Message

From: Dorka, Lilian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: 2/17/2017 8:29:06 PM
To: Marianne Engelman-Lado [marianne.engelman-lado@YLSClinics.org]
CC: Martinez, Brittany [Martinez.Brittany@epa.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Farrell, Ericka [Farrell.Ericka@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Biffl, Betsy [Biffl.Betsy@epa.gov]; Tania Galloni (tgalloni@earthjustice.org) [tgalloni@earthjustice.org]; Allison Kvien [akvien@earthjustice.org]; O'Lone, Mary [olone.mary@epa.gov]; Lapierre, Kenneth [lapierre.kenneth@epa.gov]; HALIM-CHESTNUT, NAIMA [Halim-Chestnut.Naima@epa.gov]; Tommelleo, Nancy [Tommelleo.Nancy@epa.gov]; Joya Sonnenfeldt [joya.sonnenfeldt@YLSClinics.org]; Tellis, Vickie [Tellis.Vickie@epa.gov]; Elham Shabahat [elham.shabahat@ylsclinics.org]
Subject: RE: Follow Up on Uniontown, Alabama Complaint, EPA OCR File No. 01R-12-R4 [WARNING: DKIM validation failed]

Hello Marianne, thanks for this information, really appreciate your keeping us updated on the litigation. Re the status of the case/investigation, all I can tell you right now is that we are considering the information you provided during and after our last conference call in December in order to consider options for next steps on this case. There is nothing additional I can share with you right now but will definitely keep you updated on any key developments moving forward. Thanks and have a great weekend. Lilian

Lilian Sotolongo Dorka
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From: Marianne Engelman-Lado [mailto:marianne.engelman-lado@YLSClinics.org]
Sent: Thursday, February 16, 2017 9:56 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Martinez, Brittany <Martinez.Brittany@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Farrell, Ericka <Farrell.Ericka@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Biffl, Betsy <Biffl.Betsy@epa.gov>; Tania Galloni (tgalloni@earthjustice.org) <tgalloni@earthjustice.org>; Allison Kvien <akvien@earthjustice.org>; O'Lone, Mary <OLone.Mary@epa.gov>; Lapierre, Kenneth <Lapierre.Kenneth@epa.gov>; HALIM-CHESTNUT, NAIMA <Halim-Chestnut.Naima@epa.gov>; Tommelleo, Nancy <Tommelleo.Nancy@epa.gov>; Joya Sonnenfeldt <joya.sonnenfeldt@YLSClinics.org>; Elham Shabahat <elham.shabahat@ylsclinics.org>
Subject: Re: Follow Up on Uniontown, Alabama Complaint, EPA OCR File No. 01R-12-R4 [WARNING: DKIM validation failed]

Dear Lilian,

Please let us know the status of the investigation and any discussion with ADEM related to complaint filed pursuant to Title VI regarding ADEM's decisions to reissue and modify permits for the Arrowhead Landfill, as well as the retaliation and intimidation complaint. As you know, we believe that EPA has more than sufficient information to make a finding of discrimination, but we also stand ready to provide additional information should EPA believe it has insufficient information to make a finding. Complainants also seek an opportunity for input on any resolution of the complaint.

As you may know, on February 7th, Green Group Holdings LLC and Howling Coyote LLC, the owners and operators of Arrowhead Landfill, agreed to the dismissal of their SLAPP suit against Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) four of the complainants in the civil rights complaint. Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) gave up their right to bring counterclaims for libel, slander and malicious prosecution. See Consolidated Joint Motion to Dismiss Claims with Prejudice and Settlement Agreement, as well as the Joint Statement from the Parties, attached. Although the withdrawal of the SLAPP suit does not prevent similar tactics

in the future, it does at least mean that the defamation litigation, and the fear associated with it, is behind us. Notably, though ADEM was fully apprised of the Landfill's activities, the conclusion was brought about not by ADEM but by a team of lawyers working pro bono on behalf of Ex. 6 Personal Privacy (PP) The dismissal of the suit is a positive development, but the litigation was but one aggressive tactic contributing to a pervasive atmosphere of intimidation in Uniontown. We would welcome the opportunity to provide more information in support of the intimidation complaint.

Please let me know when we might schedule time to discuss the status of the case.

Please note that I am cc'ing co-counsel at Earthjustice, as well as two students working on behalf of complainants under my supervision in the Environmental Justice Clinic at Yale, Joya Sonnenfeldt and Elham Shabahat.

