

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 3, 2018

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In Reply Refer to:

EPA File No. 03R-18-R4

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

Re: Resolution and Closure of EPA Administrative Complaint No. 03R-18-R4

Dear Director LeFleur:

This letter is to notify you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving and closing, as of the date of this letter, Administrative complaint 03R-18-R4, against the Alabama Department of Environmental Management (ADEM). The complaint generally alleged that ADEM violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code §§ 2000d, *et seq.* (Title VI) and the EPA's nondiscrimination regulation found at 40 Code of Federal Regulations (C.F.R.) Parts 5 and 7. With respect to the specific issues addressed in this case, EPA ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation.

On July 2, 2018 ECRCO accepted for investigation the following issue:

Whether ADEM is complying with the regulatory requirement delineated in 40 C.F.R. Part 7.90(a), specifically whether ADEM has adopted grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the regulation.

Regulatory Requirements

EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7 requires that recipients adopt and publish grievance procedures that ensure the prompt and fair resolution of complaints.¹ Additionally, the U.S. Department of Justice's regulation on "Coordination of Enforcement of Non-discrimination in Federally Assisted Programs," requires recipients to display prominently

¹ 40 C.F.R. § 7.90 (each recipient with 15 or more employees shall adopt grievance procedures that assure the prompt and fair resolution of complaints). *See also* 40 C.F.R. §5.135(b) ("Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.").

information regarding the nondiscrimination requirements of Title VI, including the procedures for filing complaints.²

Previous Investigation of ADEM's Nondiscrimination Program

ECRCO recently conducted an investigation of Administrative Complaint No. 13R-16-R4 which focused on ADEM's nondiscrimination program relative to the requirements of federal nondiscrimination laws and regulation, including whether ADEM adopted grievance procedures that assure the prompt and fair resolution of complaints which allege violations of the regulation. ECRCO's March 1, 2018, Resolution and Closure Letter for that complaint, concluded that ADEM was meeting the regulatory requirement because it had adopted and published the "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process."³ In the March 1 letter, ECRCO strongly recommended that ADEM clarify and explain in the grievance procedures that ADEM will investigate and resolve retaliation and intimidation claims in a prompt and impartial manner under the grievance procedures.⁴ ECRCO also noted that ADEM must continue to take steps to ensure accurate translations of the grievance procedures into the appropriate languages other than English be posted on its website and that ADEM should not rely on inaccurate web-based translations.⁵ ECRCO's investigation of the other components of ADEM's nondiscrimination program supported that ADEM was currently meeting the regulatory requirements. As a result, ECRCO determined that there was insufficient evidence of noncompliance with Title VI and EPA's nondiscrimination regulation.⁶

Current Investigation of ADEM's Grievance Procedures

On June 13, 2018, ECRCO received the subject complaint, which alleged that ADEM had rescinded its grievance procedures and was now in violation of 40 C.F.R. §7.90(a). On July 2, 2018, ECRCO issued a combined acceptance and request for information letter to ADEM which

² 28 C.F.R. §42.405(c) ("Federal agencies shall require recipients, where feasible, to display prominently in reasonable numbers and places posters which state that the recipients operate programs subject to the nondiscrimination requirements of title VI, summarize those requirements, note the availability of title VI information form recipients and the federal agencies, and explain briefly the procedures for filing complaints. Federal agencies and recipients shall also include information on title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, federal agencies and recipients shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by federal law.").

³ At the time that ECRCO made this determination, ADEM had its grievance procedures prominently posted on its website.

⁴ Letter from Lilian S. Dorka, Director External Civil Rights Compliance Office, to Lance R. LeFleur, Director, Alabama Department of Environment Management at 6 (March 1, 2018).

⁵ *Id.* at 7.

⁶ *Id.* at 11.

included questions related to whether ADEM currently has grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the EPA nondiscrimination regulation, whether the grievance procedures are available to the public, the steps ADEM is taking to put in effect grievance procedures if they currently did not have procedures in place, and whether ADEM had received any complaints under the previously known grievance procedures that were reviewed in Title VI complaint 13R-16-R4. On August 20, 2018, ECRCO received ADEM's response which included: a copy of a Memorandum addressed to Marilyn Elliot, ADEM's Nondiscrimination Coordinator, from ADEM's Director Lance LeFleur stating that ADEM has been using interim grievance procedures since June 5, 2018; an attachment that included ADEM's response to ECRCO's information request; and ADEM's interim grievance procedures.⁷ Based on ECRCO's review, the interim procedures dated August 10, 2018 were only provided to ADEM's staff and were not publicly available on ADEM's internet webpage. Additionally, ECRCO noted that ADEM's interim grievance procedures did not include retaliation as a basis for discrimination grievances as strongly recommended in ECRCO's March 1, 2018 closure letter.⁸ Finally, ECRCO noted that the interim procedures provided by ADEM were in English only.

EPA and ADEM had several communications between August and October 2018, via phone calls and emails, to discuss the regulatory nondiscrimination requirements and ADEM's ongoing plans to update its grievance procedures, including the steps ADEM would take to ensure revised grievance procedures would be posted prominently on ADEM's website and in all appropriate languages. On October 4, 2018, ADEM shared its updated draft interim grievance procedures with EPA for review and input. On October 11, 2018, EPA provided feedback in writing which included, but was not limited to, previous recommendations that ADEM's grievance procedures should include retaliation as one of the bases for filing a complaint under the procedures; ADEM's procedures must be made publicly available; and ADEM's procedures must be translated into the appropriate languages other than English used by limited English proficient individuals in its service area. On November 2, 2018 ADEM shared its updated grievance procedures which reflected EPA's substantive feedbacks. On November 5, 2018, ADEM posted on its internet website its updated grievance procedures in English as well as translated versions in Spanish, Vietnamese, and Korean.⁹

Conclusion

During the course of this investigation, EPA provided technical assistance to ADEM and in response ADEM updated and posted on its website, in English and other appropriate languages, grievance procedures that meet the regulatory nondiscrimination requirements. Accordingly,

⁷ Letter from Lance R. LeFleur, Director, Alabama Department of Environmental Management to Lilian S. Dorka, Director, External Civil Rights Compliance Office, U.S. Environmental Protection Agency. (August 13, 2018).

⁸ See Letter from Dorka to LeFleur at 6.

⁹ See <http://adem.alabama.gov/inside/ndstatement.cnt>

ECRCO finds insufficient evidence of current noncompliance with Title VI and EPA's implementing regulations at 40 C.F.R. Parts 5 and 7. Thank you and your staff for your cooperation during this investigation. If you have questions about this letter, please feel free to contact Brittany Robinson, Case Manager, at 202-564-0727, by email at robinson.brittany@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Kristy Eubanks
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4