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September 16, 2016

Via E-Mail
Betsy Biffl
Attorney Adviser
Civil Rights Law Practice Group
Office of General Counsel
U.S. Environmental Protection Agency
Biffl.Betsy@epa.gov

Re: *Ashurst Bar/Smith Community Organization, Case No. 06R-03-R4.*

Dear Ms. Biffl:

On behalf of Ashurst Bar/Smith Community Organization ("ABSCO"), Complainant in Case No. 06R-03-R4, Earthjustice and the NAACP Legal Defense & Educational Fund, Inc. ("LDF")[1] submit this letter and accompanying documents to supplement the record in the Environmental Protection Agency's ("EPA") Office of Civil Rights ("OCR") investigation of the Complaint filed pursuant to Title VI of the Civil Rights Act ("Title VI") by ABSCO on or about September 3, 2003, which EPA OCR accepted for investigation on September 7, 2005. EPA OCR accepted two claims for investigation, one of which was dismissed by EPA OCR on January 25, 2013. The remaining claim, for which the investigation is pending, concerns whether the Alabama Department of Environmental Management's ("ADEM") failure to require the Tallapoosa County Commission to properly use the siting factors, listed in EPA OCR's June 2003 Investigative Report for Title VI Administrative Complaint File No. 28 R-99-R4 ("Yerkwood Report"), had a discriminatory effect on the African American residents in East Tallassee living in proximity to the Landfill that ADEM permitted to operate and expand there.[2]

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[1] LDF is serving as co-counsel with Earthjustice on behalf of ABSCO in Case No. 06R-03-R4, and Complainant requests that OCR include Leah Aden, Senior Counsel at LDF, on correspondence related to the case investigation. Please find Ms. Aden's contact information on the signature line of this letter.
[2] *See* Letter from Karen D. Higginbotham, Dir., EPA OCR, to unnamed individual (Sept. 7, 2005).

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On February 10, 2016, more than a decade after ABSCO filed its complaint, EPA OCR had a telephone conference with four leaders and members of the Complainant organization: Ex. 6 Personal Privacy (PP) Despite Earthjustice's request, on behalf of Complainant, to discuss the investigation and potential remedies broadly, EPA OCR circumscribed the call to a rote set of investigatory questions about individual experiences. Given the passage of time, we made clear that this investigation is all the more difficult, as some witnesses are no longer available, memories have become clouded, and documentation is harder to find. As such, Complainant and community members are among the most knowledgeable resources to help EPA OCR determine which allegations or impacts related to the Landfill remain relevant, and whether time and conditions may have affected the salience of the allegations or effects in the years since the filing of the 2003 Title VI complaint. In this case, the lingering effects of the challenged actions remain and Complainant and other community members are in the best position to share information about what is happening today and potential remedies.

Subsequently, on March 4 and March 8, Earthjustice, representing ABSCO, submitted documents discussed on the February 10 call in further support of the Complaint and indicated that we would continue to provide such documentation as well as names of potential witnesses, during the pendency of the investigation. We also encouraged you and others at EPA involved in the investigation to tour the site and meet with residents, which we remain willing to help arrange.

With this letter, Earthjustice and LDF, representing Complainant, provide additional information, including potential witnesses, in support of the Title VI Complaint. *First*, Complainant encloses <u>four</u> declarations from current and former residents of the Ashurst Bar/Smith community—namely Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) —providing more detail on the significant and various effects of the Stone's Throw Landfill on their community. We will continue to provide you with declarations and other documentation on an ongoing basis.

As you know, the Ashurst Bar/Smith community is majority-Black, despite being located in a majority-white city (72% white under the 2010 Census) and county (70% white under the 2010 Census). These declarations describe: significant truck traffic to and from the Landfill on residential roads that pose a safety risk to school-age children; putrid smells that dissuade families from engaging in communal activities; an increase in vultures and other pests that are harbingers of disease; health impacts such as cancer, respiratory problems, migraines, and dizziness, which residents have reason to believe are related to contamination from the Landfill; and community residents who no longer garden, fish from the waterways, or use well water or springs and streams because of fear of contamination.

For example, Ex. 6 Personal Privacy (PP) who was born and raised in the Ashurst Bar/Smith community and continues to have family and friends who live there, described the impacts of the Landfill on the way of life in the community as follows:

> We are a community of hardworking people who were taught and became accustomed to living off the land, raising livestock, and growing crops like cotton and corn. I distinctly remember the smell of the fresh earth when it was planting season and the delicious smell and taste of the fresh fruits and vegetables that we grew. . . . Since the Landfill has come into our community . . . [we] fear that gardening and raising livestock is no longer safe. As a result, many people have given up on these traditions.