Sincerely,

Marianne

Marianne Engelman Lado
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Ex. 6 Personal Privacy (PP)

From: "Dorka, Lilian" <Dorka.Lilian@epa.gov>
Date: Monday, January 9, 2017 at 9:28 PM
To: Marianne Engelman Lado Ex. 6 Personal Privacy (PP)
Cc: "Martinez, Brittany" <Martinez.Brittany@epa.gov>, "Covington, Jeryl" <Covington.Jeryl@epa.gov>, "Farrell, Ericka" <Farrell.Ericka@epa.gov>, "Temple, Kurt" <Temple.Kurt@epa.gov>, "Biffl, Betsy" <Biffl.Betsy@epa.gov>, "Tania Galloni (tgalloni@earthjustice.org)" <tgalloni@earthjustice.org>, Allison Kvien <akvien@earthjustice.org>, Marianne Engelman-Lado <marianne.engelman-lado@YLSClinics.org>, "O'Lone, Mary" <OLone.Mary@epa.gov>, "Lapierre, Kenneth" <Lapierre.Kenneth@epa.gov>, "HALIM-CHESTNUT, NAIMA" <Halim-Chestnut.Naima@epa.gov>, "Tommelleo, Nancy" <Tommelleo.Nancy@epa.gov>
Subject: Re: Follow Up on Uniontown, Alabama Complaint, EPA OCR File No. 01R-12-R4

Thanks Marianne for providing this information so quickly. We will consider it thoroughly and will get back to you soon with any additional questions. Lilian

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From: Marianne Engelman Lado Ex. 6 Personal Privacy (PP)
Sent: Monday, January 9, 2017 5:53 PM
To: Dorka, Lilian
Cc: Martinez, Brittany; Covington, Jeryl; Farrell, Ericka; Temple, Kurt; Biffl, Betsy; Tania Galloni (tgalloni@earthjustice.org); Allison Kvien; Marianne Engelman Lado
Subject: Follow Up on Uniontown, Alabama Complaint, EPA OCR File No. 01R-12-R4

Dear Lilian,

This email is submitted on behalf of Complainants in the complaint against the Alabama Department of Environmental Management ("ADEM") regarding its decisions to reissue and modify permits for Arrowhead Landfill in Uniontown, Alabama (EPA OCR File No. 01R-12-R4), and specifically is intended to follow up on our discussion last Friday, January 4, 2017. As we said on the phone, we appreciated the conversation.

As residents of Uniontown Ex. 6 Personal Privacy (PP) and other complainants live every day in the shadow of environmental contamination, fighting to defend their community from the effects of the coal ash and other material, much unknown in content to residents, that is deposited in Arrowhead Landfill. During last week's phone call, we were concerned that OCR may be discounting studies of air and water impacts as insufficient by themselves to meet a particular standard for determining adversity. As a starting point, it isn't clear what standard EPA may be using for determining adversity. At the same time, we are also concerned because Complainants submitted this evidence as indicative of adverse impacts with the understanding that OCR's role is to investigate and that OCR has the capacity to collect and evaluate additional evidence. A more complete discussion of the standard for determining "adversity" and how it is applied is subject for another day. At this point, given the range of impacts alleged, Complainants believe that OCR has more than ample evidence of the adverse impacts of ADEM's decisions to modify and reissue the permit for Arrowhead Landfill and urge OCR to make a finding of discrimination under Title VI of the Civil Rights Act of 1964 and EPA regulations, based on the unjustified disparate adverse impacts that residents of Uniontown experience as a result of those decisions.

The current location of the Landfill is unacceptable — in such close proximity to residences in this very low-income African American community; near other toxic sources also adversely affecting the environment, health and quality of life of community residents; and adjacent to a historic African American cemetery — and the experience with the Landfill supports the conclusion that the only appropriate remedy to bring ADEM into compliance is to require that ADEM revoke the permit and stay approval of the pending renewal and modification until ADEM comes into compliance with the law. Had ADEM complied with Title VI at the outset of its consideration of Arrowhead's applications for permits, including the modification and reissuance, as was its obligation, it would have had to take into account the already overburdened environment of Uniontown (which ADEM well knew) and the demographics of its population. The Landfill should never have been approved to operate at this location and certainly not without greater protections for the community living in proximity to the facility.

