

December 22, 2014

ADEQ

Attention: Danielle Taber, Waste Programs Division,
1110 W. Washington Street
Phoenix, AZ 85007

Re: Don't Waste Arizona, Inc. and Concerned Residents of South Phoenix' Comments
Regarding Two Competing Proposals for the West Van Buren Area WQARF Site

Don't Waste Arizona, Inc. (DWAZ) is a non-profit environmental organization dedicated to the protection and preservation of the environment in Arizona. DWAZ is especially concerned about environmental justice, civil rights protections, and air pollution and toxics issues. DWAZ is headquartered at 6205 South 12th Street, Phoenix, AZ 85042, and may be reached at (602) 268-6110. DWAZ has members in the affected areas.

The Concerned Residents of South Phoenix (CRSP) is a non-profit environmental justice organization concerned about air and water pollution, emissions and releases of hazardous chemicals into the community, and disparate impacts caused by inept and racist environmental bureaucracies. CRSP is headquartered at 4203 South 19th Place, Phoenix, AZ 85040, and may be reached at (602) 268-4475. CRSP has members in the affected area.

DWAZ and CRSP fully support the proposal and feasibility study proffered by the Roosevelt Irrigation District (RID). The RID proposal complies with ARS 49-282.06.A.1,

Remedial actions shall:

"1. Assure the protection of public health and welfare and the environment."

ARS 49-282.06.A.2,

"2. To the extent practicable, provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state."

ARS 49-282.06.A.3,

"3. Be reasonable, necessary, cost-effective and technically feasible."

ARS-282.06.B.4.b,

"(b) For remediation of waters of the state, the selected remedial action shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a

public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances. The specific measures to address any such well shall not reduce the supply of water available to the owner of the well."

and

ARS R18-407.E.1.

"The reference remedy and alternative remedies shall be capable of achieving all of the remedial objectives. The reference remedy and each alternative remedy shall consist of a remedial strategy under subsection (F) and all remedial measures to be employed. The combination of the remedial strategy and the remedial measures for each alternative remedy shall achieve the remedial objectives. The reference remedy and any alternative remedy also may include contingent remedial strategies or remedial measures to address reasonable uncertainties regarding the achievement of remedial objectives or uncertain time-frames in which remedial objectives will be achieved. The reference remedy and other alternative remedies shall be developed and described in the feasibility study report in sufficient detail to allow evaluation using the comparison criteria, but plans at construction level detail are not required. The units of measure set forth in Appendix A may be used, as applicable, for comparison of the relevant factors. Where appropriate, the reference remedy and an alternative remedy may incorporate different strategies for different aquifers or portions of aquifers."

ARS § 49-224.B, requires "[a]ll aquifers in this state ... shall be classified for drinking water protected use." Accordingly and pursuant to ARS § 49-223.A, the "[p]rimary drinking water maximum contaminant levels [MCLs] established by [EPA] ... are adopted as drinking water aquifer water quality standards." In addition to the enforceable numeric drinking water aquifer water quality standards established by ARS §49-223.A, there are equally enforceable narrative aquifer water quality standards that prohibit "a pollutant to be present in an aquifer for a drinking water protected use in a concentration which endangers human health" or "be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer." Under Arizona law, in addition to being a violation of the WQARF mandatory remedial action criteria of ARS § 49-282.06.A.1 and A.2, it is a criminal act to violate any applicable water quality standard.

The West Van Buren Working Group's proposal and feasibility study **does not comply** with these statutory requirements and **should never have been considered**, and DWAZ and CRSP question the motives of the ADEQ staff in even suggesting this proposal be considered. **ADEQ would intentionally commit a criminal act by adopting the West Van Buren Working Group's proposal.** The West Van Buren Working Group's proposal and feasibility study would, if accepted, would also be an intentional violation of the civil rights of the affected people in the geographic area of the West Van Buren WQARF Site. The population living in the West Van Buren WQARF Site is overwhelmingly ethnic minority and low-income.

