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

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

July 7, 2017

Return Receipt Requested
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Misael Cabrera, P.E.
Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

Re: Closure of Administrative Complaints, EPA File Nos. 03R-07-R9 and 11R-98-R9

Dear Director Cabrera:

This letter is to advise you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving and closing, as of the date of this letter, administrative complaint 03R-07-R9 and 11R-98-R9 against the Arizona Department of Environmental Quality (ADEQ). The complaints generally alleged that ADEQ violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d et seq. (Title VI) and the EPA's nondiscrimination regulation found at 40 Code of Federal Regulations (C.F.R.) Part 7.

EPA ECRCO is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex and age in programs or activities that receive federal financial assistance from the EPA.

Closure of Administrative Complaint, EPA File Number 03R-07-R9

The complaint in EPA File Number 03R-07-R9 was filed on March 28, 2007, by Don't Waste Arizona and Concerned Residents of South Phoenix under Title VI and EPA's implementing regulation at 40 C.F.R. Part 7. The complaint alleged ADEQ and the Maricopa County Air Quality Department (MCAQD)[1] discriminated against Hispanic and African American residents of South Phoenix through the operation of their Clean Air Act permitting programs. Specifically, the complaint alleged that "ADEQ has issued permits for portable sand and gravel outfits (aggregate mining), cement batch plants, and asphalt batch plants to operate in Maricopa

[1] The allegations against MCAQD are addressed separately and not within this letter.

County and especially in areas . . . adjacent to an overwhelmingly" Hispanic and African American "population that is disproportionately and adversely affected by documented high levels of particulate matter pollution. The ADEQ yet has failed to administrate, manage and/or maintain a system whereby these same portable permitted facilities are monitored, including a systematic lack of inspections of these permitted facilities and a systematic lack of emissions reports of these permitted facilities."[2]

On May 27, 2008, ECRCO accepted the following for investigation: Whether ADEQ violated Title VI and EPA's nondiscrimination regulations by failing to inspect certain permitted facilities and failing to require emissions reports of these same facilities. As discussed below, ECRCO finds insufficient evidence of current noncompliance with Title VI and EPA's implementing regulation. Accordingly, EPA File Number 03R-07-R9 is closed as of the date of this letter.

Pursuant to the investigation of the allegation, EPA examined how ADEQ's portable source program is implemented (with respect to permitting and compliance) when subject sources are located in Maricopa County. Specifically, EPA examined whether ADEQ has established and is implementing procedures that clearly articulate that ADEQ, as the permitting agency, is primarily responsible for all inspections of these portable sources, including verification of proper emissions reporting, where applicable, how complaints referred by other agencies are addressed, and for tracking the physical location of such portable sources throughout a given permit term.

During its investigation, ECRCO gathered and reviewed information relevant to the complaint. This information included the complaint submitted to ECRCO, and information submitted by ADEQ on October 26, 2009, September 21, 2010, and September 8, 2015. In addition, EPA held meetings with ADEQ on October 19, 2016 and February 24, March 16 and June 21, 2017, to obtain additional information.

ECRCO found that ADEQ has jurisdiction over portable sources that operate in multiple counties or in a county without a local air pollution control program.[3] ECRCO also found that MCAQD has jurisdiction over portable equipment operated solely in that county.[4] However, despite the recognized jurisdictions of ADEQ and MCAQD, ECRCO found that there was no written agreement between the two agencies as to how complaint response and enforcement was coordinated (*e.g.*, for portable sources under ADEQ jurisdiction but operating within Maricopa County).

During the course of ECRCO's investigation, and to address this concern, ADEQ, in coordination with MCAQD, developed the Air Quality Complaint Inspection Referral Procedure, with both agencies as signatories. The Procedure clearly describes each agency's authority and responsibilities in dealing with portable equipment inspections when there are jurisdictional

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[2] Complaint letter received by EPA on March 28, 2007, EPA File No. 03R-07-R9, pp. 1-2 & 6; December 6, 2007 Complainants' Response to EPA Request for Clarification, p.6.

[3] Arizona Revised Statutes, Title 49, Chapter 1, Article 1, Sections 49-107; 40-401.01; 49-402. Also see ADEQ website at: http://legacy.azdeq.gov/environ/air/permits/assist.html.

