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

OCT 31 2001

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
CERT. MAIL # 7000-1670-0002-9180-7615

In Reply Refer to:
EPA OCR File # 9R-01-R4

[redacted]

Re: REJECTION OF ADMINISTRATIVE COMPLAINT

Dear [redacted]:

The purpose of this letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) cannot investigate the administrative complaint that you filed against the Alabama Department of Environmental Management (ADEM), the City of Dothan, the Dothan City Board of Education, the Alabama State Board of Education, the Houston County Health Department, and the Alabama State Department of Health and Human Services concerning the Tri State Plant Food Company in Dothan, Alabama.

Your complaint generally alleged that the company's facility created an unhealthy environmental condition in the surrounding Black residential area and that the listed government agencies either allowed or contributed to creating and continuing that condition. The immediate cause of the complaint was an accidental release of ammonia from the facility on April 11, 2000, that caused a nighttime evacuation of about 1,000 people from the residential area around the facility, and a decision by a Federal court in June 2000 to reject a proposed cash settlement of a class action lawsuit that was opposed by about 200 claimants who wanted the facility to be closed instead. The complaint was originally filed with the U.S. Department of Justice (DOJ) in July 2001, which referred it to OCR.

OCR is responsible for investigating discrimination complaints against programs that receive financial assistance from EPA. EPA's nondiscrimination regulations are published in the Code of Federal Regulations (C.F.R.) at 40 C.F.R. Part 7. EPA's regulations prohibit programs that receive Federal financial assistance from discriminating on the basis of race, color, national origin, sex or disability. When EPA receives a complaint, it must decide whether to accept the complaint for investigation, or reject the complaint, or refer the complaint to another Federal agency. To be accepted for investigation by EPA, a complaint must meet the requirements for filing a complaint set forth in section 7.120 of EPA's regulations. First, it must be in writing and

specify how the writer can be contacted. Second, it must describe an alleged discriminatory act, including who committed it and when. Third, it must be filed within 180 calendar days of the alleged discriminatory act. Fourth, it must be filed against a program that received financial assistance from EPA. (EPA checks to see if it provided financial assistance to the program against which the complaint is filed.) If the complaint does not meet these requirements, it will not be accepted for investigation and will be either rejected or referred to another Federal agency.

OCR has carefully reviewed the complaint and has determined that it cannot be accepted for investigation for the following reasons. First, it was filed more than 180 days after the alleged discriminatory act took place. The complaint was based on the accidental release of toxic air emissions from the Tri State facility on April 11, 2000. The complaint, however, was not filed with the U. S. Department of Justice (DOJ) until over a year later, in July 2001. Second, the complaint states that residents (including yourself) affected by the leak filed a class-action law suit that is currently in litigation. EPA's standard administrative procedure for investigations is not to accept administrative complaints when there is pending litigation concerning the same matter. See EPA Draft Revised Investigation Guidance, 65 F.R. 124 (June 27, 2000), Section C. III. B. 3., "Ongoing Permit Appeals or Litigation." Finally, some of the programs listed in the complaint have not received financial assistance from EPA and are not, therefore, subject to EPA investigation under EPA's nondiscrimination regulations. ("Houston" and "Dothan," for example, do not appear in EPA's grants tracking database for Alabama for the years 1999 - 2000.) For these reasons, OCR is not accepting the complaint for investigation.

Part of the complaint alleges lack of, or discriminatory, environmental enforcement. ADEM records, however, indicate that ADEM has periodically inspected the Tri State facility and that Tri State has for the most part complied with applicable environmental regulations and the requirements of its environmental permits. ADEM inspected the Tri State facility on March 21, 2000, shortly before the accident in April and cited Tri State for State emissions violations. In response to the accidental release in April 2000, the Emergency Planning Community Right to Know Act (EPCRA) section of EPA Region 4 conducted an inspection of the facility with ADEM on May 16, 2000, and found a number of violations of the EPA's Risk Management Plan regulations, and issued a Clean Air Act Compliance Order (EPA Docket No. CAA-4-2001-0008). A copy of the EPCRA inspection report, along with their Compliance Order is enclosed. Additionally, the Air Compliance Section of EPA Region 4 conducted an inspection with ADEM on May 23 - 24, 2000, and found that Tri State was operating in compliance with the applicable air permit conditions. A copy of the EPA Region 4 Air Compliance section's inspection report is also enclosed for your convenience.

The complaint also alleged that ADEM levied a large fine against the United Plating Company in Huntsville, Alabama, for violations that were trivial compared to the violations found by the Occupational Health and Safety Administration (OSHA) at Tri State but "refus[ed] to enforce the laws against Tri state plant food company." The situations, however, are not similar. United Plating was reportedly fined $200,000 for violations of the Resource Recovery and Rehabilitation Act (RCRA), which regulates the generation, transportation, treatment,

storage, and disposal of hazardous waste. OSHA fined Tri State $188,500 (reduced to $94,250) for violations of the Occupational Safety and Health Act, which protects workers' occupational health and safety. ADEM does not have the authority to enforce the Occupational Safety and Health Act. Additionally, Tri State is covered, not by RCRA, but by the Clean Air Act, which regulates air emissions from various sources to ensure that all Americans have the same basic health and environmental protections. ADEM's enforcement of the Clean Air Act with respect to Tri State was explained in the previous paragraph.

Although your letter does not meet the requirements for a complaint in section 7.120 of EPA's nondiscrimination regulations, by copy of this letter, OCR is forwarding your letter to EPA's Office of Environmental Justice (OEJ) for its consideration. OEJ oversees the integration of environmental justice into EPA's policies, programs, and activities throughout the EPA, serves as the point of contact for environmental justice outreach and educational activities, and provides technical and financial assistance. OEJ can be reached by telephone at 202-564-2606 or by U.S. Mail at: U.S. EPA, Office of Environmental Justice, Mail Code 2201A, 1200 Pennsylvania Ave., NW, Washington, D.C., 20460-1000.

If you have any questions regarding this matter, please feel free to contact Mirza P. Baig of my staff at (202) 564-2788 or by mail to the U.S. EPA, Office of Civil Rights, 1200 Pennsylvania Ave., NW (Mail Code 1201A), Washington, D.C., 20460.

Sincerely,

Karen Higginbotham
Acting Director

encl. a/s

cc: Mr. James W. Warr, Director
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, Alabama 36130-1463

Chester L. Sowell, III, Mayor
City of Dothan
P. O. Box 2128
Dothan, Alabama 36302

Robert E. Fabricant, General Counsel
Office of General Counsel (MC 2310A)

Rafael DeLeon, Associate General Counsel
Civil Rights Law Office (MC 2399A)

Sylvia Lowrance, Acting Assistant Administrator
Office of Enforcement and Compliance Assurance (MC 2201A)

Barry E. Hill, Director
Office of Environmental Justice (MC 2201A)

Stanley Meiberg, Acting Regional Administrator
EPA Region 4

Nancy Tommellio, Regional Title VI Contact
EPA Region 4