LAW OFFICE OF
DAVID A. LUDDER
A Professional Limited Liability Company

August 22, 2013

Ms. Vicki Simons, Director
Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: **Alabama Department of Environmental Management's Failure to Comply with Financial Assistance Award Condition Regarding Title VI**

Dear Ms. Simons:

Effective January 23, 2013, the U.S. Environmental Protection Agency (EPA) has included the following condition in EPA financial assistance awards:

> In accepting this assistance agreement, the recipient acknowledges it has an *affirmative obligation to implement effective Title VI compliance programs* and ensure that its actions do not involve discriminatory treatment and do not have *discriminatory effects* even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

(Emphasis added).

On July 24, 2013, I submitted the following public records request to the Alabama Department of Environmental Management (ADEM):

> Please provide a copy of any written Title VI compliance program(s) that ADEM has and/or is implementing to ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral.

On August 15, 2013, ADEM responded to the public records request as follows:

> It is the Department's practice to comply with all Federal and State statutes, including Title VI. There are no documents that conform to those requested in your Public Records Request.

ADEM does not make it a practice to conduct adverse impact and demographic analyses to analyze new and existing sources, stressors, and adverse impacts with relevant demographic information, especially potential cumulative adverse impacts, to provide confidence that Title VI concerns are identified and appropriately addressed. To my knowledge, ADEM does not concern

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itself with Title VI compliance unless a complaint is filed with EPA's Office of Civil Rights. Even then, its practice is simply to defend against the complaint. Simply put, ADEM is not implementing an effective Title VI compliance program as required by the January 23, 2013 financial assistance award condition.

40 C.F.R. § 7.115(a) provides with respect to financial assistance already awarded to the recipient:

> The OCR may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews when it has reason to believe that discrimination may be occurring in such programs or activities.

40 C.F.R. § 7.110(a) provides with respect to financial assistance pending award to the recipient:

> Within EPA's application processing period, the OCR will determine whether the applicant is in compliance with this part and inform the Award Official. This determination will be based on the submissions required by § 7.80 and any other information EPA receives during this time (including complaints) or has on file about the applicant. When the OCR cannot make a determination on the basis of this information, additional information will be requested from the applicant, local government officials, or interested persons or organizations, ... The OCR may also conduct an on-site review only when it has reason to believe discrimination may be occurring in a program or activity which is the subject of the application.

Because ADEM is not implementing an effective Title VI compliance program, I request that the Office of Civil Rights investigate whether ADEM is in violation of the January 23, 2013 financial assistance award condition regarding Title VI. If ADEM is in violation, I request that EPA terminate or suspend further financial assistance to ADEM until ADEM can demonstrate that it has an effective Title VI compliance program.

Sincerely,

David A. Ludder