Remedies

During our call, you asked Complainants for specific remedial measures that ADEM should take to mitigate the adverse impacts of the Landfill, which are detailed below. In considering these measures, the issue is not whether ADEM's permit or the Landfill does or does not currently comply with environmental laws such as RCRA but, instead, whether this facility as permitted in this location has an unjustified disparate impact on the basis of race and what can be done to mitigate the impacts. This Landfill, for example, sits adjacent to a historic African American cemetery, a sacred site that survives from the days of Jim Crow. The unique circumstances of this permit require mitigation that may or may not be foreseen by RCRA or applicable to other facilities.

- Given the history and local conditions, ADEM must prohibit the receipt of "special waste" — that is, coal ash — at Arrowhead Landfill.

Given the documented history of contamination from the arrival of coal ash from Tennessee in 2010, the failure of ADEM to ensure that Arrowhead Landfill would be handled in a stable and financially secure manner so clearly illustrated by the bankruptcy of Perry County Associates, the owner of ADEM permit 53-03, authorizing the operation of the Landfill, and the economic status of this community, it would be unconscionable for Uniontown to continue to be a dumping ground for coal ash.

- Any permit of Arrowhead Landfill in Uniontown must include provisions to preserve New Hope Church Cemetery, respect its status and use as a sacred site, and protect the interests of family members of people who are interred in the Cemetery.

Measures to protect the New Hope Church Landfill and the interests of family members must include a prohibition on the use of heavy equipment on the site, a prohibition on disturbing the graves without the explicit permission of the descendants of those who are interred in those particular grave sites, a minimum 100 foot buffer between the border of the Cemetery (or where there are any suspected marked or unmarked graves, whichever is greater) and active or closed cells, the removal of any remaining monitors on Cemetery property, and a prohibition against the placement of other monitors on the site. The permit should also require Arrowhead Landfill to relocate the fence that has recently been installed by the Landfill away from all known and suspected grave sites after consultation with family members of those interred in the Cemetery and a provision requiring an ongoing commitment by the Landfill to pay for measures (clean-up and protection) to ensure future ingress and egress into the Cemetery and to gravesites.

- Consistent with EPA's previous recommendations in the *Yerkwood* case, ADEM must conduct a disproportionality analysis (or ensure that such analyses are performed by the County Commission during earlier stages in the permitting process) before making a decision regarding permit modifications and renewals at Arrowhead Landfill and all other permit applications in Alabama. Conducting a disproportionality analysis is a prerequisite for a recipient to ensure it is complying with Title VI and EPA regulations. Consistent with this obligation, ADEM must stay any decision on Green Group Holding's current application until the analysis is complete and ADEM must make the analysis public (including on ADEM's website) in a timely way so that interested parties will have access to the analysis when commenting on permit proposals.

OCR has already specifically cautioned ADEM that its "failure to adequately consider socioeconomic impacts (including race) at any point in the siting and permitting process for municipal solid waste landfills in Alabama" created a "significant potential" for failing to comply with Title VI. Letter from Karen D. Higginbotham, Dir., OCR EPA, to Luke Cole, Ctr. on Race, Poverty & the Env't & James W. Warr, Dir., ADEM at 80, EPA File No. 28R-99-R4 (July 1, 2003) ("*Yerkwood* Letter"), *available at* https://www.documentcloud.org/documents/2162712-epa_28r-99-r4.html. OCR stated, "this potential failure of consideration could lead, in the future, to ADEM-permitted landfills that have an adverse disparate impact on a population protected by EPA's Part 7 regulations." *Id.* Over time, complainants and representatives of other disproportionately affected communities in Alabama have appealed to ADEM to put systems, policies, and practices in place to collect demographic data, evaluate exposures, and analyze disproportionate impacts on the basis of race, color and national origin but thus far ADEM has refused. *See, e.g.,* ADEM Reform Coal., Environmental Justice for All Alabama Citizens (Apr. 11, 2014) (presented to Ala. Envtl. Mgmt. Comm'n), attached hereto as Ex. 2 . ADEM's continued failure to take the steps needed to ensure compliance with Title VI is unacceptable and cannot be defended as in some way limited by its authority under Alabama law. As OCR concluded in 2003, there is nothing in Alabama's solid waste law or implementing regulation that prohibits or limits ADEM's authority to consider safety and socio-economic impacts from landfill siting and to undertake independent analyses of such impacts during the state permitting process if necessary. *See Yerkwood* Letter at 92. To the contrary, Alabama law, "whose 'terms and obligations . . . shall be liberally construed to achieve remedies intended' gives ADEM broad authority to manage and regulate all aspects of solid waste disposal in Alabama." *Id.*

(emphasis in original).