If ADEQ accepts the West Van Buren Working Group's proposal and feasibility study, the Arizona Department of Environmental Quality (ADEQ) will knowingly and intentionally violate Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency's ("EPA") implementing regulation, 40 C.F.R. § 7.35, by discriminating on the basis of race.

In other WQARF sites involving the same contaminating chemicals as in the West Van Buren Area, which are known carcinogens (TCE) and toxins, such as the 56th Street and Earll WQARF site, which is situated in an area populated by white and average to upper income people, ADEQ has already implemented a pump and treat system with these carcinogenic and poisonous air emissions completely filtered out, and indeed, has arranged and implemented technology that has no emissions to the ambient air. The people of color in the West Van Buren WQARF Site. deserve the same, at a minimum. Notably, there was no question or issue about allowing these toxic emissions because they would be an "acceptable risk" to the people living in the 56th Street and Earll WQARF site. DWAZ and CRSP point out the marked difference in approach to the decision, with the only real difference being plain racism and environmental racism. It is appalling that ADEQ would even consider a proposal to continue poisoning the air the West Van Buren WQARF Site under the ruse of "acceptable risk."

"Risk assessments" are merely a regulatory ruse used to justify the addition of chemical risks to the public. Despite the fact that "risk assessments" for Superfund sites involving TCE all across America that have found minimal cancer risk, the truth is that a large number of these sites have cancer and childhood leukemia cancer clusters that the "risk assessments" did not predict. Because it is a regulatory ruse, no one has ever gone back to ascertain why these "risk assessments" were not accurate. Further, evaluations based on cancer risk do not address non-cancer risks.

Exposure to toxic chemicals can be likened to a person being physically assaulted. If one person were to physically attack another person, leaves bruises and cuts, it would be an obvious act of aggression, and criminal charges and civil liability would be the result, even if the injuries would eventually heal. Exposing people unnecessarily to toxic chemicals is physically harmful in any amount, and by allowing these exposures, the ADEQ is agreeing with the polluters that it is acceptable to harm them. The injuries may not be as visible, but the injuries are there. Worse, with chronic, low-level exposure to chemicals, the affected population never gets a break from the onslaught, a sort of daily assault. When the "science" of "risk assessment" allows these assaults, which may have genetic effects as well as cancer or injury to organs.

DWAZ and CRSP are certain that there would be no affected area residents of the West Van Buren WQARF site who would agree with the proposal of the West Van Buren Study Group and who would welcome the toxic and carcinogenic air pollution ADEQ has negligently allowed them to be subjected to all these decades and proposes to continue unabated. Neither would the residents of Phoenix who might need the affected aquifer for drinking water in a state that is entering its 15th year of an extended drought.

ADEQ also has not provided an adequate forum for the decision at hand, nor has it provided an adequate opportunity for community involvement in the instant case. The geographic area involved with the West Van Buren Area WQARF site is several miles long, ranging from 7th Avenue to 83rd Avenue, yet ADEQ only had a meeting over this crucial decision at its own building, at 6PM on a Monday evening. There was also inadequate notice for such an important decision. After decades of allowing the contamination, ADEQ proposes to make a decision affecting thousands of ethnic minority and low-income people without them ever knowing what the agency is up to.

If ADEQ is going to approve the West Van Buren Working Group's proposal and feasibility study, then the ADEQ should extend the public comment period for this decision. ADEQ should offer hearings and discussion throughout the affected area, with proper notice and extra publicity, so that affected area residents have a full opportunity to participate and face the "regulators" who would violate their civil rights and ignore state statutes without having to drive several miles to a meeting room that did not have the capacity for them. In stark contrast, the community meetings for the 56th Street and Earll WQARF site are held right in the community, and interested local citizens can even walk to the meetings. Of course, the community living in the 56th Street and Earll WQARF site is overwhelming white and not low-income.

If ADEQ is going to approve the proposal and feasibility study proffered by RID, it should proceed immediately so the abatement of chemical hazards can occur quickly..

