



AlaFile E-Notice

03-CV-2017-900021.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANTHONY KEITH ET AL V. LANCE R. LEFLEUR, DIRECTOR
03-CV-2017-900021.00

The following complaint was FILED on 1/9/2017 12:19:06 PM

Notice Date: 1/9/2017 12:19:06 PM

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

334-832-1260



Case:

03

Date of Filing:

01/09/2017

Judge Code:

State of Alabama Unified Judicial System Form ARCiv-93 Rev.5/99	COVER SHEET CIRCUIT COURT - CIVIL CASE (Not For Domestic Relations Cases)	Date of Filing: 01/09/2017 Judge Code:
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GENERAL INFORMATION

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANTHONY KEITH ET AL v. LANCE R. LEFLEUR, DIRECTOR

First Plaintiff: Business Individual
 First Defendant: Business Individual
 Government Other
 Government Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY

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

TORTS: PERSONAL INJURY

- TOPE - Personal Property
 TORE - Real Property

OTHER CIVIL FILINGS

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

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
 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

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

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)

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

ATTORNEY CODE:

LUD001

1/9/2017 12:18:59 PM

/s/ DAVID ALAN LUDDER

Date

Signature of Attorney/Party filing this form

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 the
**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF ACTION

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

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"); 6-6-500 ("Injunctions may be granted . . . by the judges of the . . . circuit courts"); 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 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 regulated and periodically permitted by the Alabama Department of Environmental Management. The operating conditions approved by the Department for the Landfill allow it to generate offensive odors and disease vectors (*e.g.*, rodents, racoons, buzzards) that invade Mr. Keith's property and/or home and diminish his health, quality of life, enjoyment of property, and property value. The operating conditions approved by the Department for the Landfill have had and will continue to have the effect of subjecting Mr. Keith and other Blacks/African-Americans to offensive odors and disease vectors and to discrimination because of their race (*i.e.*, adverse effects that disproportionately impact Blacks/African-Americans).

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/African-American. The Landfill is regulated and periodically permitted by the Alabama Department of Environmental Management. The operating conditions approved by the Department for the Landfill, including the use of approved alternative cover materials in lieu of earth for daily 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. The operating conditions approved by the Department for the Landfill have had and will continue to have the effect of subjecting Mr. Smith and other Blacks/African-Americans to offensive odors and disease vectors and to discrimination because of their race (*i.e.*, adverse effects that disproportionately impact Blacks/African-Americans).

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/African-American. The City of Uniontown Wastewater Treatment Facility is regulated and periodically permitted by the Alabama Department of Environmental Management. The Southeastern Cheese Corporation Wastewater Treatment Facility and Sprayfields are regulated by the Alabama Department of Environmental Management. The operating conditions approved by the Department for the City of Uniontown Wastewater Treatment Facility and the Southeastern Cheese Corporation Wastewater Treatment Facility and 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. The operating conditions approved by the Department for the City of Uniontown Wastewater Treatment Facility and the Southeastern Cheese Corporation Wastewater Treatment Facility and Sprayfields have had and will continue to have the effect of subjecting Ms. Calhoun and other Blacks/African-Americans to offensive odors and disease vectors and to discrimination because of their race (*i.e.*, adverse effects that disproportionately impact Blacks/African-Americans).

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 of the Arrowhead Landfill, their race is Black/African-American. The Landfill is regulated and periodically permitted by the Alabama Department of Environmental Management. The operating conditions approved by the Department for the Landfill, including the use of approved alternative cover materials in lieu of earth for daily 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 operating conditions approved by the Department for the Landfill have had and will continue to have the effect of subjecting the Gipsons and other Blacks/African-Americans to offensive odors and disease vectors and to discrimination because of their race (i.e., adverse effects that disproportionately impact Blacks/African-Americans).

9. Defendant Lance R. LeFleur is the Director of the Alabama Department of Environmental Management, duly appointed by the Environmental Management Commission of the

Alabama Department of Environmental Management pursuant to Ala. Code § 22-22A-6(a)(1) on May 1, 2010. As Director of the Department, Mr. LeFleur 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 of the Alabama Department of Environmental Management, provided that he 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 and a department of the State. Ala. Code § 22-22A-4(a); Ala. Code § 41-22-3(1). The Department 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 §§ 22-27-1 to 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. Although no claims are made herein against the Alabama Department of Environmental Management, the Department 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 promulgated 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). This regulation prohibits the use of criteria or methods of administering programs or activities by recipients of financial assistance from the U.S.

