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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

March 1, 2018

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In Reply Refer to:
EPA File No. 13R-16-R4

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

Re: Closure of Administrative Complaint, EPA File No. 13R-16-R4

Dear Mr. Ludder:

This letter is to notify 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 13R-16-R4, against the Alabama Department of Environmental Management (ADEM). The complaint generally alleged that ADEM 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. With respect to the specific issues addressed in this case, EPA ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation.

On February 24, 2016 ECRCO accepted for investigation the following issues:

> Whether ADEM discriminated against African-American residents in the surrounding community on the basis of race/color through the modification of the solid waste disposal permit number 35-06 and authorization to the City of Dothan to expand the City of Dothan Sanitary Landfill in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation; and
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> Whether ADEM is complying with the procedural safeguard provision delineated in 40 C.F.R. Part 7 Subpart D, which requires recipients of EPA financial assistance to have specific policies and procedures in place to comply with their affirmative non-discrimination obligations.

On November 3, 2016, ECRCO notified[1] you that it had determined that the first issue of this complaint, set forth above, was moot in light of ADEM's rescission and revocation of the permit,

[1] Letter from Lilian S. Dorka, Acting Director Office of Civil Rights, to Lance R. LeFleur, Director, Alabama Department of Environmental Management (November 3, 2016).

and was being closed administratively effective the date of that letter, and ECRCO would take no further action on that issue. At that time, ECRCO notified you that it would continue to investigate the second issue regarding ADEM's affirmative non-discrimination program, under EPA File No. 13R-16-R4.

At the outset of the investigation, ECRCO conducted an assessment of ADEM's nondiscrimination program relative to the requirements of federal nondiscrimination laws and regulation. During the pendency of this investigation, ECRCO communicated with ADEM on several occasions about its program and the steps ADEM had taken to address certain deficiencies in the program that ECRCO had identified. Specifically, on August 4, 2016, ECRCO conferred with ADEM regarding ECRCO's assessment of ADEM's program, as of that date, including sharing with ADEM the deficiencies in the program that ECRCO had identified and providing ADEM with technical assistance in order to address those deficiencies. During the conversation, ECRCO also requested additional information from ADEM to address open questions relevant to the investigation, such as further clarifying information regarding ADEM's nondiscrimination program and requesting information pertaining to the Dothan Landfill permit revocation process.

In May 2017, ECRCO met with ADEM leadership and staff in Montgomery, Alabama during EPA Region IV's Annual Environmental Justice meeting hosted by ADEM. At that time, ECRCO provided ADEM with a status update of ECRCO's investigation of the open Title VI complaints involving ADEM, including this matter, and proposed voluntary informal resolution as a path forward for resolving those complaints.[2] On June 20, 2017, ECRCO followed up with ADEM via conference call regarding ADEM's willingness to informally resolve this complaint and to further discuss ECRCO's review of ADEM's nondiscrimination program, as of that date, and to identify for ADEM areas of concern it needed to address to ensure compliance with federal nondiscrimination laws and regulation. Those specific issues are explained in the following sections of this letter. At that time, ADEM stated its position that there were no deficiencies in its program and, therefore, it did not view resolving the open Title VI cases through informal resolution to be appropriate under those circumstances. Rather, ADEM indicated it preferred to receive a letter documenting ECRCO's findings.

In the succeeding months, EPA continued to engage ADEM in conversation in an effort to provide technical assistance and to confirm ADEM's commitment to addressing deficiencies and improving its nondiscrimination program. During this time, ADEM continued to engage with EPA and made changes to its nondiscrimination program. ECRCO has concluded its investigation and has determined that, as of the date of this letter, there is insufficient evidence of current noncompliance with Title VI and EPA's nondiscrimination regulation.[3]

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[2] See, EPA's *Case Resolution Manual* at 22. "After acceptance of a complaint, and at any point during the investigation, ECRCO or the recipient may seek to informally resolve complaints of discrimination. (p.22) https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

[3] ECRCO is aware that Complainant represents plaintiffs in a pending lawsuit challenging the validity of ADEM's procedures titled "Memorandum #108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints" and "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process." However, there has not been a finding affecting the validity of these procedures and so that lawsuit does not affect our finding in this complaint.