[4] Maricopa County Air Pollution Control Regulation II, Section 410.1.

issues involved. Notably, for example, the Procedure provides step-by-step instructions for field staff to follow when they come upon a possible portable source violation that is not under their agency's jurisdiction. The Procedure covers jurisdictional determinations, inspections and information gathering, the process for conducting visible emissions observations, referral procedures, and how to follow up with the other agency involved.[5]

To further support effective enforcement communication between ADEQ and MCAQD, ADEQ has implemented an electronic permitting system (MyDEQ) in response to EPA's Cross-Media Electronic Reporting Rule (CROMERR).[6] In July 2016, ADEQ began using MyDEQ to address the types of portable sources identified in the complaint, thereby replacing the previous paper permitting and tracking system for all portable source permittees.[7] In implementing this system, ADEQ provided access to MCAQD and other local government agencies. The MyDEQ system uses a series of questions designed to ensure that ADEQ and MCAQD receive accurate and timely information about location, equipment, and equipment operation from permittees.

MyDEQ addresses issues regarding inspections and emissions reporting which were also raised in the complaint. Under the MyDEQ system, sources report their locations electronically, thereby allowing inspection staff to readily locate and identify equipment. This is superior to a paper-based system, especially when dealing with portable equipment, which can be moved frequently and in and out of different jurisdictions. MyDEQ also allows the source to submit equipment-specific and emissions information, such as equipment type, capacity, make and model, serial number, date of manufacture, hours of operation, and tonnage of throughput.

MyDEQ further ensures that the facility receives a permit from the correct agency. For instance, if the permittee is moving, a compliance certification is required to ensure that the source is meeting its permit terms. The permit is then issued electronically and ADEQ permit and compliance staff are electronically notified. ADEQ is also electronically notified regarding annual compliance certifications and permit terminations. If a particular portable source will operate for the duration of its permit term solely in Maricopa County, it must obtain a permit from MCAQD.[8] If it will operate in Maricopa County in addition to other counties during its permit term, it must obtain a permit from ADEQ. State-issued permits for sources located in Maricopa County need to meet the air quality requirements established by Maricopa County (which are more stringent than elsewhere in the State).

The implementation of the Air Quality Complaint Inspection Referral Procedure and the implementation and availability of the MyDEQ system indicate that ADEQ's portable source enforcement program has changed since the South Phoenix complaint was filed. In light of the changes to ADEQ's programs and activities, as well as commitments ADEQ has made during

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[5] ADEQ reported that it has an inspector in the field by 4 a.m. with the ability to adjust his schedule to cover complaints involving night time operations of permitted sources. In addition, ADEQ can require other inspectors to adjust their schedules if a complaint requires it.

[6] CROMERR is an EPA rule that establishes standards for information systems that receive reports and other documents electronically under EPA-authorized programs. More detail on the CROMERR program can be found at https://www.epa.gov/cromerr.

[7] Additional information about MyDEQ can be found at: http://www.azdeq.gov/mydeq/home.

[8] MCAQD Rule 200 § 410.1.

the course of this investigation, ECRCO finds insufficient evidence of current non-compliance with Title VI or EPA's Title VI regulation. Therefore, ECRCO is closing the complaint as of the date of this letter.

ADEQ's Non-Discrimination Program

During the course of this investigation, as is ECRCO's current practice, ECRCO reviewed ADEQ's compliance with the requirements of EPA's non-discrimination regulation,[9] which sets forth the foundational elements of a recipient's non-discrimination program. These include: continuing notice of non-discrimination under 40 C.F.R. § 7.95; adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g).

ECRCO also reviewed the programs, policies, and guidance ADEQ is implementing to ensure it provides meaningful access for persons with limited English proficiency[10] and persons with disabilities[11] to all its programs and activities that receive federal financial assistance from EPA, including its public participation process.[12]

As a result of discussions with EPA over the last several months, ADEQ developed a foundational non-discrimination program. As a result of ADEQ's efforts, the ECRCO review found the following:

a. Notice of Nondiscrimination – EPA's nondiscrimination regulation requires initial and continuing notice that the recipient does not discriminate on the basis of race, color national origin, or disability in a program or activity receiving EPA assistance or, in programs covered by Section 13 of the Education Amendments, on the basis of sex.[13] ADEQ's main

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[9] 40 C.F.R. Part 7, Subpart D.

