



## AlaFile E-Notice

03-CV-2016-900939.00

To: DAVID ALAN LUDDER  
davidaludder@enviro-lawyer.com

---

# NOTICE OF ELECTRONIC FILING

---

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANTHONY KEITH ET AL V. LANCE R. LEFLEUR, DIRECTOR ET AL  
03-CV-2016-900939.00

The following complaint was FILED on 7/13/2016 9:49:08 AM

Notice Date: 7/13/2016 9:49:08 AM

TIFFANY B. MCCORD  
CIRCUIT COURT CLERK  
MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL 36104

334-832-1260

State of Alabama  
Unified Judicial System

Form AR Civ-93 Rev.5/99

**COVER SHEET  
CIRCUIT COURT - CIVIL CASE**

(Not For Domestic Relations Cases)

Case Number:

**03-CV-201**

Date of Filing:

07/13/2016



ELECTRONICALLY FILED

7/13/2016 9:48 AM

03-CV-2016-900939.00

CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

TIFFANY B. MCCORD, CLERK

**GENERAL INFORMATION**

**IN THE CIRCUIT OF MONTGOMERY COUNTY, ALABAMA  
ANTHONY KEITH ET AL v. LANCE R. LEFLEUR, DIRECTOR ET AL**

**First Plaintiff:**  Business  Individual  
 Government  Other

**First Defendant:**  Business  Individual  
 Government  Other

**NATURE OF SUIT:**

**TORTS: PERSONAL INJURY**

- WDEA - Wrongful Death  
 TONG - Negligence: General  
 TOMV - Negligence: Motor Vehicle  
 TOWA - Wantonnes  
 TOPL - Product Liability/AEMLD  
 TOMM - Malpractice-Medical  
 TOLM - Malpractice-Legal  
 TOOM - Malpractice-Other  
 TBFM - Fraud/Bad Faith/Misrepresentation  
 TOXX - Other: \_\_\_\_\_

**OTHER CIVIL FILINGS (cont'd)**

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture  
Appeal/Enforcement of Agency Subpoena/Petition to Preserve  
 CVRT - Civil Rights  
 COND - Condemnation/Eminent Domain/Right-of-Way  
 CTMP-Contempt of Court  
 CONT-Contract/Ejectment/Writ of Seizure  
 TOCN - Conversion  
 EQND- Equity Non-Damages Actions/Declaratory  
Judgment/Injunction Election Contest/Quiet Title/Sale For  
Division

**TORTS: PERSONAL INJURY**

- TOPE - Personal Property  
 TORE - Real Property

- CVUD-Eviction Appeal/Unlawful Detainer  
 FORJ-Foreign Judgment  
 FORF-Fruits of Crime Forfeiture  
 MSHC-Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition  
 PFAB-Protection From Abuse  
 FELA-Railroad/Seaman (FELA)  
 RPRO-Real Property  
 WTEG-Will/Trust/Estate/Guardianship/Conservatorship  
 COMP-Workers' Compensation  
 CVXX-Miscellaneous Circuit Civil Case

**OTHER CIVIL FILINGS**

- ABAN - Abandoned Automobile  
 ACCT - Account & Nonmortgage  
 APAA - Administrative Agency Appeal  
 ADPA - Administrative Procedure Act  
 ANPS - Adults in Need of Protective Services

**ORIGIN:** F  **INITIAL FILING**

A  **APPEAL FROM  
DISTRICT COURT**

O  **OTHER**

R  **REMANDED**

T  **TRANSFERRED FROM  
OTHER CIRCUIT COURT**

**HAS JURY TRIAL BEEN DEMANDED?**  Yes  No

**RELIEF REQUESTED:**  **MONETARY AWARD REQUESTED**  **NO MONETARY AWARD REQUESTED**

**ATTORNEY CODE:** LUD001

7/13/2016 9:48:52 AM

/s/ DAVID ALAN LUDDER

**MEDIATION REQUESTED:**  Yes  No  Undecided



## IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**ANTHONY KEITH, RONALD C. SMITH,  
ESTHER CALHOUN, WILLIAM T. GIPSON  
and LATONYA J. GIPSON,**

Plaintiffs,

v.

Civil Action No.

**LANCE R. LeFLEUR**, in his official capacity  
as Director of the Alabama Department of  
Environmental Management and individually,  
and the **ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,**

Defendants.

---

**COMPLAINT FOR DECLARATORY JUDGMENT**

**NATURE OF ACTION**

1. This is an action to declare certain policies and rules of the Alabama Department of Environmental Management to be invalid.