ADEM's Nondiscrimination Program

ECRCO investigated whether ADEM is in compliance with the requirements of EPA's nondiscrimination regulation,[4] which sets forth the foundational elements of a recipient's nondiscrimination program. These include: continuing notice of nondiscrimination under 40 C.F.R. § 7.95; the adoption of grievance procedures that assure the prompt and fair resolution of complaints which allege a violation of EPA's nondiscrimination regulation under 40 C.F.R. § 7.90; and the designation of at least one person to coordinate its efforts to comply with its nondiscrimination obligations under 40 C.F.R. § 7.85(g).

ECRCO also reviewed the programs, policies, and guidance ADEM is implementing to ensure it provides meaningful access for persons with limited-English proficiency[5] and persons with disabilities[6] to all its programs and activities that receive federal financial assistance from EPA. In addition, ECRCO investigated whether ADEM has in place a public participation policy and process that ensure that the public participation portion of its environmental permitting program provides meaningful public involvement that is consistent with Title VI and the Title VI implementing regulation.[7]

ECRCO began discussions with ADEM regarding its nondiscrimination program beginning in August 2016. Throughout its investigation of this issue, ECRCO identified elements of ADEM's nondiscrimination program that were deficient in meeting the regulatory nondiscrimination program requirements in light of the Title VI implementing regulation. Based on ECRCO's latest review of ADEM's nondiscrimination program, including changes it has made to its website, ECRCO has determined that ADEM has met the regulatory requirements for compliance with the nondiscrimination program requirements of the Title VI implementing

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[4] 40 C.F.R. Part 7, Subpart D. *See also* Title VI of the Civil Rights Act of 1964.

[5] *See* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin,) *Lau v Nichols 414 U.S. 563, 568-69* (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin.) 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 Recipient Guidance). The LEP Recipient 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 Recipient Guidance also provides a description of the factors recipients should consider in fulfilling their responsibilities to persons with limited-English proficiency 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. LEP Recipient Guidance, 69 FR 35602, 35606-35607 (June 25, 2004), at https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi; 40 C.F.R. § 7.35(a) (prohibiting discrimination on the basis of national origin in the programs or activities of a recipient of EPA assistance).

[6] *See* 40 C.F.R. §§ 7.45 – 7.75; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a). Section 504, and EPA's implementing regulation prohibit discrimination on the basis of disability in any programs or activities receiving federal financial assistance.

[7] 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 Title VI issues that could arise related to the public participation process. https://www.epa.gov/sites/production/files/2013-09/documents/title6_public_involvement_guidance.3.13.13.pdf, at 14207. For example, the Guidance mentions that the interface between public involvement and Title VI often arises when communities of color believe that they've been discriminated against as a result of a decision made in the permitting process, but these same communities have not been adequately involved in the decision-making process. *Id* at 14210.

regulation. The specific requirements are discussed below.

a. Notice of Nondiscrimination: ECRCO has determined that, currently, ADEM meets the regulatory requirements regarding its Notice of Nondiscrimination ("Notice"). EPA's nondiscrimination regulation requires initial and continuing notice that the recipient does not discriminate on the basis of race, color, national origin, age, 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.[8] The Notice must be posted in a prominent place in the recipient's offices or facilities, and may also include recipient's internal publications.[9] Today, the most "prominent" location for posting notice of nondiscrimination with the greatest public access is likely to include at least a reference on the recipient's website home page. As of the time of acceptance of this complaint, that is, February 2016, ECRCO identified that ADEM's Notice was not located in a prominent place on its website but rather was placed on the "Inside ADEM" web page, which is not the ADEM website's homepage and would require a search of ADEM's website in order to locate, and thus, not located in a "prominent" place.

