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## ENVIRONMENT

# EPA Overrides Civil Rights Complaint About JCDH, Adding to Residents' Frustration

Hank Black, August 4, 2019

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The

Environmental Protection Agency and Jefferson County's Department of Health have

settled civil rights complaints over air permits the department awarded to coke manufacturers in north Birmingham and Tarrant in recent years.

But the EPA response has added to frustration over recent environmental developments in the heavily industrial part of Jones Valley, according to residents and officials at Gasp, a clean-air nonprofit group that has been involved in antipollution efforts there for most of the past decade.

“I am totally disappointed. It’s a slap in the face,” said Jimmy Smith of the Collegeville neighborhood, one of the complainants. “It makes no sense that we taxpaying citizens cannot (experience) happiness because we live in a ZIP code (35207) where toxic chemicals and metals poison our air and ground.”

Smith said the community’s relationship with the health department is broken.

“I would trust strychnine poison to not hurt my body more than I’d trust anybody at the health department now,” he said. “They are duty bound to protect citizens’ health, but it’s my experience that, from the head of it on down, they give decisions against us and for big business.”

The “informal resolution agreement” brokered by the EPA’s External Civil Rights Compliance Office instructs JCDH to enhance communication procedures and update nondiscrimination processes, but it does not include additional, targeted monitoring of air emissions and reduction in particulate matter and odors, which have been called for by the complainants.

In the agreement, filed four years ago and entered into July 2, the health department admits to no civil rights violations, and the EPA makes no finding of compliance or noncompliance with federal nondiscrimination laws and regulations under Title VI of the Civil Rights Act and EPA’s implementing regulation.

The complaints were linked to the health department’s reissuance of air permits to ABC Coke in 2014 and to Walter Coke in 2015 under Title V of the federal Clean Air Act. Permits cover five years of operation. ABC Coke’s air permit was renewed this April after a large public hearing and a comment period in which the health department received uniformly negative submissions.

Jonathan Stanton, director of Environmental Services for the Jefferson County Department of Health, said in a recent interview that his department agreed to continue processes that are transparent on its website and streamline the public’s

ability to submit comments and find answers to concerns.

He noted that the department has contracted with a firm to develop the infrastructure necessary to put all its major-source air quality permit files online and searchable. He said that process “is critical to keeping the community educated.” It is expected to be completed by July 2020.

“With this agreement, we will make sure we continue to improve on our ways to educate the community in the complexity in air permitting,” Stanton said.

Specifically included, he added, will be at least two community meetings within a year concerning the coke plant and, potentially, sessions to train the public in how coke facilities operate so they can submit more knowledgeable and effective comments regarding permit renewals.



*Jimmy Smith of Collegeville  
(Source: Hank Black)*

### **“Unfortunate” for Residents**

But the agreement did not go far enough by a long shot, community complainants and their supporters say.

“We were asking for a finding of discriminatory effect and a reduction in the incidence of odors, fugitive dust and air toxics,” attorney David Ludder said. “What we got had no finding at all regarding either.”

The only result, Ludder said, was a requirement for the department to comply with Title VI dictates, “which they were required to comply with anyway.” He filed the complaint with the EPA’s External Civil Rights Office on behalf of Gasp and residents who live in the predominantly low-income, African-American communities.

“It is very unfortunate for the residents that they will continue to be exposed to unhealthy levels of pollution and that the EPA has chosen not to step in and correct that,” he said.

He charged EPA’s civil rights program with historic failure “to do anything substantive about pollution burdens going back well beyond the current (presidential) administration. ... They don’t want to supplant Clean Air Act requirements with more

restrictive requirements (based on) racial impacts. They are absolutely not committed to environmental justice or the Title VI program.”

Stanton said the health department is going to “strive to continue to improve the public’s knowledge of the nondiscriminatory process.”

“When we get (discrimination) complaints, we work them internally and with the EPA office to make sure there’s not anything that could be perceived to be discriminatory in any of our practices,” he said. “They didn’t find anything like that, but it is critical we continue to value residents’ concerns and address those, which we feel this agreement shows.”

