



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

October 3, 2023

In Reply Refer to:

EPA Complaint No. 03R-23-R4

Lance LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Post Office Box 301463
Montgomery, AL 36111-2400
llefleur@adem.alabama.gov

Re: Acceptance of Administrative Complaint

Dear Director LeFleur:

The U.S. Environmental Protection Agency (EPA), Office of Environmental Justice & External Civil Rights, Office of External Civil Rights Compliance (OECRC), is accepting for investigation the administrative complaint filed by the Southern Poverty Law Center (on behalf of the Center for Rural Enterprise and Environmental Justice) and the Natural Resources Defense Council against the Alabama Department of Environmental Management (ADEM, EPA Complaint No. 03R-23-R4), which EPA received on March 6, 2023. The Complaint alleges that ADEM discriminates against the Black residents of Alabama, particularly residents of the Black Belt region of Alabama,¹ on the basis of race, through its implementation of the Alabama Clean Water State Revolving Fund (SRF). Specifically, the complaint alleges that ADEM prevents Black residents from accessing federal SRF support to improve onsite sanitation access, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.

Pursuant to EPA's nondiscrimination regulation, OECRC conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial

¹ The complaint uses the term "Black Belt" to refer to the following 17 Alabama counties: Greene, Sumter, Choctaw, Hale, Marengo, Perry, Dallas, Wilcox, Lowndes, Butler, Montgomery, Crenshaw, Macon, Butler, Pike, Russell, and Barbour.

assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, OECRC has determined that the Complaint against ADEM meets the jurisdictional requirements stated above. First, the allegations are in writing. Second, the Complaint alleges discrimination that, if true, may violate the EPA's nondiscrimination regulation. Third, the Complaint alleges a discriminatory act that occurred within 180 days of filing the Complaint. Finally, it alleges discriminatory acts by ADEM, which is a recipient of EPA financial assistance.²

OECRC will investigate the following issues:

1. Whether ADEM's implementation of the Clean Water State Revolving Fund (CWSRF) program, including its public engagement and outreach practices, excludes from participation, denies benefits to, or subjects to discrimination, residents in the Black Belt region of Alabama, on the basis of race in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 43 USC § 2000d et seq., and EPA's nondiscrimination regulation, 40 C.F.R. Part 7,³ and
2. Whether ADEM has and is implementing grievance procedures that provide prompt and fair resolution of discrimination complaints which allege violations of federal non-discrimination laws, consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.⁴

The initiation of an investigation of the issues above is not a decision on the merits. OECRC is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the Complainant, and determine next steps utilizing OECRC's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and OECRC's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

OECRC is providing ADEM with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter, notifying ADEM of the acceptance of Administrative Complaint No. 03R-23-R4. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact Complainants and ADEM within 10 days of the date of this letter to provide information about

² The Complaint also identifies the State of Alabama Legislature as an entity that has prevented the use of the Clean Water State Revolving Fund for on-site sanitation needs. However, OECRC is not accepting for investigation the allegations against the Legislature (Complaint No. 04R-23-R4) because it is not a recipient of EPA financial assistance.

³ *See* 40 C.F.R. § 7.30.

⁴ *See* 40 C.F.R. § 7.90; §§ 5.135 (b) and 5.140.

OECRC's complaint process, and to offer and discuss the alternative dispute resolution (ADR)⁵ and informal resolution agreement⁶ processes as potential options for resolving the issues which OECRC has accepted for investigation. If ADEM (and Complainants with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend the timeline for issuing preliminary findings within 180 days of initiating the investigation. In the event that either of these potential resolution processes fail to result in an agreement, OECRC will notify ADEM as well as Complainants that OECRC has resumed its process to issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁷

Attached, please find a copy of the Complaint, consistent with 40 C.F.R. § 7.120(e). OECRC is releasing the Complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁸

EPA's regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OECRC.

If you have any questions, please contact the Case Managers assigned to this matter, V'Hesspa Glenn (202-564-8029, glenn.vhesspa@epa.gov) or Nell Cormack (202-565-2242, cormack.nell@epa.gov) or me (202-809-3297, hoang.anhthu@epa.gov).

Sincerely,

Anhthu Hoang
Acting Director
Office of External Civil Rights Compliance
Office of Environmental Justice &
External Civil Rights

Enclosures: Redacted complaint and supplemental materials, via E-Mail

⁵ EPA OECRC's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, OECRC Case Resolution Manual, Section 3.3, p.24 https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

⁶ Informal Resolution occurs between OECRC and the recipient. *See* https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

⁷ *See* 40 C.F.R. § 7.115(c).

⁸ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Carol Kemker
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
US EPA Region 4

Leif Palmer
Regional Counsel
US EPA Region 4