Environmental Protection Agency that result in discrimination against persons of a particular race, color national origin, or sex (e.g., adverse effects that disproportionately impact Blacks/African-Americans).

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. For example, during Fiscal Year 2016, the Department received \$45,906,857 in financial assistance from the U.S. Environmental Protection Agency.

15. In response to the requirement of 40 C.F.R. § 7.90(a), the Director of the Alabama Department of Environmental Management developed and adopted "Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints" (Exhibit A) on or about October 18, 2004.

16. "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 by 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 and describes the

process that will be used to investigate and "resolve" the complaint.

17. 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.

18. "Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints" (Exhibit A) was adopted without prior publication of notice of the proposed adoption thereof in the Alabama Administrative Monthly and without affording all interested persons a reasonable opportunity to submit data, views, or arguments thereon, orally or in writing.

19. "Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints" (Exhibit A) was adopted without prior public advertisement in the three newspapers of this State with the largest regional circulation of the date, time, and place of a public hearing on the proposed adoption thereof and without

providing a public hearing at which persons were afforded a reasonable opportunity to be heard with respect thereto.

20. "Memorandum 108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints" (Exhibit A) was not developed or adopted by the Environmental Management Commission of the Alabama Department of Environmental Management.

21. In response to the requirement of 40 C.F.R. § 7.90(a), the Director of the Alabama Department of Environmental Management developed and adopted "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process" (Exhibit B) on or about April 12, 2016.

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 by 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 and describes the process that will be used to investigate and "resolve" the complaint.

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 publication of notice of the proposed adoption thereof in the Alabama Administrative Monthly and without affording all interested persons a reasonable opportunity to submit data, views, or arguments thereon, orally or in writing.

25. "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process" (Exhibit B) was adopted without prior public advertisement in the three newspapers of this State with the largest regional circulation of the date, time, and place of a public hearing on the proposed adoption thereof and without providing a public hearing at which persons were afforded a reasonable opportunity to be heard with respect thereto.

26. "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process" (Exhibit B) was not developed or adopted by the Environmental Management Commission of the Alabama Department of Environmental Management.

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

28. 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.

29. The Director of the Alabama Department of Environmental Management, acting through an employee of the Department to whom he has delegated his power to issue permits, 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

"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 notice and comment requirements of the Alabama Administrative Procedure Act.

30. Plaintiffs incorporate by reference paragraphs 1 through 18, and 21 through 24.

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 statements of general applicability that prescribe policy, or that describe the procedure or practice requirements of the Alabama Department of Environmental Management.

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 not forms which impose any requirement or solicit any information specifically required by federal statute or by federal rule or regulation.

33. "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).

34. "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 in Ala. Code § 41-22-5 requiring publication of notice of proposed rules in the Alabama Administrative Monthly prior to adoption and requiring that all interested persons be afforded a reasonable opportunity to submit data, views, or arguments thereon, orally or in writing, prior to adoption.

35. "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." See Ala. Code § 41-22-5(d) ("No rule adopted after October 1, 1982, is valid unless adopted in substantial compliance with this section.").

36. "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) may not be invoked by the Alabama Department of Environmental Management for any purpose, including the investigation and resolution of administrative complaints alleging that any person has been discriminated against by the Department on the basis of race, color, national origin, disability, age or sex, until all notices required by Ala. Code § 41-22-5, including notice in the Alabama Administrative Monthly, have been given. See Ala. Code § 41-22-4(b) ("No agency rule . . . may . . . be invoked by the agency for any purpose until . . . the agency has given all notices required by Section 41-22-5.").

37. The adoption of "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) without substantial compliance with the provisions in Ala. Code § 41-22-5 interferes with or impairs the legal rights of Plaintiffs to submit data, views, or arguments thereon, orally or in writing - legal rights protected by Ala. Code § 41-22-5.