For example, Stanton said, the department will make sure to make more information available online and implement suitable suggestions provided by the EPA. The department, he said, uses the EPA’s environmental justice tool, EJSCREEN, to make sure minority or low-income communities near major industries are notified when major air permits are being considered.

“It’s always a work in progress as we learn that one community wants to hear things in one way and another wants to hear in another way,” he said. “We are only required to publish a notice of re-permitting in a newspaper, but JCDH has taken the extra steps to include putting Title V permits online, posting flyers in convenience stores and areas where residents might frequent, scheduling and holding public hearings and meetings, as well as other methods that encourage public input.”

Ludder and Gasp believe the EJSCREEN should be better used. Gasp Executive Director Michael Hansen said health officials “need to include an environmental justice statement in the permits that acknowledges racial and income demographics.”

One point of contention for residents is the [ABC Coke permit renewal](#) awarded despite community objections. Gasp has appealed to the EPA to reverse that permit.

Another is what community leaders have charged is an inadequate penalty proposed for ABC Coke’s historic pollution in a consent decree involving the EPA and the health department.

Residents at a recent news conference called by state Rep. Mary Moore, D-Birmingham, said they fear they would have no say in how the health department might use its half of the proposed \$775,000 fine. They and Gasp called for the money to



be put into a trust fund with at least some community oversight to ensure it is used to improve the health of the people affected.

### Locked in Place

Underlying these perceived injustices is a deepening feeling that homeowners are walled into a polluted area where their property is increasingly losing value. Many say they cannot afford to move to places with cleaner air and soil.

Their children and grandchildren move out as soon as they can, leaving a population that is growing older. When property owners leave or die, some just abandon their property to the weeds and the illegal dump sites that dot the area.

A feeling of ripe distrust is invariably expressed in every community gathering. Outsiders — industry owners, health officials, researchers, politicians and members of the media — are seen as parachuting in for their own benefit, leaving with little or no discernible improvement accruing to residents of the area, Gasp outreach director Kirsten Bryant said.



*Gasp outreach director Kirsten Bryant (Source: Hank Black)*

“If I lived there and was attending meetings and asking for relief over and over again with no real results, I would feel the same way,” Bryant said. “It’s upsetting and frustrating that the resolution agreement wasn’t stronger. We would have thought that, in light of the overall picture of what’s happened (concerning the coke plants), that there would have been more meat on that resolution.”

Even academic health researchers are met with distrust. At a meeting last week of Panic, the oldest anti-pollution citizens group in the area, a researcher from Indiana University who is conducting self-reported health surveys in Birmingham garnered mistrust and pointed questions from the audience. Panic stands for People Against Neighborhood Industrial Contamination.

The past year’s federal bribery convictions and state ethics indictments are a consistent thread that flows through all conversation about industrial pollution.

The trial revealed the extent to which ABC Coke's owner, Drummond Co., and its attorney at Balch & Bingham went to divide residents in their successful effort to prevent the EPA's 35<sup>th</sup> Avenue Superfund site from being expanded to Tarrant and placed on the National Priority List for clean-up of industrial pollution. An expansion potentially would have made Drummond liable for some of the clean-up costs.

Panic and Gasp are attempting to revive the priority list issue. At their urging, Birmingham Mayor Randall Woodfin sent letters to EPA and to Gov. Kay Ivey asking that the issue be reopened. The EPA will not put a site on the list without state support.

The trial buttressed residents' belief they are being abused, according to Bryant. In meetings of neighborhood associations, antipollution groups and other groups, the feelings of outrage and persecution predictably arise.

The groups are not united across the northern Jones Valley — a situation that Bryant and Jimmy Smith attribute in part to the bribery scheme outlined in last year's trial. Smith said no one leader has emerged to bring neighborhoods together.

“Except for a few people, most of them in my neighborhood have been silent,” he said. “It's befuddling to me.”