**JURISDICTION AND VENUE**

2. This action arises under Ala. Code §§ 6-6-223, 6-6-226, and 41-22-10.

3. This Court has jurisdiction under Art. VI, § 142(b), Ala. Const. 1901 (Off. Recomp.) (“The circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law”); Ala. Code §§ 6-6-222 (“Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed”); 12-11-31 (“The powers and jurisdiction of circuit courts as

to equitable matters or proceedings shall extend . . . To all civil actions in which a plain and adequate remedy is not provided in the other judicial tribunals”); 12-11-33 (“Circuit courts, when exercising equitable jurisdiction, must take cognizance of the following cases: (1) When the defendants reside in this state”); and 41-22-10 (“The validity or applicability of a rule may be determined in an action for a declaratory judgment or its enforcement stayed by injunctive relief in the circuit court of Montgomery County . . .”).

4. The official and individual residence of defendant Lance R. LeFleur is in Montgomery County, Alabama. The principal office of defendant Alabama Department of Environmental Management is in Montgomery County, Alabama. Venue is appropriate in Montgomery County, Alabama. Ala. Code §§ 6-3-2, 41-22-10; *Little v. State*, 44 So. 3d 1070, 1072-73 (Ala. 2010).

#### **PARTIES**

5. Anthony Keith is a resident of Houston County, Alabama. Like ninety-one percent of an estimated 1,271 persons living less than one mile from the City of Dothan Sanitary Landfill, his race is Black/African-American. The City of Dothan Sanitary Landfill is permitted by the Alabama Department of Environmental Management, a recipient of federal financial assistance from the U.S. Environmental Protection Agency. The operating conditions authorized by the Alabama Department of Environmental Management for the Landfill allow it to generate offensive odors and disease vectors (*e.g.*, rodents, racoons, buzzards) that invade his property and/or home and diminish his health, quality of life, enjoyment of property, and property value. Mr. Keith believes that the permitting of the City of Dothan Sanitary Landfill by the Alabama Department of Environmental Management has had and will continue to have the effect of

subjecting him and others to offensive odors and disease vectors and to discrimination because of their race in violation of 40 C.F.R. § 7.35(b). Although the Director of the Alabama Department of Environmental Management has developed and adopted procedures and processes for filing, investigating and resolving complaints by persons alleging discrimination in violation of 40 C.F.R. § 7.35(b) in response to the requirements of 40 C.F.R. § 7.90(a), such procedures and processes threaten to interfere with or impair the ability of Mr. Keith to protect his rights under, and to secure the benefits of, 40 C.F.R. § 7.35(b) because they are invalid as alleged herein.

6. Ronald C. Smith is a resident of Tallapoosa County, Alabama. Like eighty percent of an estimated 161 persons living less than one mile from the Stone's Throw Landfill, his race is Black or African-American. The Stone's Throw Landfill is permitted by the Alabama Department of Environmental Management, a recipient of federal financial assistance from the U.S. Environmental Protection Agency. The operating conditions authorized by the Alabama Department of Environmental Management for the Landfill, including the approved use of alternative cover materials in lieu of earth for periodic cover of solid waste, allow it to generate offensive odors and disease vectors (*e.g.*, buzzards) that invade his property and/or home, quality of life, enjoyment of property, and property value. Mr. Smith believes that the permitting of the Stone's Throw Landfill by the Alabama Department of Environmental Management has had and will continue to have the effect of subjecting him and others to offensive odors and disease vectors and to discrimination because of their race in violation of 40 C.F.R. § 7.35(b). Although the Director of the Alabama Department of Environmental Management has developed and adopted procedures and processes for filing, investigating and resolving complaints by persons alleging discrimination in violation of 40 C.F.R. § 7.35(b) in response to the requirements of 40

C.F.R. § 7.90(a), such procedures and processes threaten to interfere with or impair the ability of Mr. Smith to protect his rights under, and to secure the benefits of, 40 C.F.R. § 7.35(b) because they are invalid as alleged herein.

7. Esther Calhoun is a resident of Perry County, Alabama. Like eighty-four percent of an estimated 2,000 persons living less than one mile from the City of Uniontown Wastewater Treatment Facility and the adjacent Southeastern Cheese Corporation Wastewater Treatment Facility and Sprayfields, her race is Black or African-American. The City of Uniontown Wastewater Treatment Facility is permitted by the Alabama Department of Environmental Management, a recipient of federal financial assistance from the U.S. Environmental Protection Agency. The Southeastern Cheese Corporation Sprayfields are subject to approval by the Alabama Department of Environmental Management, a recipient of federal financial assistance from the U.S. Environmental Protection Agency. The operating conditions of the City of Uniontown Wastewater Treatment Facility and the Southeastern Cheese Corporation Wastewater Treatment Sprayfields allow them to generate offensive odors and disease vectors (*e.g.*, flies) that invade her property and home and diminish her health, quality of life, and enjoyment of property. Ms. Calhoun believes that the operation of the City of Uniontown Wastewater Treatment Facility and the operation of the Southeastern Cheese Corporation Sprayfields has had and will continue to have the effect of subjecting her and others to offensive odors and disease vectors and to discrimination because of their race. Although the Director of the Alabama Department of Environmental Management has developed and adopted procedures and processes for filing, investigating and resolving complaints by persons alleging discrimination in violation of 40 C.F.R. § 7.35(b) in response to the requirements of 40 C.F.R. § 7.90(a), such procedures and

