

To Whom it may concern,

The (b) (6) Privacy, (b) (7)(C) Enforcement Privacy hereby requests that the U.S Environmental Protection Agency (“EPA”) initiate its Complaint of Discrimination process pursuant to 40 C.F.R. § 7.120 (2010) and conduct a thorough review of the issues raised below with respect to the rock quarry proposed for the community of (b)(6) Privacy, (b)(7)(C) Enf. Privacy. At this juncture, time is of the essence for the (b)(6) Privacy, (b)(7)(C) Enf. Pri community – particularly since, today, ADEM issued Air Permit No. 708-0036-X001 and National Pollutant Discharge Elimination System (“NPDES”) Permit No. AL0084480 to the quarry operators, and seemingly, quarry operations have begun. It is probably worth noting in the context of this request, by the way, that, despite dozens of comments regarding the air permit and the quarry, not a single revision was made by ADEM to the air permit to address those concerns. Such is the reality of the situation facing (b)(6) Privacy, (b)(7)(C) Enf. P.

The (b)(6) Privacy, (b)(7)(C) (b)(6) Privacy, (b)(7)(C) Enf. Privacy

(b)(6) Privacy, (b)(7)(C) Enf. Privacy members (some of whom are veterans of military service) who are elderly, disabled, suffer health issues, and are living on low or fixed incomes.

The (b)(6) Privacy, (b)(7)(C) formed in response to a proposed limestone quarry, to be constructed in the community of (b)(6) Privacy, (b)(7)(C) Enf. P, where all of these congregations are located. Specifically, the (b)(6) Privacy, (b)(7)(C) formed in an effort to ensure the various congregations receive just treatment and opportunities for meaningful involvement in the course of the quarry’s permitting process.

The (b)(6) Privacy, (b)(7)(C) is aware that ADEM receives Federal financial assistance, through EPA, to undertake various programs and activities – to include permitting facilities such as the (b)(6) Privacy, (b)(7)(C) Enf. P quarry. Accordingly, EPA has a legal obligation, pursuant to Title VI of the Civil Rights Act of 1964, to ensure that ADEM’s permitting of the (b)(6) Privacy, (b)(7)(C) Enf. P quarry (and, for that matter, ADEM’s implementation of its own Title VI regulations) does not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin. 42 U.S.C. § 200d et seq (1964). And, because the (b)(6) Privacy, (b)(7)(C) believes that federally-funded ADEM has, in fact, conducted its permitting of the (b)(6) Privacy, (b)(7)(C) Enf. P quarry using criteria, methods, and practices in a manner that has resulted in discriminatory processes and outcomes (and conducted its own Title VI investigation of the same in a similar manner), the (b)(6) Privacy, (b)(7)(C) believes that EPA’s own Title VI obligations have now been implicated.

The (b)(6) Privacy, (b)(7)(C) E concerns should also be viewed in the context of EPA’s longstanding commitment to ensuring and advancing “environmental justice”; i.e., “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment ...” *Environmental Justice*, United States Environmental Protection Agency (Sept. 16, 2024), <https://www.epa.gov/environmentaljustice>. Environmental justice requires that people such as the residents of (b)(6) Privacy, (b)(7)(C) Enf. P :

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of

environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.”

*Environmental Justice*, United States Environmental Protection Agency (Sept. 16, 2024), <https://www.epa.gov/environmentaljustice>.

Such protection and access, however, threatens to be denied in <sup>(b)(6) Privacy, (b)(7)(C) Enf. Pri</sup> as detailed below.

As an initial matter, ADEM, in the fall of 2023, determined, prior to any public notice, comment, outreach, or the like, , that, following its own internal “Environmental Justice analysis” of the Air Permit application, “enhanced outreach [to the public] is not necessary.” Given the actual reality of the socioeconomics of the <sup>(b)(6) Privacy, (b)(7)(C) Enf. P</sup> community, this determination that there was no need for enhanced outreach to what is obviously a community with environmental justice concerns was, in short, unexpected. At that point, however, <sup>(b)(6) Privacy, (b)(7)(C) Enf. Privac</sup> residents were not even aware that a quarry was being considered for their community.