[10] On June 25, 2004, EPA issued *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (LEP Guidance). The LEP guidance clarifies recipient's existing legal obligations to provide meaningful access to limited English proficient persons in all programs and activities that receive federal financial assistance from EPA. The LEP guidance also provides a description of the factors recipients should consider in fulfilling their responsibilities to limited English proficient persons to ensure meaningful access to recipients' programs and activities and the criteria EPA uses to evaluate whether recipients are in compliance with Title VI and the Title VI implementing regulation. https://www.federalregister .gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients·regarding-title-vi.

[11] *See* 40 C.F.R. §§ 7.45 – 7.55, 7.65

[12] On March 21, 2006, EPA published its *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (Public Involvement Guidance) which was developed for recipients of EPA assistance implementing environmental permitting programs. It discusses various approaches, and suggests tools that recipients may use to enhance the public involvement aspects of their current permitting programs. It also addresses potential issues related to Title VI and EPA's regulation implementing Title VI. https://www.epa.gov /sites/production/ files/2013-09/documents/title6_public_involvement _guidance.3.13.13.pdf.

[13] 40 C.F.R. § 7.95.

website page now contains a "Civil Rights" link[14] to its Notice of Nondiscrimination.[15] In addition, by selecting a language from a drop-down menu, on the web page, the page will display in a number of languages, including Spanish. In addition, ADEQ reports that this Notice is prominently displayed in ADEQ's offices.[16] The Notice describes the procedures to file a discrimination complaint with ADEQ and how to contact the ADEQ Nondiscrimination Program Coordinator for assistance.

b. Grievance Procedures - EPA's nondiscrimination regulation requires that each recipient adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violations of the nondiscrimination regulation.[17] ADEQ's website contains a Nondiscrimination Policy for Programs, Activities and Services and Grievance Procedures ("Grievance Procedures")[18] in English and Spanish that can be found by accessing the Civil Rights link on ADEQ's main web page.[19] The Grievance Procedures describe the process for individuals to file a complaint of discrimination with ADEQ. ADEQ's Grievance Procedures assure that it promptly and fairly resolves complaints utilizing a preponderance of the evidence standard.[20] To initiate the grievance process, ADEQ has developed a complaint form in English and Spanish, which is accessible on its website via a link on the bottom of its main web page.[21]

ADEQ reports that it is developing the capability to accept different types of complaints from individuals against ADEQ directly from its main website page, including complaints under Title VI and other federal nondiscrimination laws, for implementation by late Fall 2017. Currently, ADEQ's "File A Complaint" option, which is located in the form of a click-button near the top of ADEQ's main web page only allows individuals to file environmental complaints. ADEQ maintains that once the new customer complaints system is in place, the "File A Complaint" function will clearly inform the public of its ability to file Title VI and other nondiscrimination complaints. This development will also provide more prominent access to civil rights information from ADEQ's main website page by moving the link to civil rights information further up on the page from the link's current location.

c. Nondiscrimination Coordinator – EPA recipients are required to have a nondiscrimination coordinator to oversee their nondiscrimination program.[22] On its website, ADEQ has

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[14] http://www.azdeq.gov/

[15] This notice can be found in ADEQ's Civil Rights Program Policy, found at http://www.azdeq.gov/CivilRights and http://static.azdeq.gov/legal/VI_policy.pdf .

[16] ADEQ Civil Rights Program Policy, at 2, found at http://static.azdeq.gov/legal/VI_policy.pdf.

[17] 40 C.F.R. § 7.90 (each recipient with 15 or more employees shall adopt grievance procedures that assure the prompt and fair resolution of complaints).

[18] Nondiscrimination Policy for Programs, Activities and Services and Grievance Procedures, found at http://static.azdeq.gov/legal/grievance_policy.pdf and http://static.azdeq.gov/legal/grievance_policy_sp.pdf .

[19] http://www.azdeq.gov/

[20] Grievance Procedures, at 3.1.5.5, found at http://static.azdeq.gov/legal/grievance_policy.pdf

[21] Title VI Discrimination Complaint Form, at http://static.azdeq.gov/legal/civilrightsform.pdf and http://static.azdeq.gov/legal/Civil_Rights_Form_sp.pdf.

