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

SEP 26 2012

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail# 7004-2510-0004-2241-7357

In Reply Refer to:
EPA File No. 01R-12-R4

David A. Ludder
9150 McDougal Court
Tallahassee, FL 32312-4208

Re: Dismissal without prejudice of Administrative Complaint

Dear Mr. Ludder:

This letter concerns the administrative complaints you filed with the U.S. Environmental Protection Agency (EPA) on January 6, 2012, and February 21, 2012, on behalf of the listed complainants who are residents of Uniontown, Alabama (Complainants). The complaints have been consolidated as EPA File No. 01R-12-R4 (Complaint). The Complainant alleges that the Alabama Department of Environmental Management (ADEM) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI) at 42 U.S.C, §§ 2000d *et seq.*, and EPA's regulations implementing Title VI at 40 C.F.R. Part 7 when approving the renewal and modification of Permit 53-03 to Perry County Associates, LLC, for construction and operation of the Arrowhead Landfill, a municipal solid waste landfill in Perry County, Alabama. The Complaint alleges that ADEM's action of renewing and modifying Permit 52-03 will have the effect of adversely and disparately impacting the African American residents in the surrounding community. EPA notified you by letter on June 14, 2012, that it had accepted for investigation the allegations in the Complaint.

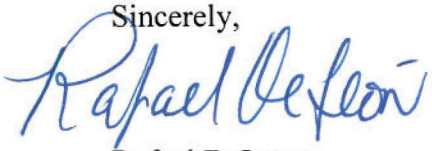
OCR has learned that in 2010, certain residents of Perry County filed a civil action in the U.S. District Court for the Southern District of Alabama, Northern Division, against Phill-Con Services, LLC, the operator of the Arrowhead Landfill, to enforce an emission standard or limitation under the Clean Air Act, 42 U.S.C. 7401-7671q, and to enforce a standard, regulation, requirement, or prohibition under the Solid Waste Disposal Act, 42 U.S.C. 6901-6992k. Also in 2010, certain residents of Perry County filed a civil action in state court against Phill-Con and Phillips & Jordan, Inc. (a contractor at the landfill), asserting state law claims including negligence, wantonness, nuisance, and trespass resulting from the construction and operation of the landfill. In addition to other remedies, the Plaintiffs seek a permanent injunction that the landfill ceases operating in such a manner as to cause certain impacts. Both of these actions were subsequently removed to the U.S. Bankruptcy Court for the Southern District of Alabama, Selma Division, where the litigation has been consolidated. The bankruptcy court confirmed on January 26, 2011, that the cases would be jointly administered for all pretrial purposes under Adversary Proceeding Case No. 10-00075. OCR understands that the litigation is still ongoing.

In situations where the allegations raised in the complaints involve the same facts that are also the subject of litigation in Federal court, such that the result of those proceedings could affect the outcome of the Title VI investigation, it is OCR's general practice to dismiss without prejudice the administrative complaint, pending results of the litigation. Therefore, OCR is dismissing without prejudice, complaint 01R-12-R4, pending results of the litigation.

If, after conclusion of the litigation, you, on behalf of the Complainants, believe that the discrimination alleged in the Complaint is still occurring, and wish to refile your complaint, it must be refiled within 60 calendar days following termination or conclusion of the proceeding. In the event that you do refile your complaint, please include the file number 01R-12-R4. However, if your complaint is refiled, OCR may choose not to proceed with a complaint investigation if issues relevant to the complaint are substantively decided by the Federal court or the remedies ordered by the court have resolved the complaint.

If you have any questions, please contact Ms. Helena Wooden-Aguilar, Assistant Director of the OCR External Compliance Program by telephone at (202) 564-0792, via electronic mail at Wooden-Aguilar.Helena@epa.gov, or by mail at: US EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, DC, 20460-1000.

Sincerely,



Rafael DeLeon
Director

cc: Lance R. Le Fleur, Director
Alabama Department of Environmental Management
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