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

March 30, 2016

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail #: 7015 1520 0002 0019 2304

In Reply Refer to:
EPA File Nos: 06R-03-R4,
12R-13-R4, and 13R-16-R4

Mr. Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36130-1463

Re: Request for Information, EPA File Nos. 06R-03-R4, 12R-13-R4, and 13R-16-R4

Dear Mr. LeFleur:

The U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is requesting information to facilitate the investigations of several allegations concerning the Alabama Department of Environmental Management (ADEM). OCR is currently investigating complaint file nos. 06R-03-R4 (Tallassee[1]), 12R-13-R4 (Arrowhead Landfill), and 13R-16-R4 (Dothan Sanitary Landfill). In addition to investigating the environmental and health impacts arising from the issuance of permits or permit modifications in these cases, OCR is investigating whether ADEM is complying with the procedural safeguard provisions of 40 C.F.R. Part 7 Subpart D which require recipients of EPA financial assistance to have specific policies and procedures in place to comply with their affirmative non-discrimination obligations.[2]

OCR recognizes that ADEM has made information publicly available on its website; however, OCR needs additional information in order to investigate the accepted allegations. Pursuant to its authority under 40 C.F.R. §7.115, OCR requests ADEM to provide the information and documents outlined in the enclosed attachment (Enclosure 1) within thirty (30) **calendar days** of receipt of this letter. Please provide any other information that ADEM would like EPA to consider while investigating the allegations in these complaints. For your convenience, ADEM may provide electronic versions of the requested responses and documents.

Please review and follow the enclosed instructions (Enclosure 2) prior to responding to the questions set forth in Enclosure 1. Failure to provide the information required by this letter may result in one or more of the actions outlined in 40 C.F.R §7.130, including referral to the Department of Justice. *See*

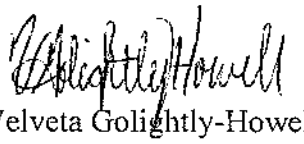
[1] The Tallassee Waste Disposal Center is currently known as the Stone's Throw Landfill, but for consistency with the name when the complaint was filed, OCR is referring to this as Tallassee.
[2] Acceptance of Administrative Complaint no. 13R-16-R4 from Velveta Golightly-Howell, Director of OCR, EPA to Director Lance R. LeFleur, ADEM. (February 24, 2016).

also, Department of Justice, Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes, September 1998, section V(D)(3)(c).

After OCR's review of the information ADEM provides, OCR may request additional information and/or documents, so please preserve all electronic communications and other documents that may be relevant to the investigations. Please be sure to provide the name and telephone number of the individual who compiled the information in response to this Information Request, and the name and telephone number of the individual to whom OCR should direct any future questions.

If you have any questions, please feel free to contact Lilian Dorka, OCR's Deputy Director at 202-564-9649, by email at dorka.lilian@epa.gov or U.S. mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460-1000. Thank you in advance for your cooperation.

Sincerely,



Velveta Golightly-Howell
Director
Office of Civil Rights

Enclosures: 1 - Questions
2 - Instructions

cc: Elise Packard
Assistant General Counsel
Civil Rights and Finance Law Office

Kenneth LaPierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 4

Naima Halim Chestnut
Office of Policy & Management
U.S. EPA Region 4

Nancy Tommelleo
Deputy Regional Counsel
Office of Regional Counsel
U.S. EPA Regional 4

Enclosure 1

EPA File No. 06R-03-R4
EPA File No. 12R-13-R4
EPA File No. 13R-16-R4

Information Request to ADEM

Provide the following information using the instructions included as Enclosure 2. A response must be sent to the EPA within thirty (30) calendar days of ADEM's receipt of this request for information letter. However, if there is a specific question(s) that you believe will require additional time for response please contact us immediately to discuss and we can arrange a different time frame.

1) Please confirm whether ADEM has designated at least one Non-Discrimination Coordinator to ensure ADEM's compliance with Title VI, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).

   If ADEM's response is "yes", please identify this individual's name, title, and contact information and describe how ADEM ensures its Non-Discrimination Coordinator:

   a. Provides information to individuals regarding their right to services, aids, benefits, and participation in any ADEM program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination, as well as notice of ADEM's formal and informal grievance processes and the ability to file a discrimination complaint with ADEM.

   b. Establishes grievance policies and procedures or mechanisms (*e.g.*, an investigation manual) to ensure that all discrimination complaints filed with ADEM under federal non-discrimination statutes are processed promptly and appropriately.

   c. Ensures the tracking of all discrimination complaints filed with ADEM under federal non-discrimination statutes including any patterns or systemic problems.

   d. Conducts a semiannual review of all formal and informal discrimination complaints filed with the ADEM Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by ADEM in order to identify and address any patterns or systemic problems.

   e. Informs and advises ADEM staff regarding ADEM's obligations to comply with federal non-discrimination statutes and serve as a resource on such issues.

   f. Ensures that complainants are updated on the progress of their discrimination complaints filed with ADEM under federal non-discrimination statutes and are promptly informed as to any determinations made.

g. Periodically evaluates the efficacy of ADEM's efforts to provide services, aids, benefits, and participation in any ADEM program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination.

h. Ensures appropriate training in the formal and informal processes available to resolve complaints filed under federal non-discrimination statutes.

i. Provides or procures appropriate services to ensure ADEM employees are appropriately trained on ADEM non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.