   Based on ECRCO's review as of September 2017, ADEM's Notice is now made available on its website's homepage, via a link labeled "Nondiscrimination Statement" in the first paragraph on the main ADEM website page. In addition, ADEM posts its Notice in its offices and one of its internal publications "Guide for Citizen Participation".[10]

   Notice of Nondiscrimination in Languages Other Than English: ECRCO has determined that currently, ADEM meets the regulatory requirements regarding its Notice, where appropriate, in languages other than English. The regulation requires that "where appropriate, such notice must be in a language or languages other than English."[11] Although, as previously discussed, as of June 2017 ADEM had met the regulatory requirements regarding its Notice being placed in a prominent place, as of June 2017, ADEM had not complied with the regulatory requirement that, where appropriate, this Notice should be provided in languages other than English. As of June 2017, the Notice was only provided in English in a "prominent" place on its website. It is appropriate to provide this important Notice in a language(s) that a significant number and proportion of LEP individuals in Alabama speak.[12] As such, in June 2017, ECRCO advised ADEM that, consistent with EPA's LEP Recipient Guidance, the

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[8] 40 C.F.R. § 7.95.

[9] *Id.*

[10] Letter from Lance R. LeFleur, Director, ADEM to Lilian S. Dorka, Acting Director, Office of Civil Rights, EPA regarding EPA File No. 06R-03-R4; 12R-13-R4; 13R-16-R4, ADEM Response to EPA Follow-up Information Request. (September 1, 2016). The Guide for Citizen Participation can be found at http://www.adem.alabama.gov/moreInfo/pubs/citizensguide.pdf

[11] 40 C.F.R. § 7.95.

[12] *See also* EPA's Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. (EPA LEP Recipient Guidance) discusses the importance of ensuring that vital information is provided to LEP individuals, page 35610. at https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi. In addition, the EPA LEP Recipient Guidance describes the four-factor analysis which is an individualized assessment that recipients can utilize to determine reasonable steps to take in order to provide meaningful access to LEP individuals. *Id.* at pages 35606-35607. *See also* the U.S. Census Bureau, 2011-2015 American Community Survey: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over. (Alabama) https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_B16001&prodType=table

"four-factor analysis, and the "safe harbor rule" (see below), their Notice should be provided in at least Spanish, which is spoken by the largest number of LEP individuals in Alabama at approximately 72,000,[13] and perhaps other languages as appropriate, in a prominent place.[14]

EPA's LEP Recipient Guidance provides a flexible and fact-dependent analysis which uses four factors to assist in determining the reasonable steps recipients must take in providing meaningful access to their programs and activities. The factors are as follows: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs.[15] The LEP Recipient Guidance also discusses "safe harbor" provisions, that is, actions that will be considered strong evidence of compliance with written translation obligations. A "safe harbor" exists when "[t]he EPA recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or includes 1,000 members, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered."[16]

ADEM has since addressed this issue with respect to Spanish translation. Specifically, ADEM's current website includes a link labeled "Nondiscrimination Statement" in the first paragraph on the main home page, which also includes this same link in Spanish. Once selected, the link corresponds to a Webpage that includes the Notice in English and in Spanish. In addition, ADEM's recently updated website includes a section on its home page with translation symbols that when selected lead to a Language Assistance Services Webpage which provides general information in Spanish, Vietnamese, and Korean regarding how to obtain language services.[17] (See Section d below.)

ADEM's Notice is made available through a link in a prominent place on the main ADEM website page. However, the language surrounding the nondiscrimination statement link would benefit from changes to provide greater clarity and transparency for the public's understanding. Although this action is not legally required, ECRCO recommends that the language provide sufficient context for the link to conclude that it leads to information regarding ADEM's obligations under Title VI and other federal nondiscrimination laws.[18]

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 regulation.[19] ECRCO has determined that ADEM is meeting the regulatory requirements with the "ADEM Civil Rights and Environmental Justice Complaint

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[13] *Id.* at U.S Census Bureau.
[14] *See* EPA LEP Recipient Guidance, at 35610. *See also* fn. 25.
[15] *Id.* at 35606-35607.
[16] *Id.* at 35610.
[17] http://adem.alabama.gov/inside/translationservice.cnt
[18] The opening paragraph states: "Welcome to ADEM – Alabama is blessed with a wealth and variety of natural resources which provide significant social, economic, and environmental benefits and opportunities for the citizens of Alabama. The mission at ADEM is to assure for all citizens of the State a safe, healthful, and productive environment. Nondiscrimination Statement/Declaración de no discriminación. This web site is designed to keep you informed and to help you as you live and work in Alabama." http://www.adem.state.al.us/default.cnt.
[19] 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).

