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

NOV 05 2010

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certified Mail 7009 2820 0002 1763 7365

In Reply Refer to:
EPA File No. 18r-10-R9

[redacted]

Re: Rejection of Administrative Complaint

Dear [redacted]:

This letter is in response to your administrative complaint filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR). You allege that the Arizona Department of Environmental Quality (ADEQ) violated the Civil Rights Act of 1964. Your complaint was received by EPA on August 10, 2010. The complaint alleges that ADEQ retaliated against you when you were discharged from your employment for being a whistleblower.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of discrimination complaints 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, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

After careful review, OCR has concluded that it cannot accept your complaint for investigation because it does not meet the jurisdictional requirements described in EPA's regulations implementing Title VI.

Your complaint states that you reported to ADEQ management the behavior of a fellow employee who you allege was conducting private business during working hours. Your complaint further alleges that ADEQ retaliated against you and terminated your employment as a result of your bringing the alleged actions of your fellow employee to management attention. Title VI statutorily restricts discrimination claims with respect to

employment practices by a recipient of Federal financial assistance to instances where the "primary objective" of the financial assistance is to provide employment. 42 U.S.C. § 2000d-3. At the time of the alleged conduct, ADEQ was not the recipient of Federal financial assistance from EPA for the primary objective of providing employment and therefore, not subject to EPA review under Title VI. Because this allegation does not meet the jurisdictional requirements in EPA's nondiscrimination regulations, EPA cannot accept it for investigation.

OCR would like to inform you that the Equal Employment Opportunity Commission (EEOC) enforces federal laws against discrimination in the workplace. If you feel you have been discriminated against in violation of the employment laws which EEOC administers, you may wish to contact the EEOC by phone at 202-463-4900 or by mail at: 131 M Street, NE Washington, DC 20507. Please bear in mind that claims filed with the EEOC have strict deadlines by which such claims must be submitted.

You should be aware that no one may intimidate, threaten, coerce, or engage in other retaliatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the nondiscrimination statutes EPA enforces. Any individual alleging such harassment or intimidation may file a complaint with EPA.

If you have any questions or need clarification regarding this letter, please contact Anthony Napoli of the OCR External Compliance and Complaints Program via Federal Relay Service 866-377-8642, and provide the relay operator his telephone number 202-564-0728. He may also be reached via electronic mail at Napoli.Anthony@epa.gov, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460-1000.

Sincerely,

Rafael DeLeon

Rafael DeLeon
Acting Director

Enclosure

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (2399A)

Jo Ann Asami, EPA Region 9

Mr. Benjamin H. Grumbles, Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007