UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

November 22, 2019

Return Receipt Requested
Certified Mail #: 70153010000112674235

In Reply Refer to:
EPA Complaint No. 01R-20-R4

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

Re: Rejection of Administrative Complaint

Dear Mr. Ludder:

On October 31, 2019, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received your administrative complaint filed against the Alabama Department of Environmental Management (ADEM). You allege that ADEM discriminated against the predominantly African American community in close proximity to the City of Dothan Sanitary Landfill by approving an application to renew and modify Solid Waste Disposal Facility Permit No. 35-06 (Permit), in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation, 40 C.F.R. Part 7. The Permit renewal and modification authorizes the City of Dothan to continue to operate an existing municipal solid waste landfill, to construct and operate an expansion of the existing municipal solid waste (MSW) landfill, and to construct and operate a construction and demolition (C&D) landfill. After careful consideration, for the reasons identified below, ECRCO is rejecting this complaint for investigation. Accordingly, this matter is closed as of the date of this letter.

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.

In general, ECRCO will accept, reject, or refer a complaint after considering the jurisdictional requirements described above. However, if ECRCO obtains information leading ECRCO to

conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation. For example, ECRCO may reject a complaint allegation which is not ripe for review because it anticipates future events which may not unfold as outlined in the complaint, or when the same complaint allegations are currently pending with a local agency or have been raised through a recipient's internal grievance procedures, including due process proceedings. A rejection based on lack of ripeness is without prejudice, meaning that a complainant may refile the complaint with ECRCO within sixty (60) days of a subsequent act or event that raises an allegation of discrimination.[1]

You notified ECRCO that, on June 4, 2019, residents living near the City of Dothan Sanitary Landfill filed a request with the Alabama Environmental Management Commission (Commission) for an administrative hearing to contest the reissuance and modification of Permit No. 35-06, in part, based on alleged discrimination. As reported to ECRCO by you, the Commission concluded the administrative hearing on September 19, 2019. According to you, the Commission's final administrative decision regarding the hearing to contest the Permit remains pending as of the date of this letter.

Accordingly, ECRCO has determined that an investigation is premature at this time. ECRCO is rejecting this complaint without prejudice and closing this case as of the date of this letter. The complainants may refile this complaint within sixty (60) days of the Commission's final decision. If the complaint is refiled, ECRCO will conduct another preliminary review to determine acceptance, rejection, or referral.

If you have questions about this letter, please contact Case Manager Jeryl Covington, at (202) 564-7713, via email at covington.jeryl@epa.gov, or by mail at U.S. EPA, Office of General Counsel, Mail Code 2310A, Room 2524, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460-1000.

Sincerely,

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

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

[1] *See* ECRCO Case Resolution Manual, Section 2.6, at 12-13, available at: https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

Beverly Banister
Acting Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 4

Leif Palmer
Regional Counsel
U.S. EPA Region 4