Reporting and Investigating Process." Accordingly, ECRCO has determined that there is insufficient evidence of noncompliance. ADEM's current process states that it applies to claims of discrimination based on race, color, national origin, disability, age, or sex. ECRCO strongly recommends that ADEM clarify and explain in the grievance procedures themselves that ADEM will investigate and resolve retaliation and intimidation claims in a prompt and impartial manner under the grievance procedures, just as ADEM states it would do so with any other discrimination claim.[20]

At the time this issue was accepted for investigation in February 2016, ADEM did not have its grievance procedures posted on its website. Later in 2016, ADEM posted its grievance procedures on its website.[21] ECRCO determined that ADEM's grievance procedures available in English, on their face, are adequate to assure the prompt and fair resolution of complaints, as required by the regulation.

However, ECRCO also determined that, as of June 2017, the grievance procedures that ADEM had available through links in languages other than English were not accessible to LEP persons in Alabama, as appropriate, because of material inaccuracies contained in, at least, the Spanish translation.[22] ADEM explained that the translations were made available by ADEM through links located at the bottom of its home page for a web-based translation service, in order to access its grievance procedures in Spanish, Vietnamese and Korean. ECRCO's June 2017 review of the web-based Spanish translation of the grievance procedures, found material inaccuracies in the translation in Spanish. For example, critical terms regarding the prohibited discriminatory basis, such as "race," were not translated correctly and included the wrong usage and definition of the word "race" in Spanish. ECRCO informed ADEM of these deficiencies and of the expectation that information provided in languages other than English be as accurate as the information provided in English.[23] During conversations with ECRCO in July 2017, ADEM explained that it currently utilizes other translation services, including qualified translators provided through a language contract. Through the use of qualified translators, ADEM has updated its Spanish translation of its grievance procedures which are currently available on its website and ECRCO has determined that the Spanish translation is now accurate. In addition, during those July 2017 conversations, ADEM stated that it will ensure that its grievance procedures will be accurately translated and made available in Vietnamese and Korean. As such, ADEM has met the regulatory requirements of the regulation with respect to grievance procedures and accordingly, there is insufficient evidence of current noncompliance.

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[20] *See* 40 C.F.R. § 7.100 (stating that "[n]o applicant, recipient, **nor other person** shall intimidate, threaten, coerce, or discriminate against any individual or group. . ..)" (emphasis added).

[21] http://adem.alabama.gov/inside/ndstatement.cnt

[22] *See, e.g.*, Dear Colleague Letter: English Learner Students and Limited English Proficient Parents – U.S. Department of Education and U.S. Department of Justice, at p.38, fn103 (Jan. 27, 2015) (stating that "[u]tilization of such services is appropriate only if the translated document accurately conveys the meaning of the source document, including accurately translating technical vocabulary. The Departments caution against the use of web-based automated translations; translations that are inaccurate are inconsistent with the school district's obligation to communicate effectively with LEP parents"), found at https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf

[23] *See* LEP Guidance, 69 FR at 35611, at https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi (discussing the importance of using qualified certified translators.)