The ramifications of ADEM’s failure to conduct any degree of enhanced outreach to the community were magnified by the manner in which the public notice and public comment period ultimately unfolded. ADEM initially posted the public notice regarding the quarry’s proposed permits on its webpage on December 1, 2023,. At that point, ADEM gave the public 30 days to submit comments to ADEM regarding the proposed permits. By picking December 1, 2023, to start the 30-day public comment period, ADEM selected a month essentially shortened or otherwise compromised by the holiday season. It should also be noted that, with respect to the NPDES permit in particular, 30 days was the minimum number of days for which a public notice period was required and that it would have been within ADEM’s discretion to extend that comment period further had ADEM desired. Furthermore, rather than proactively scheduling a public hearing, ADEM put the onus on the members of the <sup>(b)(6) Privacy, (b)(7)(C) Enf. P</sup> community to request a public hearing to offer in-person comments on a 199-acre quarry to be located literally across the road from <sup>(b)(6) Privacy, (b)(7)(C) Enf. Privacy</sup>.

In the wake of the ensuing public outcry, ADEM agreed to hold a public hearing. The hearing took place on March 7, 2024, and the public comment period deadline was extended to, first March 8, 2024, and then March 22, 2024. At the public hearing, a request was made for ADEM to make its, as-of-that-time-yet-provided, Environmental Justice analysis available to the public; such was released the following week but only days before the public comment period ended (and some 3 months into the public comment period).

At that point, after ADEM avoided having to publicly address the deficient Environmental Justice analysis at the public hearing and only days before the public comment period closed, the <sup>(b)(6) Privacy, (b)(7)(C)</sup> and the general public first learned that ADEM based its so-called “Environmental Justice analysis” on its completion of a desktop, computer model-based Environmental Justice Screen (“EJScreen”). At that point, the reason for ADEM’s error became clear – ADEM had, in fact, misapplied the EJScreen tool. Rather than relying solely on the EJScreen to generate definitive conclusions (as ADEM had apparently done), ADEM should have recognized that, as EPA has explained, “it is important to understand that EJScreen is not a detailed risk analysis. It is a screening tool that examines some of the relevant issues related to environmental justice, and there is uncertainty in the data included. It is important to understand both of these limitations ... Many environmental

concerns are not yet included in comprehensive, nationwide databases. For example, data on environmental factors such as drinking water quality and indoor air quality are not available with adequate quality, coverage and/or resolution to be included in this national screening tool. EJScreen cannot provide data on every environmental impact and demographic factor that may be important to any location. Therefore, its initial results should be supplemented with additional information and local knowledge whenever appropriate, for a more complete picture of a location.” *Issues not Covered by EJScreen*, United States Environmental Protection Agency (Jan. 9, 2024), <https://www.epa.gov/ejscreen/limitations-and-caveats-using-ejscreen>.

As a result of ADEM’s mistaken use of the EJScreen, ADEM reached an erroneous conclusion regarding the actual need for enhanced outreach to identify and address (b)(6) Privacy, (b)(7)(C) Enf. Privacy environmental justice concerns. Accordingly, no enhanced outreach was conducted. The failure to do so created a discriminatory impact to the (b)(6) Privacy, (b)(7)(C) Enf. P community and the congregants of the churches represented by the (b)(6) Privacy, (b)(7)(C) Enf. Privacy.

ADEM’s failure in this regard was exacerbated when ADEM received (and rejected) requests at (and in connection with) the public hearing to extend the public comment period. Importantly, one of the reasons an extended public comment period was requested was because the (b)(6) Privacy, (b)(7)(C) Enf. Privacy had, in the course of its own unilateral outreach efforts to EPA Region 4, procured the services of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy. In the absence of the earlier denied “enhanced outreach” to its community, the (b)(6) Privacy, (b)(7)(C) Enf. Privacy was, frankly, scrambling in the 11th hour of this public notice/comment process to obtain assistance to evaluate the technical permit applications on public notice and to offer appropriate comments regarding them during the public comment period. The (b)(6) Privacy, (b)(7)(C) Enf. Privacy, as a federally-funded Thriving Communities – Technical Assistance Center, had the capability to do so but was not able to schedule an initial meeting and listening session with the (b)(6) Privacy, (b)(7)(C) Enf. Privacy until March 21, 2024 – only one day before the public comment period ended.