[22] 40 CFR § 7.85(g) (if a recipient employs 15 or more employees, it must designate at least one nondiscrimination coordinator).

identified Ian Bingham as its Nondiscrimination Coordinator and has provided a contact number and email address for him.[23] Within its Civil Rights Program Policy, ADEQ has confirmed that its Nondiscrimination Coordinator is charged with ensuring ADEQ's compliance with federal non-discrimination laws and ensuring that information regarding ADEQ's Nondiscrimination Program is internally and externally available; maintaining public notice of, and procedures for receipt and processing of complaints; receiving and logging complaints; training department staff on ADEQ's Nondiscrimination Program and procedures; informing complainants about the progress of investigations; and periodically reviewing the efficacy of ADEQ's Nondiscrimination Program.[24]

d. Limited English Proficiency (LEP) – ADEQ has developed an LEP policy referencing EPA's LEP Guidance. ADEQ's policy is contained within ADEQ's Civil Rights Program Policy, which is available on its website.[25] The LEP policy outlines ADEQ's commitment to provide meaningful access to LEP individuals to its programs and activities. In doing so, ADEQ undertook an analysis of its LEP population within its service area.[26] Since ADEQ has identified Spanish speakers as the major LEP language group in Arizona, ADEQ's efforts primarily focus on ensuring key materials and services are available in both English and Spanish.[27] ADEQ's Policy also states that it will accommodate the needs of other LEP (non-Spanish speaking) persons through contracts for LEP services.[28] To ensure that key materials and services are available to LEP individuals, EPA notes that it is essential provide good guidance and training for managers on the "key materials" that should be translated for purposes of Title VI.

e. Individuals with Disabilities – In ADEQ's Civil Rights Program Policy, ADEQ describes the analysis it has undertaken of its population who have identified as individuals with disabilities. ADEQ has committed to providing meaningful access to individuals with disabilities to department programs and activities.[29] ADEQ states that it provides appropriate auxiliary aids and services to disabled persons who are deaf or hard of hearing and other individuals upon request at no cost to ensure effective communication and an equal opportunity to participate fully in the ADEQ decision making processes.[30]

f. Public Participation – ADEQ has developed a public participation policy, which is set forth in its Civil Rights Program Policy. ADEQ states that it strives to provide for meaningful public involvement in all of its programs, no matter the location of the program in the State of Arizona or the community potentially impacted.[31] ADEQ notes that in order for public involvement to be meaningful, it requires informing, consulting and working with potentially

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[23] http://www.azdeq.gov/CivilRights
[24] ADEQ Civil Rights Program Policy, at 3, found at http://static.azdeq.gov/legal/VI_policy.pdf.
[25] *Id.* at 3-4. 5-6 and Attachment D.
[26] ADEQ Civil Rights Program Policy, at Attachment D, found at http://static.azdeq.gov/legal/VI_policy.pdf.
[27] *Id.* at 4.
[28] *Id.* at 5.
[29] *Id.* at 3-4, 5-6 and Attachment D.
[30] *Id.* at 5.
[31] *Id.* at 4.

affected communities at various stages of the decision making process in order to understand and address concerns.[32]

ADEQ explains that when developing public participation plans, it evaluates the following: community demographics and other statistics; media sources (considering, for example, local media and community groups); need for and location of public meetings considering accessibility and availability of public transportation; and the need for language assistance services for LEP persons and accommodations for persons with disabilities.[33]

ADEQ reported that it undertook a demographic analysis of its population and states that its development and distribution of public notices and planning for public meetings/ hearings regarding ADEQ actions considers the LEP and disabled populations in the areas impacted by the ADEQ action or program. ADEQ states that it provides access to phone menu and voicemail options in Spanish, as well as access to Spanish-speaking representatives. It further ensures the availability of key materials and services in Spanish, including compliance and enforcement brochures, compliance training schedule information, TV and radio announcements and newspaper articles and press releases among other materials.

Based on the foregoing, ECRCO has determined that ADEQ's actions taken during the pendency of this complaint regarding its environmental enforcement program, its response to environmental complaints, as well as its nondiscrimination program, as described above, have resulted in significant changes to the overall circumstances since the filing of this complaint. Accordingly, ECRCO finds insufficient evidence of current non-compliance with Title VI and EPA's implementing regulation. Therefore, ECRCO is closing complaint number 03-07-R9 as of the date of this letter.