Ex. 6 Personal Privacy (PP) an ABSCO member, poignantly explained the shame, fear, and financial costs that the Landfill has imposed on members of Ashurst Bar/Smith, a community now forced to distrust its own resources, saying:

> In a community where many people are impoverished, it is a shame that they feel that they have to pay for water when they used to have access to free water . . . these already under-resourced families buy bottled water to provide themselves with some peace of mind about what they are putting into their bodies and that of their children.

Ex. 6 Personal Privacy (PP) a civil servant and local pastor, returned to Ashurst Bar/Smith to join his parents "in their more than 10-year fight to defend [his] family's property and quality of life . . . from continuing to be encroached on, devalued, and diminished by the Landfill." According to Ex. 6 Personal Privacy (PP) today, Alabama "state officials have permitted the Landfill to expand and receive more and more garbage in our backyards, such that now we bear the burden of living surrounded by garbage – asbestos to septic sewage – from every one of the 67 counties in Alabama and three counties in Georgia." Ex. 6 Personal Privacy (PP) like others in his community, is "angry and saddened by the reality that [this] remarkable Black majority community bears the effects of the Landfill, when it already is overburdened by lack of opportunity."

These declarations also describe how many Ashurst Bar/Smith residents have owned and passed down land in the community for generations Ex. 6 Personal Privacy (PP), for example, traces her land ownership to the 1800s when her great-grandparents, as former slaves, invested in land as the only form of transferable wealth available to them. As Ex. 6 Personal Privacy (PP) puts it: "[t]o take this land away from their descendants, like me and my brother, who live on and maintain ownership of the land – by the [L]andfill essentially making our family's land unbearable to live on – is to extinguish everything that we have to connect us to our heritage and history." Similarly, the land that Ex. 6 Personal Privacy (PP) and his family are now forced to defend has been in their family since 1813, when Ex. 6 Personal Privacy (PP)'s great-grandfather came from South Carolina to Tallassee and acquired, incredibly, about 600 acres of land through federal land grants for farmers. "The Ashurst/Bar Smith community was created through pioneering Black landowners like my ancestors," said Ex. 6 Personal Privacy (PP) He, like other residents of this tight-knit community, is "deeply concerned that the ever-expanding Landfill will do away with the hundreds of years of history here." Like Ex. 6 Personal Privacy (PP), Ex. 6 Personal Privacy (PP) contends that this resilient community in the heart of the former Confederacy is being torn apart.

Ex. 6 Personal Privacy (PP) who was born and raised in the Ashurst Bar/Smith community, explained why he no longer plans to retire in his hometown, saying:

> As the [L]andfill continues to expand and take over additional acreage within the community . . . I fear the effects that it is currently having on the community and am concerned that its operations and expansion will eventually result in the [L]andfill destroying and taking over the entire Ashurst Bar/Smith community. Although I enjoy and cherish my visits with family and friends within the community, I have serious safety and health concerns for everyone who continues to reside in the community. Consequently, I do not plan on residing in the Ashurst Bar/Smith community in the senior years of my life, as I once planned to do, due to the health and safety concerns while the [L]andfill continues and/or expands its operations, which are fouling the air and water and degrading the quality of life in my beloved community.

The testimony of these individuals is supported by the assertions of many other residents of the Ashurst Bar/Smith community, echoing similar and other deleterious effects that the Landfill has on their community.[3] The undersigned met with at least 50 community members in late March 2016 and requested that they respond to a questionnaire/survey that sought their perspectives on whether the Landfill affected them, their family and friends, and their community. Almost all of the attendees responded to the questionnaire (*i.e.*, 44 residents) and, since that meeting, the undersigned have received additional responses from other community members. Individually and collectively, these community members' assertions are indicative of how the Landfill is affecting people in the Ashurst Bar/Smith community. As examples, we have learned from community members that:

- Most, if not all of the residents no longer use well water. As an alternative, residents choose to use public water serviced by Tallassee. Among the reasons given for not using well water were either that their wells were closed or dried up, or they perceived the well water to be unsafe. All of the residents that responded to the question said that their well had never been tested or at least not to their knowledge.
- Given that free well water is no longer an option for residents, but rather costly city water is available, many households reported that they spent between $10-100 a month on this public water.
- Almost all of the households surveyed reported that they purchased bottled water on a monthly basis, with most of the households spending $15-60 per month.