processes threaten to interfere with or impair the ability of Ms. Calhoun to protect her rights under, and to secure the benefits of, 40 C.F.R. § 7.35(b) because they are invalid as alleged herein.

8. William T. Gipson and Latonya J. Gipson are residents of Perry County, Alabama. Like seventy-one percent of an estimated 42 persons living within one mile from the Arrowhead Landfill, their race is Black or African-American. The Arrowhead Landfill is permitted by the Alabama Department of Environmental Management, a recipient of federal financial assistance from the U.S. Environmental Protection Agency. The operating conditions authorized by the Alabama Department of Environmental Management for the Landfill, including the approved use of alternative cover materials in lieu of earth for periodic cover of solid waste, allow it to generate offensive odors and disease vectors (*e.g.*, buzzards) that invade their property and/or home and diminish their health, quality of life, enjoyment of property, and property value. The Gipsons believe that the permitting of the Arrowhead Landfill by the Alabama Department of Environmental Management has had and will continue to have the effect of subjecting them and others to offensive odors and disease vectors and to discrimination because of their race. Although the Director of the Alabama Department of Environmental Management has developed and adopted procedures and processes for filing, investigating and resolving complaints by persons alleging discrimination in violation of 40 C.F.R. § 7.35(b) in response to the requirements of 40 C.F.R. § 7.90(a), such procedures and processes threaten to interfere with or impair the ability of the Gipsons to protect their rights under, and to secure the benefits of, 40 C.F.R. § 7.35(b) because they are invalid as alleged herein.

9. Defendant Lance R. LeFleur is the Director of the Alabama Department of Environmental Management, duly appointed by the Environmental Management Commission pursuant to Ala. Code § 22-22A-6(a)(1). The Director of the Alabama Department of Environmental Management is authorized to perform all powers, duties and functions transferred to the Department by the Alabama Environmental Management Act, except those specifically granted to the Environmental Management Commission, provided that the Director may delegate the performance of such of his powers, duties and functions, to employees of the Department, wherever it appears desirable and practicable in fulfilling the policies and purposes of the Alabama Environmental Management Act. Ala. Code § 22-22A-4(b).

10. Defendant Alabama Department of Environmental Management is an agency within the executive branch of State government established pursuant to Ala. Code § 22-22A-4(a) and a department of the State pursuant to Ala. Code § 41-22-3(1). Defendant Alabama Department of Environmental Management administers the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14; the Alabama Safe Drinking Water Act of 1977, Ala. Code §§ 22-23-30 to 22-23-53; the Solid Wastes and Recyclable Materials Management Act, Ala. Code §§ 22-27-18; the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23; the Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24; the Alabama Land Recycling and Economic Redevelopment Act, Ala. Code §§ 22-30E-1 to 22-30E-13; the regulatory responsibilities of the Alabama Coastal Area Management Program as provided in Ala. Code §§ 9-7-10 to 9-7-20; and the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17. Defendant Alabama Department of Environmental Management is made a party to this action as directed by Ala. Code § 41-22-10.

## GENERAL ALLEGATIONS OF FACT

11. The Civil Rights Act of 1964 provides that “no person . . . shall . . . be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The Act also provides that “[e]ach Federal department and agency which is empowered to extend Federal financial assistance to any program or activity . . . is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.” 42 U.S.C. § 2000d-1.

12. Pursuant to 42 U.S.C. § 2000d-1, the U.S. Environmental Protection Agency issued the following regulation:

A recipient [of federal financial assistance] shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

40 C.F.R. § 7.35(b).

13. Pursuant to 42 U.S.C. § 2000d-1, the U.S. Environmental Protection Agency issued the following regulation:

Each recipient [of federal financial assistance] shall adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this part.

40 C.F.R. § 7.90(a).

14. The Alabama Department of Environmental Management is the recipient of federal financial assistance from the U.S. Environmental Protection Agency.

15. In response to the requirement of 40 C.F.R. § 7.90(a), “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) was developed by the Director of the Alabama Department of Environmental Management or his delegatee(s), not the Environmental Management Commission.

16. In response to the requirement of 40 C.F.R. § 7.90(a), “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) was adopted on or about October 18, 2004 by the Director of the Alabama Department of Environmental Management, not the Environmental Management Commission.

17. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) provides a step-by-step procedure for filing a timely complaint with a designated employee of the Alabama Department of Environmental Management and describes the process that will be used to investigate and “resolve” the complaint of any person alleging that he or she has been discriminated against by the Alabama Department of Environmental Management on the basis of race, color, national origin, disability, age or sex.

18. The procedure described in “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) is intended to provide Plaintiffs and others with the opportunity to obtain administrative relief from the discriminatory effects of actions taken by the Alabama Department of Environmental Management, including permit actions.

19. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) was adopted without prior public notice, opportunity for public comment, and public hearing.

20. In response to the requirement of 40 C.F.R. § 7.90(a), “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) was developed by the Director of the Alabama Department of Environmental Management or his delegatee(s), not the Environmental Management Commission.

21. In response to the requirement of 40 C.F.R. § 7.90(a), “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) was adopted on or about April 12, 2016 by the Director of the Alabama Department of Environmental Management, not the Environmental Management Commission.

22. “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) provides a step-by-step procedure for filing a timely complaint with a designated employee of the Alabama Department of Environmental Management and describes the process that will be used to investigate and “resolve” the complaint of any person alleging that he or she has been discriminated against by the Alabama Department of Environmental Management on the basis of race, color, national origin, disability, age or sex.

23. The process described in “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) is intended to provide Plaintiffs and others with the opportunity to obtain administrative relief from the discriminatory effects of actions taken by the Alabama Department of Environmental Management, including permit actions.

24. “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) was adopted without prior public notice, opportunity for public comment, and public hearing.

25. The Alabama Department of Environmental Management, acting through the Environmental Management Commission, adopted Ala. Admin. Code rs. 335-13-4-.15, 335-13-4-.22, and 335-13-4-.23 in November 1981.

26. Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. authorize landfill operators to use alternative cover materials (*e.g.*, foams, synthetic tarps, coal ash, petroleum contaminated soil, posi-shell, automotive shredder residue, waste products) in lieu of earth for periodic cover of solid waste at landfills if approved by the Alabama Department of Environmental Management.

27. Pursuant to Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1., the Alabama Department of Environmental Management has approved the use of “alternative cover material” (*e.g.*, synthetic tarps, coal ash, petroleum contaminated soil, posi-shell, automotive shredder residue, waste products) in lieu of earth for periodic cover of solid waste at landfills, including the Stone’s Throw Landfill and Arrowhead Landfill.

## COUNT I

**The Alabama Department of Environmental Management exceeded its statutory authority by adopting and implementing “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process.”**

28. Plaintiffs incorporate by reference paragraphs 1 through 24.

29. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are statements of general applicability that prescribe policy, or that describe the procedure or practice requirements of the Alabama Department of Environmental Management.

30. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are not forms which impose any requirement or solicit any information specifically required by federal statute or by federal rule or regulation.

31. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are “rules” as defined in Ala. Code § 41-22-3(9).

32. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are “rules, regulations, or standards” as those terms are used in Ala. Code. §§ 22-22A-5(2), 22-22A-5(3), 22-22A-6(a)(2), and 22-22A-8(a).

33. None of the statutes enumerated in paragraph 10 authorize the Alabama Department of Environmental Management to develop and adopt a procedure for filing timely complaints with a designated employee of the Alabama Department of Environmental

Management and a process that will be used to investigate and “resolve” the complaints of persons alleging that they have been discriminated against by the Alabama Department of Environmental Management on the basis of race, color, national origin, disability, age or sex in violation of 40 C.F.R. § 7.35(b).

34. None of the statutes enumerated in paragraph 10 authorize the Alabama Department of Environmental Management to investigate the complaints of persons alleging that the permit decisions of the Alabama Department of Environmental Management have caused or will cause them to suffer adverse effects that discriminate against them on the basis of race, color, or national origin, disability, age or sex in violation of 40 C.F.R. § 7.35(b).

35. None of the statutes enumerated in paragraph 10 authorize the Alabama Department of Environmental Management to “resolve” the complaints of persons alleging that the permit decisions of the Alabama Department of Environmental Management have caused or will cause them to suffer adverse effects that discriminate against them on the basis of race, color, national origin, disability, age or sex in violation of 40 C.F.R. § 7.35(b).

36. None of the statutes enumerated in paragraph 10 authorize the Alabama Department of Environmental Management to deny, revoke or modify permits for regulated activities to “resolve” the complaints of persons alleging that the permit decisions of the Alabama Department of Environmental Management have caused or will cause them to suffer adverse effects that discriminate against by them on the basis of race, color, national origin, disability, age or sex in violation of 40 C.F.R. § 7.35(b).

37. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice

Complaint Reporting and Investigating Process” (Exhibit B) establish procedures and processes that are in excess of the authority granted to the Alabama Department of Environmental Management by statute.

38. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are invalid rules.

39. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) threaten to interfere with or impair those rights and benefits secured to Plaintiffs by 40 C.F.R. § 7.35(b).

## COUNT II

**The Director of the Alabama Department of Environmental Management exceeded his statutory authority by developing “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process.”**

40. Plaintiffs incorporate by reference paragraphs 1 through 24.

41. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are “environmental polic[ies]” as that term is used in Ala. Code §§ 22-22A-5(3) and 22-22A-6(a)(3).

42. The Alabama Department of Environmental Management, acting through the Environmental Management Commission, is authorized to develop “environmental policy” for

the State and to adopt and promulgate “rules, regulations, and standards” for the Department.  
Ala. Code § 22-22A-5(3).

43. It is the duty of the Environmental Management Commission to develop “environmental policy” for the State. Ala. Code § 22-22A-6(a)(3).

44. The Director of the Alabama Department of Environmental Management is authorized to perform all powers, duties and functions transferred to the Department by Ala. Code chap. 22-22A, except those specifically granted to the Environmental Management Commission, provided that the Director may delegate the performance of such of his powers, duties and functions, to employees of the Department, wherever it appears desirable and practicable in fulfilling the policies and purposes of Ala. Code chap. 22-22A. Ala. Code § 22-22A-4(b).

45. The Director of the Alabama Department of Environmental Management or his delegatee(s), rather than the Environmental Management Commission, developed “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B).

46. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are invalid “environmental polic[ies].”

47. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice

Complaint Reporting and Investigating Process” (Exhibit B) threaten to interfere with or impair those rights and benefits secured to Plaintiffs by 40 C.F.R. § 7.35(b).

### COUNT III

**The Director of the Alabama Department of Environmental Management exceeded his statutory authority by adopting “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process.”**

48. Plaintiffs incorporate by reference paragraphs 1 through 24.

49. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are statements of general applicability that prescribe policy, or that describe the procedure or practice requirements of the Alabama Department of Environmental Management.

50. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are not forms which impose any requirement or solicit any information specifically required by federal statute or by federal rule or regulation.

51. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are “rules” as defined in Ala. Code § 41-22-3(9).

52. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are “rules, regulations, or standards” as those terms are used in Ala. Code. §§ 22-22A-5(2), 22-22A-5(3), 22-22A-6(a)(2), and 22-22A-8(a).

53. It is the duty of the Environmental Management Commission to establish, adopt, promulgate, modify, repeal and suspend any “rules, regulations or environmental standards” for the Alabama Department of Environmental Management. Ala. Code § 22-22A-6(a)(2).

54. All “rules, regulations or standards” shall be adopted by and promulgated by the Environmental Management Commission. Ala. Code § 22-22A-8(a).

55. The Director of the Alabama Department of Environmental Management is authorized to perform all powers, duties and functions transferred to the Department by Ala. Code chap. 22-22A, except those specifically granted to the Environmental Management Commission, provided that the Director may delegate the performance of such of his powers, duties and functions, to employees of the Department, wherever it appears desirable and practicable in fulfilling the policies and purposes of Ala. Code chap. 22-22A. Ala. Code § 22-22A-4(b).

56. The Director of the Alabama Department of Environmental Management, rather than the Environmental Management Commission, adopted “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B).

57. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are invalid “rules, regulations, or standards.”

58. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) threaten to interfere with or impair those rights and benefits secured to Plaintiffs by 40 C.F.R. § 7.35(b).

#### COUNT IV

**“Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” were adopted without substantial compliance with the procedural requirements of the Alabama Administrative Procedure Act.**

59. Plaintiffs incorporate by reference paragraphs 1 through 24.

60. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are statements of general applicability that prescribe policy, or that describe the procedure or practice requirements of the Alabama Department of Environmental Management.

61. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are not forms which impose any

requirement or solicit any information specifically required by federal statute or by federal rule or regulation.

62. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are “rules” as defined in Ala. Code § 41-22-3(9).

63. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) were adopted by the Director of the Alabama Department of Environmental Management without substantial compliance with the provisions for public notice and opportunity for public comment in Ala. Code § 41-22-5 prior to adoption.

64. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are invalid “rules.” Ala. Code § 41-22-5(d).

65. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) threaten to interfere with or impair those rights and benefits secured to Plaintiffs by 40 C.F.R. § 7.35(b).

## COUNT V

**“Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” were adopted without substantial compliance with the procedural requirements of the Alabama Environmental Management Act.**

66. Plaintiffs incorporate by reference paragraphs 1 through 24.

67. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are “rules, regulations, or standards” as those terms are used in Ala. Code §§ 22-22A-5(2), 22-22A-5(3), 22-22A-6(a)(2), and 22-22A-8(a).

68. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) were adopted by the Director of the Alabama Department of Environmental Management without substantial compliance with the provisions for public notice and public hearing in Ala. Code § 22-22A-8(a) prior to adoption.

69. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are invalid “rules, regulations or standards.”

70. “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and Environmental Justice

Complaint Reporting and Investigating Process” (Exhibit B) threaten to interfere with or impair those rights and benefits secured to Plaintiffs by 40 C.F.R. § 7.35(b).

## COUNT VI

**The Alabama Department of Environmental Management lacks statutory authority to adopt and implement Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1.**

71. Plaintiffs incorporate by reference paragraphs 1 through 10, and 25 through 27.

72. Ala. Code §§ 22-27-2 defines the term “Landfill” as follows:

A method of compaction and *earth* cover of solid wastes other than those containing garbage or other putrescible wastes, including, but not limited to, tree limbs and stumps, demolition materials, incinerator residues, and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis.

(Emphasis added).

73. Ala. Code §§ 22-27-2(32) defines the term “Sanitary Landfill” as follows:

A controlled area of land upon which solid waste is deposited and is compacted and covered with compacted *earth* each day as deposited, with no on-site burning of wastes, and so located, contoured, and drained that it will not constitute a source of water pollution as determined by the department.

(Emphasis added).

74. Ala. Code §§ 22-27-2(23) defines the term “Municipal Solid Waste Landfill” as follows:

A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile. A municipal solid waste landfill may also receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, industrial solid waste, construction/demolition waste, and rubbish. A municipal solid waste landfill is a *sanitary landfill*.

(Emphasis added).

75. The Solid Wastes and Recyclable Materials Management Act, Ala. Code §§ 22-27-1 to 22-27-18, does not authorize the Alabama Department of Environmental Management to grant variances, exceptions or exemptions from the Act and does not authorize the Department to approve the use of “alternative cover material” in lieu of earth for periodic cover of solid waste at landfills.

76. Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. authorize the Alabama Department of Environmental Management to approve the use of “alternative cover material” in lieu of earth for periodic cover of solid waste at landfills.

77. Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. are in excess of the authority granted to the Alabama Department of Environmental Management by the Solid Wastes and Recyclable Materials Management Act.

78. Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. are invalid rules.

79. Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. threaten to interfere with or impair those rights and benefits secured to Plaintiffs by the Solid Wastes and Recyclable Materials Management Act.

### **DEMAND FOR RELIEF**

Wherefore plaintiffs demand the following relief:

A. That the Court enter a judgment pursuant to Ala. Code §§ 41-22-10, 6-6-222, 6-6-223, and 6-6-226 declaring that the “Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints” (Exhibit A) and “ADEM Civil Rights and

Environmental Justice Complaint Reporting and Investigating Process” (Exhibit B) are invalid “environmental policies,” invalid “rules, regulations and standards” and invalid “rules;”

B. That the Court enter a judgment pursuant to Ala. Code §§ 41-22-10, 6-6-222, 6-6-223, and 6-6-226 declaring that Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. are invalid “rules, regulations or standards” and invalid “rules;” and

C. That the Court award Plaintiffs such other and additional relief to which they may be entitled.

Respectfully submitted,

*s/ David A. Ludder*

---

DAVID A. LUDDER (LUD001)  
Attorney for Plaintiffs  
ASB-4513-E63D  
Law Office of David A. Ludder, PLLC  
9150 McDougal Ct.  
Tallahassee, Florida 32312-4208  
Tel (850) 386-5671  
Fax (267) 873-5848  
Email [davidaludder@enviro-lawyer.com](mailto:davidaludder@enviro-lawyer.com)

**ADEM****ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

POST OFFICE BOX 301463 36130-1463 • 1400 COLISEUM BLVD. 36110-2059

MONTGOMERY, ALABAMA

WWW.ADEM.STATE.AL.US

(334) 271-7700

JAMES W. WARR  
DIRECTORBOB RILEY  
GOVERNOR

October 18, 2004

## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## MEMORANDUM #108

SUBJECT: PROCEDURE FOR TITLE VI OR ENVIRONMENTAL JUSTICE FILING OF  
DISCRIMINATION COMPLAINTS

Facsimiles: (334)  
 Administration: 271-7952  
 General Counsel: 384-4332  
 Air: 279-3344  
 Land: 279-3550  
 Water: 279-3561  
 Groundwater: 279-5631  
 Field Operations: 272-8731  
 Laboratory: 277-6719  
 Mining: 364-4329  
 Education/Outreach: 364-4383

GENERAL

This memorandum is intended to provide guidance to anyone who has reason to believe they have been discriminated against by the Alabama Department of Environmental Management (ADEM) on the basis of:

- race;
- color;
- national origin;
- disability;
- age; or
- sex.