ADEM must continue to take steps to ensure accurate translations of materials posted on its website going forward and not rely on inaccurate web-based translations. At ADEM's request, ECRCO can provide ADEM with appropriate technical assistance regarding the translation services it has procured for translation of grievance procedures, as well as the translation of any other vital information into additional languages to fulfill its LEP obligations.

c. Nondiscrimination Coordinator: ECRCO has determined that ADEM is currently meeting the regulatory requirements regarding ADEM's nondiscrimination coordinator. The regulation requires that EPA recipients have a nondiscrimination coordinator to oversee their nondiscrimination program.[24] In addition, under the "Notice of Nondiscrimination" the regulation requires that the Notice "identify the responsible employee" designated as the recipient's Nondiscrimination Coordinator.[25] At the time that ECRCO identified this issue for investigation, and as recently as June 2017, ADEM was not in compliance because it did not specifically identify the actual responsible employee and thus, had not identified at least one person as its Nondiscrimination Coordinator to coordinate its compliance efforts, rather, ADEM had identified only the general position that would carry out these responsibilities. However, ECRCO found that as of June 2017, ECRCO confirmed that ADEM updated its website and included Marilyn Elliot's name and contact information as the Nondiscrimination Coordinator below the Notice of Nondiscrimination, together with her mailing address, email and phone number.

ECRCO notes that ADEM's title for this position is used inconsistently in its nondiscrimination program materials. For example, the current grievance procedures do not use the term "Nondiscrimination Coordinator" but rather initially use the term "Title VI/EJ Coordinator" and then references "EJ Coordinator" throughout the remainder of the document. The inconsistent use of titles for the Nondiscrimination Coordinator position may lead to confusion with the public. Accordingly, although not legally required, ECRCO recommends that ADEM amend its nondiscrimination program materials to ensure it consistently uses the title "Nondiscrimination Coordinator" throughout.

d. Limited English Proficiency (LEP): Based on ECRCO's review of ADEM's LEP program, ECRCO has determined that, currently, ADEM is meeting the regulatory requirements of Title VI with respect to its responsibility to ensure meaningful access for LEP persons to its programs, services and activities. As this investigation progressed, ECRCO became aware that ADEM was not providing notice to LEP individuals regarding nondiscrimination, nor providing meaningful access to accurate information about its grievance procedures. These concerns were addressed by ADEM during the course of this investigation in response to ECRCO's feedback (See Sections a and b above.)

ECRCO also reviewed ADEM's LEP program to determine whether, in general, ADEM has policies and procedures in place to ensure meaningful access for LEP individuals eligible to be served by ADEM's services, programs or activities.

In September 2016, ADEM provided ECRCO a copy of ADEM's "Title VI Manual" which

[24] 40 C.F.R. § 7.85(g) (if a recipient employs 15 or more employees, it shall designate at least one person to coordinate its efforts to comply with its obligations under this part).
[25] *See* 40 C.F.R. § 7.95.

included a section titled "Limited English Proficient (LEP) Program." That section of ADEM's internal Title VI Manual, which ADEM identified as its LEP plan, in part, briefly described Alabama's LEP statistics and stated that "[a]ccording to the U.S. Department of Justice (DOJ) website, Alabama is one of the states where LEP should not present a significant problem."[26] In June 2017, ECRCO discussed this statement with ADEM and pointed out that DOJ does not make this statement on its website. ADEM clarified that it did not mean to suggest that DOJ said this on its website, rather that the statement reflects ADEM's interpretation of the statistics found in the tables at DOJ's website. However, as ECRCO shared with ADEM, on its face, this statement is misleading as it may be interpreted as suggesting that no language services are necessary for LEP persons in Alabama. Further, ECRCO shared with ADEM that the portion of its Manual that it was identifying as its LEP Plan was not sufficiently developed so as to address the critical areas for ensuring meaningful access for LEP individuals, as required by statutory and regulatory authority.[27] EPA's LEP Recipient Guidance gives further direction on providing services to LEP individuals, including the four-factor analysis, to assist ADEM in determining the reasonable steps it will take to provide meaningful access to its programs and activities.[28] Thus, to the extent that the portion of the ADEM Manual identified as its LEP Plan represented ADEM's only response to its obligation to provide meaningful access for LEP persons, this would have raised a Title VI concern. However, ADEM has shared additional information, including information about the contract it currently utilizes to provide for qualified translation and interpretation services, which provides further clarification as to the reasonable steps it is taking to ensure meaningful access to its programs and activities for LEP individuals. ECRCO asserts its continued willingness to provide technical assistance to ADEM to further improve its LEP program.