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[3] When the 2003 Title VI complaint was filed, Ashurst Bar/Smith had 175 residents and was 98% African-American. First Am. Compl. For Declaratory & Injunctive Relief, *Californians for Renewable Energy v. EPA*, No. 4:15-cv-03292-SBA, at 4 ¶ 12 (N.D. Ca. Jan. 7, 2016). Indeed, according to EPA OCR, using Census data, the demographics of the community within 1/2, 1, 2, and 3 miles of the Landfill was 90.6%, 88.2%, 57.1%, and 44.1% African-American, respectively. *See* Letter from Rafael DeLeon, Dir., EPA OCR, to Lance R. LeFleur, Dir., ADEM (Jan. 25, 2013).

- Many residents reported that there was water runoff from the Landfill, and several residents specified that water runoff occurred around Washington Boulevard, Ashurst Bar Road, and Wall Street, or behind their house or land.
- All of the residents reported foul odors coming from the Landfill, which were described as the stench of "decay," "rot," "dead animals," "pesticides," and "gas." A significant number of respondents reported that the foul odors were present in the morning and the night.
- A large number of residents who owned or observed animals also perceived the Landfill to have had a negative impact on animals. Among those impacts were reports of wildlife and pets (especially cats and dogs) dying, getting sick, or being in poor health.
- Numerous health problems perceived to be connected to the Landfill were reported by residents, including respiratory issues, cancer, diabetes, migraines/dizziness, eye problems, dry throats, skin problems, and sinus problems.
- Many respondents said that the Landfill's presence depreciated the value of their property and property near the Landfill. Many residents who perceived their property value to have declined due to the Landfill either: (1) expressed that nobody wants to buy "contaminated" land in their community; (2) actually tried to sell their property but were unsuccessful; or (3) moved away from their home – or knew of former residents who moved – just to get away from the Landfill.
- Most residents reported complaints about the trucks accessing the Landfill. The top complaints were (1) potholes and other wear and tear caused by trucks traversing major roads and bridges; and (2) trucks speeding and running people, including children on school buses, off the road. Many residents also reported that the trucks operate all day long.
- Most of the surveyed residents reported disruptive noises from Landfill operations. Some residents specifically noted the loud sounds of trucks, tractors, and heavy machinery banging, emptying and slamming trash cans, slapping tail gates, and honking their horns.
- Many of the surveyed residents reported that the Landfill negatively affected their quality of life through its various environmental, social, and personal impacts. The most frequently mentioned impact of the Landfill, however, involved its psychological effects on residents. Reports revealed a community that felt "dehumanized," citing experiences of anxiety, fear, depression, and stress, as well as feelings of defeat and isolation.

Complainant offers these survey responses as indicative of the Landfill's impact on Tallassee residents.

Moreover, we urge you to seriously consider these declarations and the survey responses, as well as to speak to community members yourselves as you conduct a thorough investigation and carry out your responsibility to enforce Title VI. Our expectation is that this information will prompt you to engage with the Complainant and other community

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stakeholders, as EPA OCR reinitiates investigations and moves toward resolution of the civil rights complaint. As a separate letter to Lilian Dorka, Interim Director, EPA OCR, dated June 6, 2016, most recently articulated, that it is a mistake to fail to engage key stakeholders in the investigative process.[4] As you will read in the supporting documents to this letter, Complainant and community stakeholders have much to say about the impact of the Landfill on their community and daily lives, ***nearly 15 years after the Landfill was reopened in 2002***, which reinforces the need for a thorough investigation.

In conclusion, given that the Ashurst Bar/Smith community has had to live with the impacts of the challenged action during the long pendency of its Complaint, the investigation into what happened so long ago will not at this point fully redress the alleged violations by recipients of federal funds, nor EPA OCR's unreasonable delay. Yet recipients of federal funds like ADEM should nonetheless be accountable for discriminatory policies and practices, and the continuing effects of such policies and practices should be addressed. Complainant and community stakeholders have thoughts about possible remedies and EPA OCR should consult with them toward that end.

Sincerely,

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[4] *See* Letter from Marianne Engelman Lado & Jonathan Smith to Lilian Dorka, Interim Dir., EPA OCR (June 6, 2016).

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Attachments

CC (*via email*): Jeryl Covington
Lilian Dorka, Interim Director, EPA OCR
Mary O'Lone
Jonathan Stein
Kurt Temple
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