen D. Higginbotham, Director, Office of Civil Rights, USEPA, to Mr. John F. Leone, Michigan Department of Attorney General, Natural Resources & Environmental Quality Division (June 14, 2005).

[32] Letter from John F. Leone, Assistant Attorney General, Environment, Natural Resources and Agriculture Division, to Karen D. Higginbotham, Director, Office of Civil Rights, USEPA (September 2, 2005).

[33] Michigan Freedom of Information Act, MCL 15.231, *et seq.*

CONCLUSION

Based on the foregoing, OCR has concluded that MDEQ has taken the appropriate steps to resolve this complaint; therefore, OCR is closing this administrative complaint (No. 08R-01-R5). If you have any questions, please contact Yasmin Yorker, Assistant Director of the OCR External Compliance Program, at (202) 343-9682.

Sincerely,

Karen D. Higginbotham
Director

Enclosures

cc: Ms. Lillian Robinson, Acting President
Flint-Genesee United for Action, Safety & Environmental Justice
(b) (6) Privacy [redacted]

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