Although not legally required, ECRCO recommends that ADEM update its current written LEP Plan to ensure it addresses all LEP language groups, in light of their number and proportion.[29] In addition, although not legally required, ECRCO recommends that ADEM make its Title VI Manual and LEP Plan publicly-available on its website. When available on its website, these materials should also be available in the appropriate languages other than English.[30]

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[26] Letter from Lance R. LeFleur, Director, ADEM to Lilian S. Dorka, Acting Director, Office of Civil Rights, EPA regarding EPA File No. 06R-03-R4; 12R-13-R4; 13R-16-R4, ADEM Response to EPA Follow-up Information Request. (September 1, 2016). This response included ADEM's internal Title VI Manual which provided a brief overview of ADEM's LEP Program.

[27] *See* Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin); *Lau,* 414 U.S. 563, 568-69 (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin.); 40 C.F.R. § 7.35(a) (prohibiting discrimination on the basis of national origin in the programs or activities of a recipient of EPA assistance).

[28] LEP Recipient Guidance, 69 FR 35602 (June 25, 2004), at https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi, pages 35606-35607.

[29] U.S. Census Bureau, 2011-2015 American Community Survey: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over. (Alabama) https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_B16001&prodType=table Based on the U.S. Census Bureau's *American FactFinder*, Alabama's population has the following LEP language groups that meet this threshold, including Spanish, Chinese, Korean, Vietnamese, Tagalog, Arabic, German and French. Alabama's LEP groups who speak English less than "very well" with Spanish at 72, 372, Chinese at 5,289, Korean at 4,985, Vietnamese at 3,892, Tagalog at 1,033, Arabic at 1,566, German at 1,383, and French at 1,314.

[30] *See* LEP Recipient Guidance, 69 FR at 35606, at https://www.federalregister.gov/documents/2004/06/25/04-

e. Individuals with Disabilities: ECRCO has reviewed the components of ADEM's disability program and has determined ADEM is meeting the regulatory requirements of providing notice and providing meaningful access to individuals with disabilities to ADEM's programs, services and activities.

At the time this issue was identified for investigation, ADEM did not provide information on its website regarding obtaining assistance for disability needs. Although not on its website at the time, ADEM has been utilizing an internal document identified as General Guidelines for Public Participation/Hearings/Meetings. This document specifies that prior to events, ADEM will determine and ensure the facility is accessible by the public.[31] ECRCO notes that ADEM has recently enhanced information related to accessibility for its disability-related services. For example, ADEM has included disability symbols on the left hand side of its home page that leads to a follow up page which offers an email address if disability assistance is needed and specifically outlines the types of services that it provides.[32]

Additionally, ECRCO notes that in ADEM public permit notices a contact number for the Department's Permits and Services Division is provided if accommodations are needed. The notice reads as follows "Any person wishing to participate in this hearing who needs accommodations should contact the Department's Permits & Services Division at (334) 271-7714 at least five working days prior to the hearing."

Although not legally required, ECRCO recommends that ADEM make its public participation materials more transparent by providing the information that is currently contained in its internal General Guidelines for Public Participation/ Hearings/ Meetings document, or the document itself, to the public to better communicate to the public the rights of persons with disabilities and the different aids and services that may be needed for individuals with disabilities.

f. Public Participation: ECRCO has reviewed the components of ADEM's public participation program and has determined there is insufficient evidence of noncompliance with Title VI. ECRCO's review found that ADEM has developed publications which address public involvement, including the "Guide for Citizen Participation" (revised March 2014), the "Public Participation in ADEM Rulemaking and Permitting Process" (revised August 2015), and the "Community Engagement" document (updated August 2016).

ECRCO found that ADEM has engaged with the public to discuss issues of concern and conducted a citizen's education program which included community workshops in Mobile, Birmingham, Montgomery and Uniontown to train individuals on how to access environmental information from ADEM's website.[33] In addition, ADEM has created an internal Public Participation Checklist, which explains the process taken before any public

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14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi.

