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

JUL 08 2008

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail #7004-1160-0002-3622-6475

In Reply Refer to:
EPA File No. 14R-07-R9

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

Re: Rejection of Administrative Complaint

Dear Mr. Brittle:

This letter is in reference to your administrative complaint received by the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on December 10, 2007. Your complaint alleges 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 found at 40 C.F.R. Part 7. Since your allegations do not meet EPA's regulatory requirements for acceptance, OCR will not investigate your complaint.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review 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, the complaint must be in writing. 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that may violate EPA's nondiscrimination regulations (*e.g.* an alleged discriminatory act based on race, color, national origin). *Id.* Third, it must be filed within 180 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 financial assistance that committed the alleged discriminatory act. 40 C.F.R. §7.15.

After careful review, OCR has concluded that it cannot accept the allegations described in your complaint for investigation since they do not satisfy all of the jurisdictional requirements described in EPA's nondiscrimination regulations. OCR's jurisdictional analysis is discussed below.

Your first allegation concerns a May 31, 2007, public hearing pertaining to a facility air permit modification for the installation of a biologically enhanced soil vapor extraction system. You allege that MCAQD personnel tried to prevent the testimony of Ms. Mary Moore, a community resident, by physically approaching her as she walked to the microphone to make her public statement, and then insisting that she should not read from her written comments but file them instead.

While you state that race was the basis for this allegation, you did not explain how you were personally impacted by the alleged discriminatory act that occurred at the public meeting. This allegation discusses the impacts to Ms. Mary Moore, a community resident, who has also filed a complaint with EPA. EPA's nondiscrimination regulations require a complaint to be filed by a person who believes he or she has been discriminated against, or by an authorized representative. This allegation does not fulfill this requirement. In addition, this allegation describes an act that exceeds the 180-day timeframe for filing a complaint required by EPA's regulations. The alleged discriminatory act took place during a May 31, 2007, public meeting. EPA received your complaint on December 11, 2007. This allegation, therefore, does not meet the timeliness requirement. Since this allegation does not meet the criteria described in EPA's nondiscrimination regulations, OCR must reject it for investigation.

Your complaint includes additional allegations which OCR cannot accept for investigation because they also fail to meet the jurisdictional requirements described in EPA's nondiscrimination regulations. Your complaint alleges: (1) that MCAQD failed to conduct "cumulative modeling" and "special air monitoring" in the community adjacent to the facility; and (2) that MCAQD's lack of an Environmental Justice (EJ) policy or EJ fact sheets, and MCAQD's failure to conduct a public meeting to discuss an "enhanced complaint resolution process" for EJ issues, have resulted in a disparate impact on the community.

These allegations fail to describe with sufficient particularity a discriminatory act. Your complaint fails to explain how these allegations, even if true, have resulted in a disproportionately adverse impact on the community. General allegations about the shortcomings of MCAQD, without more, are not considered discriminatory acts pursuant to EPA's nondiscrimination regulations.

If you have any questions, please contact Thomas Walker of the OCR External Compliance Program, by telephone at (202) 343-9680, by e-mail at walker.tom@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave. NW., Washington, D.C. 20460.

Sincerely,

Karen D. Higginbotham
Director

cc: Robert J. Kard, Director
Maricopa County Air Quality Department
1001 North Central Avenue
Suite 400
Phoenix, AZ 85004

Joann Asami, Title VI Coordinator
EPA Region 9

Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (MC 2311)