This memorandum, in compliance with 40 CFR §§ 5.135 and 7.90, provides a step-by-step procedure for filing a timely complaint to the proper authority and describes the process that will be used to investigate and resolve the complaint. However, these procedures do not apply to administrative actions which are being pursued in another forum.

SUBMISSION OF COMPLAINT

## A. Filing Complaints of Discrimination.

- (1) Complainants may submit written complaints to ADEM's Title VI/Environmental Justice (EJ) Coordinator at ADEM which is located at 1400 Coliseum Blvd., Montgomery, Alabama 36110-2059. ADEM's mailing address is P.O. Box 301463, Montgomery, Alabama 36130-1463.
- (2) In cases where the complainant is unable or incapable of providing a written statement, but wishes ADEM to investigate alleged discrimination, a verbal complaint of discrimination may be made to ADEM by calling the EJ Coordinator at (334) 271-7700. The complainant will be interviewed by an ADEM employee who, if necessary, will assist the person in converting verbal complaints in writing. All complaints must, however, be signed by the complainant or his/her representative.
- (3) Complaints must be filed with the Title VI/EJ Coordinator at ADEM within 90 days of an alleged discriminatory act. ADEM has the authority to waive the 90-day time period required for filing a complaint if the complainant can demonstrate that the failure to file was based on "good cause." If the complainant wishes to request a waiver, the



Memorandum #108  
 Page Two  
 October 18, 2004

complainant must submit a detailed written description explaining why the complainant failed to file the complaint within 90 days of the alleged act(s) of discrimination.

B. Complaint Format.

- (1) All complaints must be in writing and signed by the complainant or his/her representative before ADEM can respond. Complaints shall:
  - a. describe with specificity the action(s) that allegedly intentionally discriminate or result in discrimination in violation of 40 CFR Parts 5 and 7;
  - b. describe with specificity the impact that allegedly has occurred or will occur as the results of such action(s); and
  - c. identify the parties subjected to, impacted by, or potentially impacted by the alleged discrimination.
- (2) ADEM will provide the complainant or his/her representative with a written acknowledgement within ten working days that ADEM has received the complaint.

C. Determination of Jurisdiction and Investigative Merit.

The EJ Coordinator, based on the information in the complaint and additional information provided by the alleged civil rights violator(s), will determine if ADEM has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant an investigation. These determinations will be made within 15 working days after the receipt of the complaint by ADEM. A complaint shall be regarded as meriting investigation unless:

- (1) It clearly appears on its face to be frivolous or trivial;
- (2) Within the time allotted for making the determination of jurisdiction and investigative merit, ADEM voluntarily concedes noncompliance and agrees to take appropriate remedial action or reaches an informal resolution with the complainant;
- (3) Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or
- (4) It is not timely and good cause does not exist for waiving the requirement.

INVESTIGATION

If the Title VI/EJ Coordinator accepts the complaint, the Coordinator will designate an individual to investigate the allegation(s). After examining all of the information in light of the requirements in 40 C.F.R. Parts 5 and 7, the investigator will draft a report with findings and recommendations.

A. Request for Additional Information from the Complainant.

In the event that the complainant has not submitted sufficient information to make a determination of jurisdiction or investigative merit, ADEM may request additional information. This request shall be made within 15 working days of the receipt of the complaint by ADEM and will require that the

Memorandum #108  
Page Three  
October 18, 2004

party submit the information within 60 working days from the date of the original request. Failure of the complainant to submit additional information within the designated timeframe may be considered good cause for determination of no investigative merit.

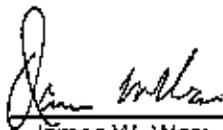
B. Request for Information Involving Third Party Entities.

In the case of complaints involving third party entities; e.g. a sub-recipient, permit applicant or permittee, ADEM will notify the third party entity that the complaint has been received no later than the time of the written notice provided to a complainant that the complaint is complete. At such time, ADEM will ask the third party entity to provide information necessary for ADEM to investigate the complaint. ADEM will use the information provided by the third party entity and the complainant in resolving the complaint.

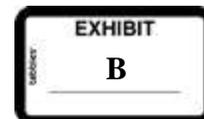
DISPOSITION OF COMPLAINTS

Within 180 days of accepting the complaint, the Office of the Director will issue a written decision approving or disapproving the findings and recommendations made in the investigative report. ADEM will implement and recommendations approved by the Office of the Director. The consequent disposition of the complaint will be communicated to the complainant in writing.

In addition, complaints may be filed in accordance with 40 C.F.R. Parts 5 and 7 with the U.S. EPA, Office of Civil Rights, 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, DC 20460-1000, instead of following the ADEM grievance process.



