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

OFFICE OF
CIVIL RIGHTS

October 5, 2016

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 2145

In Reply Refer to:
EPA File No. 12R-13-R4

Ms. Marianne Engelman Lado
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005

Re: Acceptance of Administrative Complaint (12R-13-R4) (Formerly 38r-16-R4)

Dear Ms. Engelman Lado:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is accepting for investigation your claim that the Alabama Department of Environmental Management (ADEM) retaliated against and intimidated, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, and EPA regulation at 40 C.F.R. Part 7, Complainants who engaged in protected activities as identified in 40 C.F.R. § 7.100. The investigation of this claim will be conducted under EPA File No. 12R-13-R4. The case number that had been initially assigned to this new complaint upon recipet, EPA File No. 38r-16-R4, has been closed.

Pursuant to EPA's nondiscrimination administrative regulation, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. § 7.120(d)(1). Generally, OCR accepts for investigation complaints that meet the four 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 regulations (*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. *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.

As of the date of this letter, OCR has determined that the complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint describes alleged discriminatory acts that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory acts occurred within 180 days of the filing of the complaint. And finally,

the complaint was filed against ADEM, a recipient of EPA financial assistance at the time of the alleged retaliatory acts.

After careful consideration, OCR will investigate the following:

> Whether ADEM's actions or inactions, violated 40 C.F.R. § 7.100, which prohibits intimidating, threatening, coercing, or engaging in other discriminatory conduct against any individual or group because of actions taken and/or participation in an action to secure rights protected by the non-discrimination statutes OCR enforces.

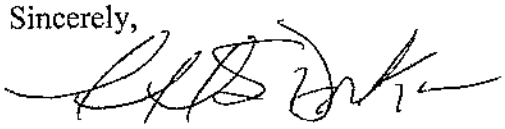
The initiation of an investigation of the issue above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the recipient, if appropriate, and determine next steps utilizing its internal procedures.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

EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the subject complaint and may contact representatives of ADEM to discuss the Recipient's interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf

Finally, we would like to remind you that no applicant, recipient or other 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 non-discrimination statutes OCR enforces. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have questions about this letter, please contact Case Manager Brittany Martinez of the OCR External Compliance Program at 202-564-0727, via electronic mail at martinez.brittany@epa.gov, or me at 202-564-9649, via electronic mail at dorka.lilian@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,



Lilian S. Dorka
Acting Director
Office of Civil Rights

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

Ken Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region IV