Closure of Administrative Complaint, EPA File Number 11R-98-R9

The complaint in EPA File Number 11R-98-R9 was filed on October 13, 1998, by Sanford Lewis, on behalf of United Paperworkers International Union (UPI)[34] and (b) (6) - Privacy [35] under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and EPA's implementing regulations at 40 C.F.R. Part 7.[36] The complaint generally alleged that Arizona Department of Environmental Quality's (ADEQ) issuance of a permit to Arizona Portland Cement Company in Rillito, now known as CalPortland Cement Rillito Plant (hereinafter referred to as "CalPortland"),[37] discriminated against nearby African American and Hispanic residents by causing a disproportionate and adverse risk to residents' health. In

[32] *Id.*

[33] ADEQ Public Participation Program Checklist: Title VI Nondiscrimination; ADEQ Civil Rights Program Policy, at 5, found at http://static.azdeq.gov/legal/VI_policy.pdf

[34] We note that United Paperworkers International Union withdrew from participation in this complaint in November 2010. Email from Robert Laventure, Director of UPI District 12 to Lynn Agee, Special Counsel, UPI. (November 22, 2010).

[35] We also note that (b) (6) - Privacy is now deceased.

[36] Consistent with EPA's regulations, ECRCO offered the Complainants and ADEQ the opportunity to pursue a resolution using alternative dispute resolution (ADR). However, the ADR process was unsuccessful.

[37] For the purpose of this letter, the facility will be referenced as "CalPortland" or "the Facility".

addition, the complaint alleged that the permit revision process was conducted in a discriminatory manner because it did not allow for adequate participation by key members of the community.[38] With respect to the first issue, ECRCO's investigation found that, pursuant to EPA and ADEQ involvement, significant changes in the operation of this facility were made during the course of this investigation. As such, ECRCO finds insufficient evidence of current non-compliance with Title VI and EPA's implementing regulation. With respect to the second issue regarding public participation, ECRCO's investigation found insufficient evidence to conclude that ADEQ violated Title VI and EPA's implementing regulation.[39]

In conducting the investigation, ECRCO gathered and reviewed information relevant to the complaint. This information included the complaint and supplementary information submitted to ECRCO, information received from ADEQ in response to ECRCO's issuance of two information request letters,[40] and information received through interviews with the Complainant.

Issue 1: Arizona Department of Environmental Quality's (ADEQ) issuance of a permit to CalPortland discriminated against nearby African American and Hispanic residents by causing a disproportionate and adverse risk to residents' health.

Background

CalPortland is a Portland cement plant, a limestone quarry, and a rock and stone aggregate plant. Portland cement is a fine gray powder that binds sand and aggregate into concrete. At CalPortland, cement is produced from various types of minerals, including limestone, and calcium, silica, alumina, and iron. These materials are ground to a fine powder, blended in specific proportions needed for the final cement product, and heated until partially molten at temperatures of approximately 2,700°F in a precalciner[41] cement kiln to produce a pellet-shaped, glass-hard material called clinker.[42] The clinker is then ground with gypsum to an extremely fine powder, known as Portland cement.

Subsequent to the filing of this complaint, significant additional permitting, enforcement, and rulemaking actions have been implemented which affect the issues involved in this complaint. The facility's permit has been revised several times in order to implement new requirements to address federal maximum achievable control technology requirements for Portland Cement facilities[43] and to add enhanced visibility monitoring requirements resulting from the resolution

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[38] Acceptance of Administrative Complaint letter from Karen D. Higginbotham, Acting Director, ECRCO, EPA to Mr. Sanford Lewis, Complainant. (December 2001).
[39] 40 C.F.R. Part 7, Subpart D.
[40] Email from Bret Parke, Administrative Counsel, ADEQ to Karen Randolph, ECRCO, US EPA, Re: EPA Administrative Complaint (File No. 11R-98-R9), (November 7, 2011 and February 23, 2012).
[41] The precalciner system is a suspension preheater in which, in addition to the kiln flame, extra fuel is burned in the base of the preheater.
[42] Technical Support Document for the Proposed Phase 3 Action on the Federal Implementation Plan for the Regional Haze Program in the State of Arizona; Docket No. EPA-R09-AR-2013-0588; Air Division, U.S. EPA Region 9, January 27, 2013. pp 87-90.
[43] *See* 40 C.F.R. Part 63, Subpart LLL.

of ADEQ and/or EPA enforcement actions. As explained further below, both ADEQ and EPA took enforcement actions to address noncompliance at the Rillito facility.

