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

SEP 7 2005

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certified Mail #7003 2260 0005 1961 1919

In Reply Refer To:
06R-03-R4

[redacted]

Re: Acceptance of Administrative Complaint

Dear [redacted]:

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) has accepted for investigation your December 15, 2003, administrative complaint filed against the Alabama Department of Environmental Management (ADEM). Your complaint concerns ADEM's public participation process regarding the permitting of the Tallassee Waste Disposal Center Landfill located in Tallapoosa County in East Tallassee, Alabama. Your complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C, §§ 2000d *et seq*. (Title VI), and EPA's regulations implementing Title VI at 40 C.F.R. Part 7, by ADEM.

Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for 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 Title VI regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that violates EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120. Fourth, the complaint must be against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

The complaint meets the jurisdictional requirements in EPA's Title VI implementing regulations. First, the complaint is in writing. Second, the complaint alleges that ADEM discriminated against the African-American citizens of the Ashurst Bar/Smith community in

violation of Title VI. Third, the complaint was filed within 180 days of August 26, 2003 (the date of the alleged discriminatory act). And fourth, the complaint has been filed against ADEM, which receives financial assistance from EPA.

Therefore, OCR is accepting the following allegations for investigation:

(1) ADEM intentionally discriminated against the African-American citizens of the Ashurst Bar/Smith community by:

(a) providing information prior to the public hearing regarding the size of the facility, acreage of the facility's property, and inclusion of wetlands, that was inconsistent with the information provided by the US Army Corps of Engineers, and

(b) limiting the length and scope of the public hearing so that none of the concerns raised by the impacted community were addressed at the hearing or in ADEM's Response To Comments report.

(2) ADEM's failure to require the Tallapoosa County Commission to properly use the siting factors listed in the EPA June 2003 Title VI Investigative Report has created a discriminatory effect for the African -American citizens since most of Tallapoosa County's municipal solid waste landfills are located in their communities.

Your letter also alleged that ADEM gave insufficient notice of the August 26, 2003, public hearing relative to the proposed landfill permit renewal. OCR cannot accept this allegation for investigation because the allegation did not describe an act that would violate EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Your complaint states that you received information about the proposed landfill permit on June 9, 2003, and was given until July 9, 2003, to submit comments and request a public hearing. The additional information you sent us with the complaint states that ADEM gave public notice of a hearing on July 17, 2003, and held the public hearing on August 26, 2003. According to the Alabama Department of Environmental Management regulations, section 335-13-5-.04(2)(c), the Department shall give notice of the public hearing, and also to the persons requesting the hearing, no less than 35 days prior to the time of the public hearing. Here, ADEM provided 40 days notice prior to the time of the public hearing, in accordance with their regulations. Therefore, OCR cannot accept this allegation.

Pursuant to EPA's Title VI regulations, ADEM may either respond to the complaint in writing within 30 calendar days of receiving this notice, or wait until OCR notifies ADEM of any preliminary findings of noncompliance. Additionally, EPA's Title VI regulations provide that OCR must attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR will discuss, at any point during the process, offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

If you have any questions, please contact Karen Randolph of the OCR External Compliance Program by telephone at (202) 343-9679, via electronic mail at Randolph.Karen@epa.gov, or by mail at: US EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Karen D. Higginbotham
Director

cc: Onis Glenn III , Director
Alabama Department of Environmental Management

Steve Pressman, Associate General Counsel
Civil Rights Law Office (MC 2399A)

Nancy Tommelleo, Title VI Coordinator
EPA Region 4