When the (b)(6) Privacy meeting did occur on March 21, 2024 (at the (b)(6) Privacy, (b)(7)(C) Enf. Privacy), the value of (b)(6) Privacy’s assistance became readily apparent, including helping the community understand ADEM’s administrative process, providing technical information to be used in the comment process, and aiding in accessing or otherwise conducting environmental studies. It also became apparent that another (b)(6) Privacy session with the community would be necessary to accomplish (b)(6) Privacy truly meaningful involvement in the permitting process. Once again, requests were made to ADEM to extend the public comment period and, once again, those requests were denied. Even a court order keeping the public comment period open until April 18, 2024 (which was strongly opposed by ADEM and the State of Alabama), proved to be inadequate to provide enough time to allow (b)(6) Privacy to continue its work in a manner that would positively influence ADEM’s permitting process.

As demonstrated by the foregoing, ADEM’s decisions during the course of the public comment period – and, in particular, its refusal to extend the public comment period to allow for the community to fully realize the benefit of (b)(6) Privacy, (b)(7)(C) Enf. Privacy involvement in this process – frustrated the (b)(6) Privacy community’s meaningful involvement in the permitting process. And, as for ADEM, it seemingly continued with its internal processing of the permitting application (although, interestingly, essentially ceasing any uploads of public documents, correspondence, and communications related to the permitting process to its eFile public record docket for a period from April 23, 2024, to September 4, 2024).

As a means to get any sort of governmental assistance for the people of (b)(6) Privacy, (b)(7)(C) Enf. P, advocates for the (b)(6) Privacy, (b)(7)(C) Enf. Pri community attended meetings for both the National Environmental Justice Advisory Council (“NEJAC”) and the White House Environmental Justice Advisory Council (“WHEJAC”) on April 23, 2024, and October 9, 2024 respectively. At those meetings, members of the public were given the opportunity to speak on a variety of environmental concerns. Therefore, advocates for the (b)(6) Privacy, (b)(7)(C) Enf. Pri community spoke on the aforementioned issues of ADEM’s erroneous results in its environmental justice analysis and on its failure to conduct enhanced outreach in the community. Additionally, these advocates submitted written comments on behalf of the citizens of (b)(6) Privacy, (b)(7)(C) Enf. P to both reiterate the points made in their public comments and to further detail the problems the proposed quarry poses to (b)(6) Privacy, (b)(7)(C) Enf. Pri

In spite of these efforts, and with growing concerns about ADEM’s actions, the (b)(6) Privacy, (b)(7)(C) attempted to avail itself of ADEM’s own Title VI process. On May 8, 2024, the (b)(6) Privacy, (b)(7)(C) filed a Title VI Complaint with ADEM, in the hope that its Complaint would enable ADEM to examine and address its failures in its environmental justice analysis and lack of engagement with the (b)(6) Privacy, (b)(7)(C) Enf. P community. A copy of that complaint is enclosed with this correspondence. Unfortunately, the Complaint did nothing to cure these issues, as evidenced by the enclosed, one-page letter dated November 5, 2024, from ADEM Executive Director Lance LeFleur. A letter received approximately six months from when ADEM initially in received the (b)(6) Privacy, (b)(7)(C) En Title VI Complaint.

