UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

July 2, 2018

Return Receipt Requested
Certified Mail#: 7015 3010 0001 1267 0329

In Reply Refer to:
EPA File No. 03R-18-R4

Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36130-1463

Re: Notification of Acceptance of Administrative Complaint and Request for Information

Dear Director LeFleur:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Alabama Department of Environmental Management (ADEM), received by EPA on June 13, 2018. The complainant alleges that ADEM is in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code, 2000d, et seq. and the EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine 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 the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or 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 issue raised in the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory act occurred within 180 days of the filing of this complaint. Finally, it alleges a discriminatory act by ADEM, which is an applicant for, or recipient of EPA financial assistance.

ECRCO will investigate the following issue:

> Whether ADEM is complying with the regulatory requirement delineated in 40 C.F.R. Part 7.90(a), specifically whether ADEM has adopted grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the regulation.

The initiation of an investigation of the issue above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with ADEM and the complainant, if appropriate, and determine next steps utilizing ECRCO's internal procedures. In the intervening time, ADEM may provide a written submission responding to, rebutting, or denying the issue that has been accepted for investigation within thirty (30) calendar days of receiving this 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.

As part of the investigative process, ECRCO needs additional information in order to investigate the accepted issue. Pursuant to its authority under 40 C.F.R. § 7.115 and 7.120, ECRCO requests that ADEM respond to the questions outlined in the Enclosure within thirty (30) calendar days of receipt of this letter. Please produce any other information that ADEM would like EPA to consider while investigating the issue raised in this complaint.

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* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact Brittany Robinson, Case Manager, at 202-564-0727, by email at robinson.brittany@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,

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

Enclosure: Request for Information

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

Enclosure

EPA File No. 03R-18-R4
Request for Information to ADEM

Please provide responses to the following questions within **thirty (30)** calendar days of ADEM's receipt of this request for information.

ECRCO is aware that ADEM filed a motion on June 5, 2018, in response to the lawsuit, 03-CV-2017-900021.00 (Circuit Court of Montgomery County), for the Court to consider as moot 5 of the 6 counts in that lawsuit due to the ADEM Director's rescission of Memorandum No. 108 and its web-based version entitled "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process."[1]

1. Does ADEM currently have in effect grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the EPA nondiscrimination regulation, as required by 40 C.F.R. § 7.90(a)?
2. If yes, please provide us with a copy of ADEM's grievance procedures and the effective date of these procedures.
3. If yes, are these grievance procedures available to the public? Please describe how (in what form or format) these procedures are available to the public.
4. If ADEM does not have in effect grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the EPA nondiscrimination regulation, please describe the steps ADEM is taking to put in effect grievance procedures as required by 40 C.F.R. § 7.90(a).
5. Has ADEM received any complaints between June 5, 2017 and June 5, 2018, under the nondiscrimination grievance procedures contained in Memorandum 108? If yes, please provide a copy of each complaint. Please describe how each complaint was addressed.

[1] Suggestion of Mootness, Civil Action No.: CV-2017-900021.00-JRG. (June 5, 2018).