The ADEQ enforcement action resulted in the facility paying $300,000 in civil penalties; being required to conduct annual performance tests to monitor hazardous air pollutant emissions; taking steps to assess raw materials used in the manufacturing process to ensure no future violations of air pollutant limits; and making improvements to enhance air quality in Rillito by applying dust suppressants to an unpaved community road, installing a heating, cooling, ventilation system and air purifiers in the Rillito Community Center, and offering and providing air purifiers to Rillito residents.[44]

The EPA enforcement action required the facility to pay $350,000 in civil penalties and required that the facility upgrade older kilns and related operations at its plant to reduce the amount of emissions produced or to shut down the older kilns. With respect to rulemaking, EPA's final Federal Implementation Plan to address Arizona Regional Haze,[45] which covers the activities of CalPortland, requires the installation of advanced emissions controls (selective non-catalytic reduction) that will reduce emissions at kiln 4 (the main stationary source of emissions at the Rillito facility) by 35 percent by the end of 2018 along with stringent associated monitoring, recordkeeping, and reporting requirements.[46]

Current Status

CalPortland currently consists of four dry process rotary kilns (Kilns 1, 2, 3, and 4) and clinker coolers.[47] The rock and stone aggregate plant is called the Twin Peaks Rock and Stone Aggregate Plant. Particulate emissions are generated throughout the facility from numerous stationary and mobile operations. Particulate emissions also result from fugitive dust generated by activities such as material handling, open storage of materials, rock crushing, paved and unpaved road traffic, and quarry drilling and blasting. The facility uses baghouses and dust collectors throughout its facility, including on Kilns 1- 4, to control particulate emissions. Baghouses and dust collectors are forms of fabric filters used for controlling particulate emissions at efficiencies greater than 98 percent. Kilns 1, 2 and 3 are long kilns, and currently rely on good combustion practices to control NOX emissions. Kiln 4 is a preheater/precalciner kiln. Preheater/precalciner kilns generally use inherent low NOX design features. NOX emissions from Kiln 4 are controlled by low NOx burners with indirect firing and preheater riser duct firing. Preheater riser duct firing is applicable to preheater/precalciner kilns.[48]

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[44] Consent Judgement (Non-classified Civil), Civil Action No. CV2006-016354 (Nov. 7, 2006).
[45] *See* 79 Fed. Reg, 52420 (Sept. 3, 2014)
[46] *Id.*
[47] Technical Support Document for the Proposed Phase 3 Action on the Federal Implementation Plan for the Regional Haze Program in the State of Arizona; Docket No. EPA-R09-AR-2013-0588; Air Division, U.S. EPA Region 9, January 27, 2013. pp 87-90.
[48] *See* 79 Fed. Reg, 9354-9356 (Feb. 18, 2014). For additional detail, see also Technical Support Document for the Proposed Phase 3 Action on the Federal Implementation Plan for the Regional Haze Program in the State of Arizona; Docket No. EPA-R09-AR-2013-0588; Air Division, U.S. EPA Region 9, January 27, 2013. pp 87-90.

According to the Title V operating permit issued by ADEQ, CalPortland's existing kilns 1, 2, 3, and 4 are capable of using a variety of fuels, including solid fuels (coal and petroleum coke), fuel oils, and natural gas. Kiln 4 is also designed to use and has historically used supplemental fuels such as shredded tires and wood chips. Kilns 1-3 have not been operated since early 2008. Emissions that result from the manufacturing of Portland cement at the Rillito Plant include particulates, nitrogen oxides (NOX), and sulfur dioxide (SO2), and volatile organic compounds (VOC). Virtually all of the NOX and SO2 emissions, as well as the majority of the particulate emissions, are generated from the kiln systems. A negligible amount of NOX and SO2 are generated from ancillary combustion equipment at the facility. The facility-wide SO2 emissions are minimal.[49]

Based on the foregoing, ECRCO has determined that the permitting, enforcement, and rulemaking activities undertaken since the filing of this complaint, including ADEQ's enforcement actions involving the CalPortland facility, have resulted in significant changes to the overall circumstances, including the adverse health risks to residents, alleged in the original complaint. Accordingly, ECRCO finds insufficient evidence of current non-compliance with Title VI and EPA's implementing regulation.

