UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 18, 2017

Return Receipt Requested
Certified Mail#: 7015 3010 0001 1267 5768

In Reply Refer to:
EPA File No. 16R-17-R4

Lance LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

Re: Acceptance of Administrative Complaint 16R-17-R4

Dear Director LeFleur:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed by Yale Law School Environmental Justice Clinic, the NAACP Legal Defense & Educational Fund, and Earthjustice on behalf of the Ashurst Bar/Smith Community (ABSCO) against the Alabama Department of Environmental Management (ADEM). In general, the complaint alleges that ADEM discriminated on the basis of race against ABSCO residents in Tallapoosa County, Alabama with respect to ADEM's February 10, 2017 issuance of an operating permit renewal for the Stone's Throw Landfill (also known as Tallassee Waste Disposal Center, Inc.), in Tallassee, Alabama, in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, the EPA's nondiscrimination regulation found at 40 C.F.R. Part 7.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts preliminary reviews of administrative complaints received for acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulation. First, it must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must allege a discriminatory act that if true, may violate EPA's nondiscrimination regulation (*e.g.* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act, unless this time limit is waived for good cause shown. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO has determined that the subject complaint meets the jurisdictional requirements stated above. First, the complaint is in writing. Second, the

complaint alleges that discrimination occurred, in violation of EPA's nondiscrimination regulation. Third, the complaint describes an alleged discriminatory act that occurred within 180 days of filing. And finally, the complaint was filed against ADEM, which is a recipient of EPA financial assistance.

Accordingly, ECRCO will investigate the following:

1. Whether ADEM's issuance of the February 10, 2017 operating permit renewal for the Stones Throw Landfill discriminated against the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race in violation of Title VI of the Civil Rights Act and EPA's implementing regulation at 40 C.F.R. Part 7.

2. Whether ADEM's method of administering its Solid Waste Disposal permitting program subjects the predominantly African-American residents of the Ashurst Bar/Smith community to discrimination on the basis of race in violation of Title VI of the Civil Rights Act and EPA's implementing regulation at 40 C.F.R. Part 7.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin the process of gathering the relevant information, discuss the matter further with you and the complainants, as appropriate, and determine next steps utilizing our internal procedures. In the intervening time, ADEM may make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving your copy of the letter. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO is willing to discuss, at any point during the process, offers to informally resolve the subject complaint. ECRCO may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at https://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi. ECRCO may also contact you to discuss your interest in entering into informal resolution discussions. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

We would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO. Our office would investigate such a complaint if the situation warranted.

If you have questions about this letter, please feel free to contact me at 202-564-9649 (Dorka.Lilian@epa.gov) or Jonathan Stein, Case Manager at 202-564-2088 (Stein.Jonathan@epa.gov).

Sincerely,

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

cc: Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office

Vickie Tellis
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4