The ADEQ participated in the Joint Air Toxics Assessment Project (JATAP), and has institutional knowledge that the West Van Buren WQARF Site is already a place where there are very high levels of air toxics, making it an area already burdened with unusually high levels of toxic chemicals in the ambient air. To actually treat all people with the same level of protection, besides eliminating the emissions from pumping of contaminated groundwater at the West Van Buren WQARF Site, ADEQ should also be finding ways to reduce the overall toxics burden already found in the ambient air of the West Van Buren WQARF Site. Instead, the ADEQ is considering violating state statutes in order to violate the civil rights of the ethnic minority population of the affected area.

Be forewarned, in the event that ADEQ approves the proposal by the West Van Buren Study Group, DWAZ and CRSP will file a civil rights complaint with the EPA Office of Civil Rights and will also consider a direct civil rights lawsuit in federal court. It is appalling that the ADEQ would consider violating state statutes to discriminate against ethnic minority people to protect polluters who are responsible for the pollution. Pumping a treating the groundwater contamination to bring the aquifer to drinking water standards while filtering out and eliminating toxic air emissions is a technology and methodology used for decades now, so the only reason to not require this is the usual pattern of ADEQ watching out for polluters instead of protecting the environment and public health.

Repeatedly, poorer communities of color in Arizona have been the designated recipients of disproportionate, dangerous amounts and types of air pollution, bearing a

disproportionate share of the state's environmental dangers, with no mechanism provided by ADEQ to mitigate the disproportionate, dangerously large amounts and types of air pollution these populations are being exposed to. In the instant case, there is an opportunity to remove some of these toxins from their air, so naturally, ADEQ is considering not doing that.

Title VI of the Civil Rights Act of 1964 provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. 42 U.S.C. § 2000d.

ADEQ is a recipient of federal financial assistance from EPA, and has often violated Title VI as implemented through EPA's regulations by repeatedly failing to provide an effective mechanism to prevent disparate and disproportionate adverse environmental impacts for low-income and ethnic minority populations in Arizona and severe and chronic environmental and public health consequences.

EPA must ensure that recipients of EPA financial assistance are not subjecting people to discrimination. In particular, EPA's Title VI regulations provide that an EPA aid recipient "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 C.F.R. § 7.35(b).

All DWAZ and CRSP must show is that when applied in a particular manner, ADEQ's "method of administering its WQARF program" yields a discriminatory outcome." The effect of ADEQ's WQARF program and associated processes is clear: people of color will bear disproportionate impacts from air pollution and the agency will not properly administrate its WQARF program in a way to prevent the violation of the civil rights of ethnic minority populations.

Remedies

In order to provide effective remedies for the patterns of discrimination exhibited by ADEQ, DWAZ and CRSP will request that EPA:

- Require that, as a condition of continuing to provide federal financial assistance, ADEQ immediately develop a method for citizens in the low-income and/or minority communities where ADEQ has WQARF sites to be given an adequate opportunity to be notified of decisions that will impact their communities and given an opportunity to have a voice in these decisions
- Require, as a condition of continuing to provide federal financial assistance, that ADEQ develop a competent, credible, scientific method of determining it is not violating the civil rights of communities of color and/or low-income communities;

- Permit complainants to initiate and engage in active, collaborative investigation of the foregoing allegations, including the submission of written interrogatories to ADEQ;
- Provide DWAZ and CRSP with copies of all correspondence to or from the respondent throughout the course of the EPA's investigation, deliberation and disposition of this complaint;
- Sue to compel compliance with the law, to the extent that imposition of the foregoing remedies proves in any way to be ineffectual;
- Terminate its assistance to ADEQ, pursuant to 40 C.F.R. §7.25, if ADEQ fails to implement the above requested changes.

Sincerely,

Stephen M. Brittle
President
Don't Waste Arizona, Inc.

Michael L. Pops
President
Concerned Residents of South Phoenix