Issue 2: Lack of Public Participation by Key Members of the Community

ECRCO found that, in 1998,[50] CalPortland (then Arizona Portland Cement Company or "APCC") applied to ADEQ for a modification of its Air Quality Control Permit for the modernization of its cement manufacturing facility. At the time, the facility included a limestone quarry, a Portland cement manufacturing plant, and a rock and stone aggregate plant.[51] ADEQ Arizona Air Pollution Control regulations, then and currently, require an applicant to post notice of the proposed permit at the site where the source is or may be located. The notice must include technical information and notice of a public hearing, if one is to be held.[52]

On June 5, 1998, the facility posted a copy of the public notice announcement at the front entrance of its facility, adjacent to the nearest public roadway.[53] The notice stated that ADEQ was proposing to issue Air Quality Control Permit Number 1000547 to the facility for the modernization of their cement manufacturing facility located at 1115 N. Casa Grande Highway, Pima County, Arizona. The notice provided technical information about the proposed permit revision, as well as information on the opportunity to submit public comments in writing and orally, including the time and place for the public hearing.[54]

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[49] *Id.*

[50] *See* https://yosemite.epa.gov/R9/air/EPSS.NSF/bd42b872ddae5603882561b0006d69c1/de770204f323e08507256640005c058e!OpenDocument .

[51] http://www.azdeq.gov/environ/air/permits/title_v/CP/47259/deqsupport.pdf

[52] Arizona Administrative Code Title 18, Chapter 2, Rule 330(F) (2007).

[53] Arizona Portland Cement Company Fax Transmittal Cover Sheet regarding RIMOD III Public Notice Sign with copies of pictures taken of the Public Notice sign near the front entrance of the facility. (July 1, 1998).

[54] Copy of the Public Notice placed in the *Arizona Daily Star* newspaper (June 5 and 12, 1998).

ECRCO found that, at the time (and currently), ADEQ's public participation regulations for air pollution control permits and permit revisions included provisions regarding the public notice process, when to schedule and conduct public hearings, and the requirement to respond to all comments received.[55] The regulations specifically required ADEQ to provide public notice of a completed application for permits to construct or make a major modification to major sources by publishing notice in two newspapers of general circulation in the county where the source is or will be located.[56]

On June 2, 1998, ADEQ sent a letter to the Rillito Post Office requesting that copies of the following documents related to the facility and related permits be posted for public review: 1) Public Notice for a Public Hearing; 2) the permit application with supporting documents; and 3) the draft permit with supporting documents and applicable rules. ADEQ asked that these materials be kept where they would be available for viewing by the public and indicated that it would inform the Post Office when to discard the information.[57]

At the time (and currently), ADEQ's regulations required ADEQ to provide at least 30 days from the date of its first notice for public comment. Further, ADEQ must prepare written responses to all comments received.[58] On July 6, 1998, ADEQ held a public hearing regarding the proposed modification of the facility's permit revision. The hearing was held at Marana Junior High School in Marana, Arizona. A total of 14 members of the public who attended asked questions during the hearing, including the complainant, (b) (6) - Privacy Before the public hearing concluded, the moderator asked the audience several times whether anyone else wished to speak.[59] The hearing commenced at 7:12 p.m. and concluded at 8:30 p.m.[60] After all comments were heard at the July 6, 1998 public hearing, ADEQ encouraged attendees to submit written comments to ADEQ, postmarked by July 10, 1998. In addition, ADEQ provided information about how individuals could submit written comments.[61]

On July 10, 1998, the Pima County Board of Supervisors, representing the citizens in the vicinity of the facility, requested that ADEQ extend the public comment period to July 17, 1998, to allow them sufficient time to complete an evaluation of the permit and formally submit comments on the proposed APCC permit revision.[62] Per the Pima County Board of Supervisors' request, ADEQ extended the review period and accepted written comments, questions, and objections regarding the proposed reissuance of the APCC permit until July 17, 1998.[63] On August 7, 1998, ADEQ prepared a document entitled "Responsiveness Summary, Significant Revision No.