As EPA can read in Director LeFleur’s letter, ADEM begins its correspondence by characterizing the (b)(6) Privacy, (b)(7)(C) s complaint as “alleg[ing] the Department erroneously used and or misapplied the Environmental Protection Agency’s Environmental Justice Screen tool (“EJScreen”).” While the (b)(6) Privacy, (b)(7)(C) certainly alleged such erroneous use and/or misapplication, the (b)(6) Privacy, (b)(7)(C) alleged more than the faulty use of that tool. In truth, as the (b)(6) Privacy, (b)(7)(C) stated in its Title VI Complaint, the (b)(6) Privacy, (b)(7)(C) was not simply taking issue with (b)(6) Privacy, (b)(7)(C) E misuse of the EJScreen tool but also with ADEM’s decision to not conduct enhanced outreach (and, for that matter, its conduct of the permitting public notice and comment period in this environmental justice community). And so, at the outset of ADEM’s response, it is unclear whether or not the scope of ADEM’s Title VI investigation (and thus the Director’s findings regarding the same) was adequate.

At any rate, the letter then stated that ADEM conducted an investigation of the allegations set forth in (b)(6) Privacy, (b)(7)(C) E Title VI Complaint “in keeping with ADEM Code R. 335-1-5-.01.” As an initial matter, it bears noting that ADEM Code r. 335-1-5-.01, which the (b)(6) Privacy, (b)(7)(C) encloses with this correspondence, represents the totality of ADEM’s Title VI regulations **and consists of one single sentence**. If this is ADEM’s approach to its Title VI obligations, then the paucity of its regulations is compelling in and of itself.

The letter then proceeded to recite, without providing any supporting documentation or records, the investigation ADEM conducted. The (b)(6) Privacy, (b)(7)(C) does not necessarily dispute that the ADEM investigator undertook the actions set forth but believes that more is owed than simply a recitation of such actions.

Finally, the letter concluded with the Director asserting that he “thoroughly review[ed] the total record” (again, a record that is not being provided), and concluded that “the EJ Screen was an appropriate measuring tool and appropriately applied, and that the evidence does not support a finding that the Department discriminated against the (b)(6) Privacy, (b)(7)(C) Enf. Privacy or the (b)(6) Privacy, (b)(7)(C) Enf. Pri community.” Other than stating that he “thoroughly review[ed] the total record,” however, there is no discussion of just what facts he reviewed and certainly no analysis of any such facts. For that matter, the (b)(6) Privacy, (b)(7)(C) does not even know what the investigator concluded and whether

the Director is agreeing or disagreeing with the investigator's findings. Respectfully, for ADEM to take such a cursory approach to a Title VI investigation and to send the <sup>(b)(6) Privacy, (b)(7)(C)</sup> on its way with a proverbial "pat on the head" (accompanied by an unsubstantiated assurance that a "thorough review" was completed) strikes at the very heart of the environmental justice concerns EPA is entrusted to protect.

Today, therefore, the <sup>(b)(6) Privacy, (b)(7)(C)</sup> remains concerned about the violations alleged in its Title VI Complaint with ADEM regarding the erroneous use of the EJScreen Tool and the lack of enhanced outreach to the <sup>(b)(6) Privacy, (b)(7)(C) Enf. P</sup> community. The determination letter not only serves to increase those concerns but also highlights the inadequacy of ADEM's Title VI review process. For that matter, the letter leads to questions about the nature and sufficiency of ADEM's investigation and the "review" and analysis supposedly performed by the Director. In other words, not only was the ADEM action at issue a violation, but the manner of ADEM's investigation and conclusions also likely raise issues of Title VI compliance.

Therefore, based on ADEM's faulty and insufficient analysis of the <sup>(b)(6) Privacy, (b)(7)(C) Enf. P</sup> Community's environmental justice issues; its conduct throughout the permitting, public notice, and comment process to date; its inadequate investigatory process; and its lack of transparency with the <sup>(b)(6) Privacy, (b)(7)(C)</sup> (and the general public) about the rationale for its determination; we ask the EPA to please initiate its Complaint of Discrimination process and conduct a wholesale review of all of the issues discussed above, as time is of the essence with the permits being issued by ADEM and the quarry operators beginning the process of running the quarry.

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

(b)(6) Privacy, (b)(7)(C) Enf. Privacy