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June 30, 2017

Mr. Kevin Minoli
U.S. EPA, Office of General Counsel
1200 Pennsylvania Avenue, NW (MC2310A)
Washington, DC 20460

Dear ~~Mr. Minoli~~: Kevin

This letter is a follow up on our telephone conversation last Friday. My objective is to set out our thinking as it relates to our non-discrimination program and the Title VI complaints you and we are seeking to resolve.

The External Civil Rights Compliance Office (ECRCO) has received three Title VI complaints related to three landfill permits in Alabama: EPA File No. 13R-16-R4 the City of Dothan Landfill (permit modification); EPA File No. 12R-13-R4, Perry County Associates, LLC – Arrowhead Landfill (permit renewal); EPA File No. 16R-17-R4 the Tallassee – Stone's Throw Landfill (permit renewal). The issues to be investigated were:

DOTHAN
"Whether ADEM discriminated against African-American residents in the surrounding community on the basis of race/color through the modification of the solid waste disposal permit number 35-06 and authorization to the City of Dothan to expand the City of Dothan Sanitary Landfill in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation."

"Whether the ADEM is complying with the procedural safeguard provision delineated in 40 C.F.R. Part 7 Subpart D, which requires recipients of EPA financial assistance to have specific policies and procedures in place to comply with their affirmative non-discrimination obligations."

PERRY COUNTY
"Whether ADEM violated Title VI and EPA's implementing regulations on September 27, 2011, by reissuing Permit No. 53-03 to Perry County Associates, LLC to construct and operate the Arrowhead municipal solid waste landfill in Perry County, Alabama, and, whether the Arrowhead landfill permit renewal will adversely and disparately impact the African-American residents in the nearby community."

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3664 Dauphin Street, Suite B
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"Whether ADEM violated Title VI and EPA's implementing regulations on February 3, 2012, by authorizing a permit modification to expand the disposal area of the Arrowhead municipal solid waste landfill in Perry County, Alabama, by 169.17 acres (66%), and, whether the modification will have the effect of adversely and disparately impacting the African-American residents in the surrounding community."

TALLASSEE
"Whether ADEM's issuance of the February 10, 2017 operating permit renewal for the Stones Throw Landfill discriminated against the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race in violation of Title VI of the Civil Rights Act and EPA's implementing regulation at 40 C.F.R. Part 7."

"Whether ADEM's method of administering its Solid Waste Disposal permitting program subjects the predominantly African-American residents of the Ashurst Bar/Smith community to discrimination on the basis of race in violation of Title VI of the Civil Rights Act and EPA's implementing regulation at 40 C.F.R. Part 7."

It is our understanding the ECRCO investigation of the complaints has reviewed or is reviewing the following information:

Information provided by the complainants; ADEM documents requested by ECRCO and provided by ADEM (including ADEM's non-discrimination procedures, community outreach documents, the 2004 OCR audit of the ADEM non-discrimination program, community public hearing and meeting documents, etc.); newly passed Alabama state statute providing for increased public participation in, and court review of, the local landfill siting process; and, information independently developed by ECRCO.

ADEM believes the three Title VI claims contain a sufficient number of issues in common to warrant concurrent comparable determinations. ADEM believes that upon completion of its investigation of the three complaints, ECRCO will determine there is insufficient evidence to conclude a violation of Title VI for the following reasons:

a. To date, ECRCO has not identified any ADEM non-discrimination procedures that materially fail to meet the requirements of Title VI or EPA's implementing regulation therefore, the DOTHAN, PERRY COUNTY, and TALLASSEE permit actions did not procedurally violate Title VI.
b. There was no final administrative action related to the DOTHAN complaint upon which a Title VI complaint could be filed [ECRCO previously dismissed this issue].

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c. The February 3, 2012 permit modification to the PERRY COUNTY landfill permit was an authorization to utilize an increased portion of the disposal area within the landfill footprint that was previously approved to be utilized for disposal by the Perry County Commission, which is the relevant local approving authority.
d. Utilizing the procedures set out in ECRCO "Case Resolution Manual' and its "Compliance Toolkit", the tests for disparate treatment and disparate impact for PERRY COUNTY were not met, in the same manner they were previously determined not to have been met for TALLASSEE. [ECRCO findings are anticipated to confirm this.]
e. The Title VI complaint based on the issuance of the February 10, 2017 operating permit renewal for the TALLASSEE – Stones Throw Landfill involved no major modifications to a 2011 permit renewal. A Title VI complaint based on the same issues in a 2003 permit modification was closed on April 28, 2017 which would warrant likewise closing of the new complaint.

In the interest of strengthening the ADEM non-discrimination program the following actions were implemented by ADEM as a result of recommendations by ECRCO:

1. ADEM non-discrimination procedures were consolidated into a manual that will be accessible to the public on the ADEM website.
2. The public is notified in the non-discrimination manual that the standard for determination of discrimination is the preponderance of evidence.
3. Notification of accessibility for persons with disabilities is more prominently displayed on the ADEM website.
4. Notification of accessibility for persons with Limited English Proficiency is more prominently displayed on the ADEM website.
5. A list of employees that speak a language other than English has been compiled to provide live immediate personal assistance to individuals with limited English proficiency.
6. ADEM's website was expanded to more prominently display the non-discrimination statement, non-retaliation statement, grievance procedures in four languages, and non-discrimination coordinator's information.
7. The name of the individual designated as the non-discrimination coordinator is stated on the ADEM website.
8. A dedicated standard e-mail address was created to facilitate communication between citizens and the non-discrimination coordinator.
9. A more explicit non-discrimination statement has been added to all ADEM public notices.
10. Upon completion of the EPA basic Civil Rights Title VI training, which has been required of all ADEM employees, each employee will now be required to pass a test following completion of the training exercise.
11. ADEM has developed formal Standard Operating Procedures for investigating discrimination claims.

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12. ADEM will more widely utilize the E J Screen tool in public outreach and other Departmental activities.
13. ADEM will more widely utilize the "public availability session" public outreach option which allows for one-on-one interface between individual ADEM representatives and individual citizens.
14. ADEM will expand its onsite training programs in individual communities on how to navigate the ADEM web site, including non-discrimination procedures, e-file, e-complaint and "what's happening in your county".

The approach being suggested is more comprehensive than what has been considered previously but it is a reasonable means to address all the outstanding issues related to ADEM's non-discrimination programs without a piecemeal methodology. Obviously, this approach would require a somewhat longer timeframe than what we discussed last week. If you would like to discuss this further please call me. I look forward to working with you whichever approach is taken.

Sincerely,

Lance R. LeFleur
Director

LRL/lc

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