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[55] Arizona Administrative Code Title 18, Chapter 2, Rule 330 (2007).
[56] Arizona Administrative Code Title 18, Chapter 2, Rule 330(B)(C)(D) (2007).
[57] Letter from Joie L. Estrada, Administrative Secretary, Air Quality Division/Permits Section, ADEQ to Rillito Post Office (June 2, 1998). *See also* Arizona Administrative Code Title 18, Chapter 2, Rule 330 (2007).
[58] Arizona Administrative Code Title 18, Chapter 2, Rule 330(G) (2007).
[59] Arizona Portland Cement Company Public Hearing Summary at 7, 13, 14 (July 6, 1998).
[60] *Id.*
[61] *Id.*
[62] Letter from Sharon Bronson, Pima County Supervisor, District 3 to Ms. Nancy C. Wrona, Director, Air Quality Division, ADEQ (July 10, 1998).
[63] Responsiveness Summary, Significant Revision No. 10000547 to Air Quality Control Permit No. M191365P1-99 for Arizona Portland Cement Company Arizona Portland Cement Company.

1000547, to Air Quality Control Permit No. M191365P1-99 for Arizona Portland Cement Company." ADEQ provided copies of the Responsiveness Summary to the parties who participated in the comment period.[64]

The Responsiveness Summary categorized comments received and provided summary responses to written comments and the comments voiced at the July 6, 1998 public hearing.[65] On August 24, 1998, ADEQ mailed to the participants in the public comment period a Revised Permit package that contained the Revised Permit Certificate, Responsiveness Summary, and Revised Permit.[66]

In sum, based on ECRCO's review of the record, it appears that all members of the public had (1) notice of the permit revision and related hearing; (2) an opportunity to comment at the hearing; (3) an opportunity to submit written comments, in a comment period that ADEQ extended by request; and (4) an opportunity to review ADEQ's response to all comments received. Notably, adherence to the requirements in the Arizona Administrative Code alone does not necessarily fulfill ADEQ's obligation to provide equal opportunity for public participation under Title VI. Here, however, ECRCO found that the facts regarding public participation for this permit revision indicate that ADEQ's process did provide all members of the public with the same access to detailed, specific information about the proposed permit, as well as the process to voice objections to that permit.

Accordingly, ECRCO has determined that there is insufficient evidence to support the allegation that key members of the community were denied access to public participation and that ADEQ violated Title VI and EPA's implementing regulation with respect to the public participation issue.

Based on the foregoing analysis of both issues raised in this complaint, ECRCO is closing complaint number 11R-98-R9 as of the date of this letter. This letter sets forth EPA's disposition of the two referenced complaints. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such.

EPA appreciates ADEQ's cooperation in this matter, ADEQ's work to address air quality issues in the State, and ADEQ's efforts to ensure that ADEQ has in place the appropriate foundational

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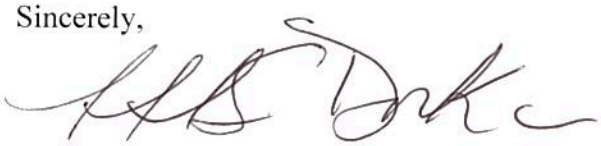
[64] Letter from Sharon Bronson, Pima County Supervisor, District 3 to Ms. Nancy C. Wrona, Director, Air Quality Division, ADEQ (July 10, 1998).

[65] Responsiveness Summary, Significant Revision No. 10000547 to Air Quality Control Permit No. M191365P1-99 for Arizona Portland Cement Company Arizona Portland Cement Company.

[66] Email from Bret Parke, Administrative Counsel, ADEQ to Karen Randolph, ECRCO, US EPA, Re: EPA Administrative Complaint (File No. 11R-98-R9), (February 23, 2012). *See* ADEQ's Response to Appellants' Cross Motion for Determination that Permit Revision is Void (November 9, 1998).

elements of a non-discrimination program. Please do not hesitate to contact me at (202) 564-9649, or at Dorka.Lilian@epa.gov, regarding any questions or requests for further technical assistance.

Sincerely,



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