[31] For clarification, although ADEM refers to disability access issues under the Americans with Disabilities Act, nondiscrimination under Federal grants and programs must adhere to the Section 504 of the Rehabilitation Act of 1973.

[32] http://adem.alabama.gov/inside/disability.cnt.

[33] This training occurred in Uniontown in February 2014 and specifically provided an overview of how to access data, participate in the permit process, review the compliance records of permitted or regulated entities, and how to file environmental complaints and concerns.

event including, the review of demographics, determining whether the facility is accessible to individuals with disabilities, and ensuring that any other accommodation needed is made available to the public, e.g. language services.[34] Although not legally required in this general context, ECRCO recommends that ADEM's public participation guidelines include a description of the appropriate community for public involvement, which should at a minimum, include demographics, history, and background.

In November 2017, it was brought to ECRCO's attention that there was an instance in which ADEM may not have appropriately responded to a comment submitted by the public. Specifically, in ADEM's November 1, 2017 Response to Comments for the City of Dothan Landfill Permit Modification Permit No. 35-06 a comment was raised that a local public official used the "N-word" to describe African-Americans in this community. Based on the hearing record, it appears ADEM did not address the derogatory racial comment, ADEM responded by referencing the proposed permit's compliance with ADEM's solid waste regulations and, in addition, ADEM stated that the allegations regarding the landfill being located in a predominately minority area are related to the siting of the landfill and are not appropriate for ADEM to consider.[35] ECRCO notes that the records do not reflect that ADEM considered these allegations within the context of their nondiscrimination program. ECRCO reminds ADEM that EPA's nondiscrimination regulation requires that recipients have in place grievance procedures to address discrimination matters. In addition, as emphasized in the EPA's Public Involvement Guidance for Recipients, recipients, such as ADEM, should build relationships with the public and understand and promptly respond to the concerns that are brought to their attention.[36]

Moreover, although not legally required, ECRCO recommends that ADEM increase its leadership role in bringing together the Dothan community, permittees, as well as other local government entities to share important information, ensure that its citizens and stakeholders understand roles, rights and responsibilities and address issues constructively. Although not legally required, ECRCO recommends that ADEM identify stakeholders in the community by making a concerted effort to create and/or re-engage partnerships with private and public entities to share information on its website and through standard media outlets. Such information sharing would ideally include the relevant community in the geographic area near the Dothan Landfill and those individuals and groups that have previously expressed an interest in environmental decision-making activities; environment and environmental justice organizations; religious institutions and organizations; public administration, environmental, law and health departments at colleges and universities; tribal governments; and relevant community service organizations.

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[34] General Guidelines for Public Participation/Hearings/Meetings, Appendix E-1 of Title VI Manual.

[35] ADEM's Response to Comments City of Dothan Landfill Permit Modification Permit No. 35-06. (November 1, 2017). http://app.adem.alabama.gov/eFile/
File name 04007_35-06_069_20171101_PERM_Response_to_Comments.pdf

[36] See Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR at 14211 (discussing recipient staff training and the importance of actively listening to the public's concerns, considering the public's opinions, and addressing the public's questions in a prompt and respectful manner). https://www.gpo.gov/fdsys/pkg/FR-2006-03-21/pdf/06-2691.pdf

Conclusion

As previously discussed, ECRCO has determined that at the time of the complaint filing, ADEM was not in compliance with the regulatory requirements of the EPA nondiscrimination regulation; but during the pendency of this investigation, and as a result of technical assistance provided by ECRCO, ADEM has made improvements and is now currently meeting the regulatory requirements of the EPA nondiscrimination regulation. As such, ECRCO finds insufficient evidence of current noncompliance with Title VI, Section 504 and EPA's implementing regulation at 40 C.F.R. Part 7. In making this finding, EPA makes no determination regarding ADEM's effective implementation of its nondiscrimination program. ECRCO did not review ADEM's application of its nondiscrimination policies and procedures, such as, for example ADEM's acceptance, investigation and resolution of an actual complaint pursuant to its nondiscrimination grievance procedures.

If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Kenneth Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 4