2) We understand that ADEM has posted its notice of non-discrimination on the ADEM website.[3] Please confirm whether ADEM currently posts its notice of non-discrimination in any other general publications that are distributed to the public. Please explain whether the notice of non-discrimination includes the following:

a. ADEM's responsibilities for coordination of compliance efforts and whether they respond to inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

b. Contact information for the Non-Discrimination Coordinator to respond to any questions about this notice or any of ADEM's non-discrimination programs, policies or procedures.

3) What is ADEM's process for providing grievance procedures to the public? How is the public informed of this process?

4) Please confirm whether ADEM ensures that its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes are published in print in general publications distributed to the public. Please confirm whether the grievance procedures at a minimum address the following:

a. Who may file a complaint under the procedures;

b. Which processes are available, and the options for complainants in pursuing either;

c. That an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted;

d. That the preponderance of the evidence standards will be applied during the analysis of the complaint;

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[3] 40 C.F. R. § 7.95 (a).

e. Assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs:

f. That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.

5) Please confirm and describe ADEM's process for providing public involvement to potentially affected and affected communities regardless of race, color, national origin (including limited-English proficiency), age, disability, and sex. Additionally, please state whether ADEM's public participation process/procedures includes the following:

a. An overview of ADEM's plan of action for addressing the community's needs and concerns;

b. A description of the community (including demographics, history, and background);

c. A contact list of ADEM's officials with phone numbers and email addresses to allow the public to communicate via phone or internet;

d. A list of past and present community concerns and how those concerns were answered (including any Title VI complaints or complaints relating to any of the other federal non-discrimination statutes enforced by EPA);

e. A detailed plan of action (outreach activities);

f. A contingency plan for unexpected events;

g. Location(s) where public meetings will be held (consider the availability and schedules of public transportation);

h. Contact names for obtaining language assistance services for limited-English proficient persons, including, translation of documents and/or interpreters for meetings;

i. Appropriate local media contacts (based on the culture and linguistic needs of the community); and

j. Providing the public with location/s of information repository/ies.

6) Please submit a copy of the processes, policies, and/or procedures by which ADEM provides access to its services and programs for individuals with disabilities. Additionally, if ADEM does not have a written policy in place, please note that in your response.

If ADEM does not have a standing documented policy for providing access to its services and programs for individuals with disabilities, please describe in detail any decision making process

utilized for providing such services. Answer the questions below and then provide any other information that OCR may find useful:

a. How does ADEM ensure that ADEM facilities and non-ADEM facilities utilized by ADEM (i.e., if ADEM holds a public hearing at a school, etc.) are physically accessible for individuals with disabilities?

b. How does ADEM make communities it serves aware that services for individuals with disabilities are available?

c. Are live proceedings such as town hall meetings or public hearings simultaneously interpreted into sign language? If so, what hearings? Who conducts the sign language interpretation? What are the sign language interpreters' qualifications?

d. How are resources for these disability accommodation services allocated?

e. How does ADEM determine which disability accommodation services are needed for ADEM sponsored public events?

7) Please provide a copy of the processes, policies, and/or procedures by which you provide access to ADEM's services and programs for individuals with limited English proficiency (LEP). Additionally, if ADEM does not have a written policy in place, please note that in your response.

If ADEM does not have a standing documented policy for providing access to ADEM's services and programs for individuals with limited English proficiency (LEP), please describe in detail any decision-making process utilized for providing such services. Answer the questions below and then provide any other LEP-related information that OCR may find useful:

a. How does ADEM you make communities it serves aware that foreign language services are available?

b. Are any standardized documents translated? If so, what documents and into what languages? Who were they translated by? What are the translators' qualifications?

c. Are live proceedings such as town hall meetings or public hearings simultaneously orally interpreted into other languages? If so, what hearings and into what languages? Who conducts the interpretation? What are their qualifications?

d. How are resources for these services allocated?

e. How is it decided who receives foreign language services?

8) Please describe how ADEM monitors and oversees compliance efforts and responds to inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the

Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

9) Please provide, excluding employment discrimination complaints, copies of any race, color, or national origin discrimination complaints raised since 2003 through ADEM's grievance procedures that are required by EPA's Non Discrimination regulations for programs or activities receiving EPA assistance and ADEM's subsequent response to those complaints.

10) Has ADEM received any complaints or comments since 2003 through the permitting process or other avenues regarding the effects or impacts of the modification of Solid Waste Disposal Facility Permit No. 35-06 and the authorization of the City of Dothan to expand the City of Dothan Sanitary Landfill regarding the adverse and disparate impacts on African American residents in the surrounding community.

    i. If so, provide copies of any records documenting the concern or comments raised and copies of ADEM's responses to each concern or comment raised.