- ADEM should require Green Group to fund community-based water and air monitoring, as well as dust and soil testing, by independent 3rd party monitors outside the permitter of the Landfill (in addition to site-based monitoring required by federal and state law).

- For all Arrowhead Landfill disposal cells containing coal ash, ADEM should require Green Group to install an additional final cover designed to encapsulate the coal ash, consisting of a geocomposite cover system (as recommended by EPA) such as the GSE TenFlow or the Enviro Liner 6000HD in 40 mil thickness, to provide greater protection for community residents and the environment.

- ADEM must require Green Group to develop and put into operation a fugitive dust plan with adequate dust control measures, including applying daily cover to active cells, paving and sweeping roads, covering with tarps all CCR when being transported on trucks and equipment, halting operations during high wind events, washing down dust on vehicles and equipment after handling CCR and before leaving the landfill premises.

- ADEM must require Green Group to provide adequate vector control measures, including applying daily cover to active cells.

- ADEM must require Green Group to provide appropriate training on hazardous materials clothing and protective equipment to all landfill employees, and to require hazmat compliance whenever employees are at risk of exposure to coal ash.

- ADEM must require Green Group to increase the buffer between any new or active cell and County Road 1 and to address any continued runoff from the Landfill onto County Road 1.

- ADEM must require Green Group to fund health monitoring for health conditions associated with proximity to landfills and coal ash exposure.

- ADEM must require that Green Group make information publicly accessible about the content of waste received at the Landfill.

- Recently Green Group has finally installed a fence around at least some of the perimeter of the facility. This fence is needed to prevent the conveyance of contaminants by wild animals, among other things. ADEM should ensure that the fence is continuous around the entire facility.

These measures are all in addition to the kinds of provisions that OCR considers the fundamentals, including an improved system for tracking complaints and making such complaints public, a Title VI coordinator dedicated to civil rights enforcement and with the resources to do an effective job, a clear civil rights policy that is posted not only on the ADEM website but also at ADEM-permitted sites, and a grievance procedure.

As discussed in the complaint in this matter and in our March 8, 2016 letter brief to OCR in this case, ADEM has ample express and implied authority to address these issues under the Alabama Administrative Code, which establishes ADEM's authority to regulate landfill practices that may cause odor and disease vectors and expressly establishes ADEM's authority to establish buffer zones to protect against adverse aesthetic impacts (e.g. noise, odor, and fugitive dust), through both rules and provisions applicable to an individual site. ADEM has broad statutory authority to place health and safety requirements on landfills through the promulgation of general regulations, which are then incorporated into individual permits, *see* Ala. Code § 22-27-12(1) (2014) (granting ADEM the authority to adopt rules to implement the regulation of solid waste facilities); Ala. Code §

22-27-12(2) (2014) (granting ADEM authority to adopt rules to establish requirements and restrictions for the management of solid waste); Ala. Code § 22-27-12(3) (2014) (granting ADEM the power to issue permits and to "specify the terms and conditions of permits"), as well as through conditions placed upon individual permits at the agency's discretion. *See, e.g.,* Ala. Admin. Code r. 335-13-4.11 (2014) (establishing that nothing in ADEM's hydrogeology standards "shall prevent the Department from requiring an additional buffer as it may deem appropriate with respect to a particular site", among other things.); *see also* Ala. Admin. Code r. 335-13-4.15 (2014) ("[d]aily, weekly, or some other periodic cover shall be required at all landfill units, as determined by the Department."); Ala. Admin. Code r. 335-13-4.16(2)(b) (2014) (discretion regarding requirements to install permanent gas monitoring structures, gas vents, gas control or recovery systems); Ala. Admin. Code r. 335-13-4.22(3)(b) (2014) ("additional requirements for operating and maintaining a [municipal solid waste landfill] may be imposed by the Department, as deemed necessary to comply with the Act and this Division.").

Please let us know if this email raises any question. We sought to provide this information quickly but would welcome the opportunity to provide additional clarification, and we look forward to touching base on the status of the case in the coming days.

Sincerely,

Marianne

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Ex. 6 Personal Privacy (PP)

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