UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

SEP 09 2010

Return Receipt Requested
Certified Mail [redacted]

In Reply Refer to:
EPA File Nos. 01R-09-R4 and 07R-10-R4

[redacted]
St. Augustine, FL 32084

Re: Partial Acceptance and Partial 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) on January 22, 2009. Your complaint alleges that the City of St. Augustine, Florida (City) and the Florida Department of Environmental Protection (FDEP) 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 implementing Title VI found at 40 C.F.R. Part 7.

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 Part 7 regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, or disability). Third, it must be filed within 180 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or a recipient of, EPA assistance that committed the alleged discriminatory act. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

Your complaint states that the City and/or FDEP: 1) disproportionately located

and allowed "polluting, noisome, noisy, and oversized and unpleasant facilities in low-income and African American communities";[1] 2) failed to provide an "adequate process or remedy" regarding the City dumping solid waste in the Old City Reservoir;[2] 3) allowed secret and illegal dumping by the City of solid waste in the Old City Reservoir in West Augustine; and 4) refused to "hold meetings in the affected communities" since January 10, 2008.[3] On December 15, 2009, OCR sent you a Clarification letter requesting the dates for the first two allegations.[4] Additionally, on April 13, 2010, OCR sent an email requesting clarification about the fourth allegation. Your responses via letter and email did not provide dates for these allegations because you claim that the continuing violation theory applies and that the alleged acts have been "ongoing throughout the time period of the complaints",[5] thus making the alleged violations timely.

Then on January 20, 2010, and February 12, 2010, you amended your complaint stating that the City and/or FDEP: 5) failed to investigate the effects of pollution on the public health of African Americans in the Lincolnville neighborhood; 6) intentionally failed to provide notice to African-Americans regarding the 1875 gallons of raw sewage spilled in the Marie Sanchez Lake; 7) intentionally dumped 611,294 gallons of raw sewage in the San Sebastian River; 8) and failed to take adequate enforcement action with respect to sewage spillage in the Marie Sanchez Lake and San Sebastian River. After careful review OCR is accepting and rejecting the following allegations.

Allegation I

> The City and FDEP disproportionately located and allowed polluting, noisy, oversized, and unpleasant facilities in low-income and African American communities.

The allegation against the FDEP is rejected for investigation because you have failed to identify a timely alleged discriminatory act. As stated above, EPA's implementing regulations require that a complaint describe an alleged discriminatory act that would violate EPA's nondiscrimination regulations and that it is filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). You did not provide dates for this allegation, explaining that the allegation was timely because the continuing violation theory applies.

As explained by the U.S. Supreme Court in the context of a Title VII employment discrimination complaint, the continuing violation theory allows consideration of a single unlawful practice, even where acts that contributed to the practice occurred outside the

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[1] Letter from [redacted] complainant, to Barack Obama, U.S. President, White House. (January 22, 2009)
[2] *Id.*
[3] *Id.*
[4] Letter from Helena Wooden-Aguilar, Acting Assistant Director, EPA, to [redacted], complainant. (December 15, 2009)
[5] Letter from (b) (6) Privacy, (b) (7)(C) Enforcement Privacy, complainants, to Helena Wooden-Aguilar, Acting Assistant Director (January 20, 2010); and Email from [redacted], complainant, to Crystal Rennie, Case Manager, EPA. (April 14, 2010)

applicable time limitation. *Amtrak v. Morgan*, 536 U.S. 101 (2002). The unlawful practice does not occur on any particular day, but occurs over a series of days or even years, and the claim is based on the cumulative effect of individual acts. The individual acts may not be actionable on their own. *Id.* at 115. The Court distinguished continuing violations from discrete acts, explaining that "discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges." *Id.* at 113. The Court provided examples of discrete acts, such as "termination, failure to promote, denial of transfer, or refusal to hire." *Id.* at 114.

The allegation against the FDEP concerns the location of certain facilities. Siting decisions are discrete acts. These discrete acts occurred on particular dates and were independently actionable without the occurrence of the other alleged actions in the complaint, making the continuing violation doctrine inapplicable. Because you have failed to identify a siting decision within 180 days preceding your complaint, OCR is unable to determine that your allegation is timely and must reject it.

Finally, the City is not a recipient of EPA assistance, and thus not subject to Title VI enforcement by the EPA. Therefore, OCR must reject allegations against the City.