11) Has ADEM ever conducted, procured, received or requested an analysis regarding any adverse or disparate impacts of the expansion of the Dothan and / or Tallassee Landfills on the African American community that is in the surrounding area? If so, please provide a copy of the analysis or analyses.

12) Has ADEM reviewed, analyzed, evaluated or altered permit or monitoring conditions based on any studies or analyses regarding any effects or impacts, including health effects, in regards to the Dothan, Arrowhead, and Tallassee landfills? If so, please provide a copy of any reports or memoranda prepared regarding those reviews. Please also provide a description of any actions taken by ADEM in response to information contained in those studies or analyses.

13) Has ADEM received any complaints about the drinking and surface water in the community surrounding the Arrowhead Landfill since June 2013? Has anyone requested or recommended that ADEM test the drinking water, including well water and the drinking water provided through the public water system, and surface water for potential contamination and/or runoff from the Landfill since June 2013? If so, please provide copies of such complaints and/or requests and a description of ADEM's actions in response to the complaints and/or requests.

14) Has ADEM performed any surface water or drinking water tests, publically or privately supplied, surrounding the Arrowhead Landfill since June 2013? If so, please provide the documentation relating to the surface and/or drinking water analysis and identify any action taken by ADEM in response to the analysis.

15) During a meeting with the EPA's Office of Civil Rights and Office of General Counsel on February 2, 2016, ADEM officials indicated that while its grievance procedure was not posted on its website or otherwise publicized that any member of the public who called ADEM's Title VI Coordinator would be directed to an internal document that described the grievance procedure. However, on February 5, 2016, witnesses testified before the United States Commission on Civil Rights. One witness indicated that they requested for ADEM to provide them with any documentation regarding their nondiscrimination compliance program.

The witness stated that ADEM's response was "[i]t 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."[4]

Please provide the following from 2004 to present day:

a) A copy of any internal memo that contains ADEM's nondiscrimination policies and/or grievance procedures.

b) Information, data or documentation that supports ADEM's description of the effectiveness of its grievance procedures for discrimination complaints.

c) Relevant information that responds to or rebuts the statements by members of the public about ADEM's grievance procedures for discrimination complaints.

d) Any logs, records or documentation: 1) identifying members of the public who called or wrote about claims of discrimination; 2) what information was requested, including information about ADEM's grievance procedures; and 3) what information ADEM provided.

   If no documentation is kept regarding public contact, describe what process ADEM developed to ensure that information about its grievance procedures for discrimination complaints is shared with the public.

e) Describe how ADEM periodically evaluates whether the Title VI Coordinator is effective in providing the public information about its grievance procedures for discrimination complaints.

[4] Statement of David A. Ludder, Esq. U.S. Commission on Civil Rights Briefing: Environmental Justice: Toxic Materials, Poor Economics, and the Impact of the Environment on Low-Income, Minority Communities. (February 5, 2016).

Enclosure 2

INFORMATION REQUEST

INSTRUCTIONS

Each of the following instructions applies to each and every question contained in the letter.

1. ADEM must provide a written response to each request for information, even if such a response is a statement reflecting that no responsive information or documents exist. Each response should be preceded by the number and content of the question being answered.

2. If ADEM's response to a particular question requires a scanned or hard copy document, ADEM must identify the filename or document title. Make sure to correlate any hardcopy or scanned documents to a specific question. If a document is responsive to more than one question, this must be so indicated and only one copy of the document needs to be provided.

3. ADEM may choose to either submit documents in .pdf format or as hard copy documents. However, electronic submissions are preferred. Should ADEM choose to provide .pdf electronic documents, do not create separate .pdf files for each page of a single document. Files publicly available online must be downloaded and submitted either in .pdf format or in hard copy. Files submitted must be those utilized in ADEM's decision-making process, not later drafts.

4. Identify each person whom ADEM relied on or consulted with in preparing its responses to each question of this information request. Provide the individuals' names, titles, job duties and duration of employment with ADEM. If they are not an employee of ADEM, identify their employer and provide their names, title, job duties and duration of employment with their employer.

5. Identify each document consulted, examined, or referred to in the preparation of ADEM's response or that contains information responsive to the question, and provide a true and correct copy of each such document if not provided in response to another specific question. Indicate on each document produced in response to this information request the number of the question to which it corresponds.

6. If requested information or documents are not known or are not available to ADEM at the time of ADEM's response to this information request, but later become known or available to ADEM, ADEM must supplement ADEM's response to the EPA within thirty (30) **calendar days** of discovery of the responsive information. However, if there is a specific question(s) that you believe will require additional time for response please contact us immediately to discuss and we can arrange a different time frame. Moreover, should ADEM find at any time after submission of ADEM's response that any portion is or becomes false, incomplete or misrepresents the facts, ADEM must provide the EPA with a corrected response as soon as possible.

7. Provide a separate response to each and every question, and each and every subpart of a question.