

Drummond lawsuit says EPA has violated Freedom of Information Act



Maclin Park is one of the places tested for soil contamination. Preliminary results from soil tests conducted by the EPA in the Collegeville neighborhood of Birmingham, Alabama are beginning to trickle in to residents and the City. (Frank Couch/fcouch@al.com)

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Drummond Co. Inc. says in a federal lawsuit filed Friday that the U.S. Environmental Protection Agency has violated the Freedom of Information Act by not providing documents related to the agency's investigation of the North Birmingham superfund site where toxic chemicals have been found in the soil.

"EPA has violated the Freedom of Information Act in both substance and procedure in its responses to three FOIA requests submitted by Drummond," the company's lawsuit, filed in U.S. District Court in Birmingham, states. "For each of Drummond's three FOIA requests, EPA continues to withhold responsive information without legal justification."

The Birmingham-based coal company seeks an order from a federal judge that says EPA violated the act, requires EPA to promptly provide it with all the records requested, and awards Drummond attorneys' fees and costs.

Drummond's ABC Coke operation operates a manufacturing facility in Tarrant near the superfund site along 35th Avenue North in Birmingham. The site includes the North Birmingham, Fairmont, Collegeville, and Harriman Park neighborhoods, as well as portions of Five-Mile Creek.

In 2013, EPA named Drummond and four other companies -U.S. Pipe, Alagasco, KMAC, and Walter Coke - as "**potentially responsible parties**" for contamination^[4] found in the soil of more than 400 properties in the neighborhoods. The Centers for Disease Control in a July report^[5] found levels of arsenic, lead and PAHs that "could harm people's health," mostly after long-term exposure, in soil samples taken near the **Superfund Site**^[6].

By declaring the area a superfund site EPA has the authority to **investigate and clean industrial pollution**.^[7] The Superfund Removal Program had cleaned up 115 properties in the neighborhood in three phases as of this summer.

The EPA in 2014 invited the five companies to submit FOIA requests for information about its investigation of that superfund site.

EPA officials cited different reasons for denying or redacting information in response to Drummonds' request.

The agency provided an index of withheld records or those that had been partially redacted, the lawsuit states.

The EPA cited Exemption 5 approximately 131 times as a basis for withholding responsive information, Drummond states in its lawsuit. However, the index does not explain, even in general terms, why EPA believes that the specific information withheld qualifies under the Exemption 5 privilege, the lawsuit states

According to the U.S. Department of Justice, Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

Drummond also claims EPA has not fully responded to its request for records – particularly emails - on communications between EPA and the clean air advocacy group GASP.

GASP had petitioned EPA for a preliminary assessment of the superfund site.

GASP las year also had unsuccessfully appealed the renewal of ABC Coke's air pollution permit^[8] by the Jefferson County Board of Health. The health advocacy group's attorney, David Ludder, was thrown out of a board meeting^[9] in April after repeatedly protesting the board's refusal to hold an appeal hearing on the issue.

EPA's response to Drummond's FOIA request for the GASP documents included 79 records, "only 18 of which EPA produced in full to Drummond. Of the 61 other records, EPA cited FOIA Exemption 5, the lawsuit states.

Drummond also on March 6 submitted a FOIA request seeking "any and all" agency records, including emails, related to the Civil Rights Act complaints submitted to EPA's Office of Civil Rights by Ludder.

Ludder in February had filed a civil rights environmental discrimination complaint, on GASP's behalf, with the EPA against the Jefferson County Department of Health for its issuance of the operating permit for ABC Coke.

GASP, citing the Civil Rights Act of 1964, stated that issuance of the permit discriminated against residents in the communities around the superfund site. Such communities bear more of the burden of air pollution than do wealthier white neighborhoods, the group says in statements.

Links

1. <http://connect.al.com/staff/fcouch/photos.html>
2. <http://connect.al.com/staff/krfaulk/posts.html>
3. <https://twitter.com/krfaulk>
4. http://blog.al.com/spotnews/2013/09/environmental_protection_agenc_1.html
5. http://www.al.com/news/index.ssf/2015/08/north_birmingham_epa_superfund.html
6. <http://www2.epa.gov/north-birmingham-project>
7. http://blog.al.com/spotnews/2013/05/post_932.html
8. http://www.al.com/news/birmingham/index.ssf/2014/08/environment_group_gasp_petitio.html
9. http://www.al.com/news/birmingham/index.ssf/2015/04/jeffco_board_of_health_rejects.html