James W. Warr, Director



## ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process

This is intended to provide assistance to anyone who has reason to believe they have been discriminated against by the Alabama Department of Environmental Management (ADEM) on the basis of:

- race;
- color;
- national origin;
- disability;
- age; or
- sex.

Below is a step-by-step procedure for filing a timely complaint to the proper authority and describes the process that will be used to investigate and resolve the complaint, in compliance with 40 CFR §§ 5.135 and 7.90. However, these procedures do not apply to administrative actions which are being pursued in another forum.

### SUBMISSION OF COMPLAINT

#### A. Filing Complaints of Discrimination.

- (1) Complainants may submit written complaints to ADEM's Title VI/Environmental Justice (EJ) Coordinator at ADEM, which is located at 1400 Coliseum Blvd., Montgomery, AL 36110-2059. ADEM's mailing address is P.O. Box 301463, Montgomery, AL 36130-1463, or by email at [CivilRightsAssistance@adem.state.al.us](mailto:CivilRightsAssistance@adem.state.al.us)
- (2) In cases where the complainant is unable or incapable of providing a written statement, but wishes ADEM to investigate alleged discrimination, a verbal complaint of discrimination may be made to ADEM by calling the EJ Coordinator at (334) 271-7700. The complainant will be interviewed by an ADEM employee who, if necessary, will assist the person in converting verbal complaints in writing. All complaints must, however, be signed by the complainant or his/her representative.
- (3) Complaints must be filed with the Title VI/EJ Coordinator at ADEM within 90 days of an alleged discriminatory act. ADEM has the authority to waive the 90-day time period required for filing a complaint if the complainant can demonstrate that the failure to file was based on "good cause." If the complainant wishes to request a waiver, the complainant must submit a detailed written description explaining why the complainant failed to file the complaint within 90 days of the alleged act(s) of discrimination.

#### B. Complaint Format.

- (1) All complaints must be in writing and signed by the complainant or his/her representative before ADEM can respond. Complaints shall:
  - a. describe with specificity the action(s) that allegedly intentionally discriminate or result in discrimination in violation of 40 CFR Parts 5 and 7;
  - b. describe with specificity the impact that allegedly has occurred or will occur as the results of such action(s); and
  - c. identify the parties subjected to, impacted by, or potentially impacted by the alleged discrimination.
- (2) ADEM will provide the complainant or his/her representative with a written acknowledgement within ten working days that ADEM has received the complaint.

C. Determination of Jurisdiction and Investigative Merit.

The EJ Coordinator, based on the information in the complaint and additional information provided by the alleged civil rights violator(s), will determine if ADEM has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant an investigation. These determinations will be made within 15 working days after the receipt of the complaint by ADEM. A complaint shall be regarded as meriting investigation unless:

- (1) It clearly appears on its face to be frivolous or trivial;
- (2) Within the time allotted for making the determination of jurisdiction and investigative merit, ADEM voluntarily concedes noncompliance and agrees to take appropriate remedial action or reaches an informal resolution with the complainant;
- (3) Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or
- (4) It is not timely and good cause does not exist for waiving the requirement.

INVESTIGATION

If the Title VI/EJ Coordinator accepts the complaint, the Coordinator will designate an individual to investigate the allegation(s). After examining all of the information in light of the requirements in 40 C.F.R. Parts 5 and 7, the investigator will draft a report with findings and recommendations.

A. Request for Additional Information from the Complainant.

In the event that the complainant has not submitted sufficient information to make a determination of jurisdiction or investigative merit, ADEM may request additional information. This request

shall be made within 15 working days of the receipt of the complaint by ADEM and will require that the party submit the information within 60 working days from the date of the original request. Failure of the complainant to submit additional information within the designated timeframe may be considered good cause for determination of no investigative merit.

B. Request for Information Involving Third Party Entities.

In the case of complaints involving third party entities; e.g. a sub-recipient, permit applicant or permittee, ADEM will notify the third party entity that the complaint has been received no later than the time of the written notice provided to a complainant that the complaint is complete. At such time, ADEM will ask the third party entity to provide information necessary for ADEM to investigate the complaint. ADEM will use the information provided by the third party entity and the complainant in resolving the complaint.

DISPOSITION OF COMPLAINTS

Within 180 days of accepting the complaint, the Office of the Director will issue a written decision approving or disapproving the findings and recommendations made in the investigative report. ADEM will implement the recommendations approved by the Office of the Director. The consequent disposition of the complaint will be communicated to the complainant in writing.

In addition, complaints may be filed in accordance with 40 C.F.R. Parts 5 and 7 with the U.S. EPA, Office of Civil Rights, 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, DC 20460-1000, instead of following the ADEM grievance process.