Allegation II

> The City and FDEP failed to provide an adequate process or remedy after citizens petitioned for administrative remedies in the case of the City's dumping solid waste in the Old City Reservoir.

The allegation against the FDEP is rejected for investigation because you have failed to identify a timely alleged discriminatory act. As stated above, EPA's implementing regulations require that a complaint describe an alleged discriminatory act that would violate EPA's nondiscrimination regulations and that it is filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). You did not provide dates for this allegation, explaining that the allegation was timely because the continuing violation theory applies.

As explained, the continuing violation theory allows consideration of a single unlawful practice, even where acts that contributed to the practice occurred outside the applicable time limitation. *Amtrak v. Morgan*, 536 U.S. 101 (2002). However, continuing violations are distinguishable from discrete acts. According to the Supreme Court, "discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges." *Id.* at 113.

FDEP's failure to respond to the citizen petition regarding the dumping in the Old City Reservoir is a discrete act that was independently actionable without the occurrence of the other alleged actions in the complaint, making the continuing violation doctrine inapplicable. Because you have failed to identify a timely alleged discriminatory event, OCR must reject it.

In addition, the City is not a recipient of EPA assistance, and thus not subject to Title VI enforcement by the EPA. Therefore, OCR must reject allegations against the City.

Allegations III & IV

The City participated in the secret and illegal dumping of solid waste in the Old City Reservoir in West St. Augustine.

The City refused to hold meetings in the affected communities since January 10, 2008.

These allegations are rejected for investigation because the City is not a recipient of EPA assistance, and thus not subject to Title VI enforcement by the EPA. Therefore, OCR must reject allegations against the City.

Allegation V

The City and FDEP's failed to investigate the effects of pollution on the public health of African Americans in the Lincolnville neighborhood.

The allegation against the FDEP is accepted for investigation because it meets EPA's four jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate EPA's nondiscrimination regulations. In response to our April 30, 2010 Clarification Request, you responded that on February 4, 2010, the FDEP either refused an investigation of or was required to investigate the effects of pollution on African Americans in Lincolnville. Therefore, the alleged discriminatory act occurred within 180 days of filing the complaint. Finally, the complaint was filed against FDEP, a recipient of EPA assistance.

The City is not a recipient of EPA assistance, and thus not subject to Title VI enforcement by the EPA. Therefore, OCR must reject allegations against the City.

Allegations VI & VII

The City intentionally failed to provide notice to African-Americans regarding the 1875 gallons of raw sewage it spilled into the Marie Sanchez Lake.

The City intentionally dumped 611,294 gallons of raw sewage in the San Sebastian River.

These allegations are rejected for investigation because the City is not a recipient of EPA assistance, and thus not subject to Title VI enforcement by the EPA. Therefore, OCR must reject allegations against the City.

Allegation VIII

The FDEP failed to take adequate enforcement action with respect to sewage spillage in the San Sebastian River and the Maria Sanchez Lake.

This allegation is accepted for investigation because it meets EPA's four jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate EPA's nondiscrimination regulations. Third, the alleged discriminatory act is timely. In October 2009, the FDEP proposed a small fine in response to the dumping in the San Sebastian River but imposed no fine in response to the dumping in the Maria Sanchez Lake. Therefore, the FDEP's alleged failure to take adequate enforcement action with respect to both spills was within 180 days of the date you submitted your complaint on January 20, 2010, making these allegations timely. Finally, the complaint was filed against FDEP, a recipient of EPA assistance.

Although your entire complaint was not accepted for investigation, OCR is forwarding the issues regarding your environmental justice concerns to Ms. Cynthia Peurifoy of EPA's Region 4's Office of Special Programs. For your reference, Ms. Peurifoy can be reached at (404) 562-9649 or via e-mail at Peurifoy.Cynthia@epa.gov.

If you have any questions, please contact Ms. Helena Wooden-Aguilar of my staff by phone at (202) 343-9681, by email at Wooden-Aguilar.Helena@epa.gov, or by mail to the U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Rafael DeLeon

Rafael DeLeon
Acting Director

Enclosure

cc: Mr. Michael W. Sole
Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard M.S. 49
Tallahassee, FL 32399

Mr. James Boles
Mayor