38. The invalidity of "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 the Plaintiffs' interest in filing administrative complaints of discrimination that are cognizable by the Alabama Department of Environmental Management and in obtaining valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans - interests protected under the Civil Rights Act

of 1964, 42 U.S.C. § 2000d-1, through the provisions of 40 C.F.R. §§ 7.35(b) and 7.90(a).

39. But for the invalidity of "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), Plaintiffs would utilize those procedures and processes to seek administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

40. If the Court grants the declaratory and injunctive relief sought by Plaintiffs, it is likely that the Alabama Department of Environmental Management will undertake efforts to adopt valid rules prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) and to ensure the continued receipt of federal financial assistance from the U.S. Environmental Protection Agency. The adoption of valid rules prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) will enable Plaintiffs to seek and

obtain valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

COUNT II

"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 notice and hearing requirements of the Alabama Environmental Management Act.

41. Plaintiffs incorporate by reference paragraphs 1 through 17, 19, 21 through 23, and 25.

42. "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.

43. "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 that term is used in Ala. Code §§ 22-22A-5(2), 22-22A-5(3), 22-22A-6(a)(2), and 22-22A-8.

44. "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 in Ala. Code § 22-22A-8 requiring publication of notice of public hearing on proposed rules in the three largest newspapers of the State with the largest regional circulation and requiring a public hearing to afford any person a reasonable opportunity to be heard with respect to proposed rules prior to adoption.

45. "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" as a result of the failure of the Alabama Department of Environmental Management to

substantially comply with the provisions in Ala. Code § 22-22A-8.

46. The adoption of "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) without substantial compliance with the provisions in Ala. Code § 22-22A-8 interferes with or impairs the legal rights of Plaintiffs to be heard with respect to the proposed adoption of "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) - legal rights protected by Ala. Code § 22-22A-8.

47. The invalidity of "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 the Plaintiffs' interest in filing administrative complaints of discrimination that are cognizable by the Alabama

Department of Environmental Management and in obtaining valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans - interests protected under the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, through the provisions of 40 C.F.R. §§ 7.35(b) and 7.90(a).

48. But for the invalidity of "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), Plaintiffs would utilize those procedures and processes to seek administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

49. If the Court grants the declaratory and injunctive relief sought by Plaintiffs, it is likely that the Alabama Department of Environmental Management will undertake

efforts to adopt valid rules prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) and to ensure the continued receipt of federal financial assistance from the U.S. Environmental Protection Agency. The adoption of valid rules prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) will enable Plaintiffs to seek and obtain valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

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."

50. Plaintiffs incorporate by reference paragraphs 1 through 17, and 20 through 23, and 26.

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 statements of general applicability that prescribe policy, or that describe the procedure or practice requirements of the Alabama Department of Environmental Management.

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 not forms which impose any requirement or solicit any information specifically required by federal statute or by federal rule or regulation.

53. "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).

54. "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 that term is used in Ala. Code. §§ 22-22A-5(2), 22-22A-5(3), 22-22A-6(a)(2), and 22-22A-8.

55. It is the duty of the Environmental Management Commission of the Alabama Department of Environmental Management to establish, adopt, or promulgate any "rules" for the Alabama Department of Environmental Management. Ala. Code § 22-22A-6(a)(2). All "rules" shall be adopted by and promulgated by the Environmental Management Commission of the Alabama Department of Environmental Management. Ala. Code § 22-22A-8(a).

56. 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 of the Alabama Department of Environmental Management. Ala. Code § 22-22A-4(b).

57. The Director of the Alabama Department of Environmental Management, rather than the Environmental Management Commission of the Alabama Department of Environmental Management, 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).

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) are "rules" adopted by the Director of the Alabama Department of Environmental Management in excess of his statutory authority.

59. "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" because they were adopted by the Director of the Alabama Department of Environmental Management in excess of his statutory authority.

60. The invalidity of "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 the Plaintiffs' interest in filing administrative complaints

of discrimination that are cognizable by the Alabama Department of Environmental Management and in obtaining valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans - interests protected under the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, through the provisions of 40 C.F.R. §§ 7.35(b) and 7.90(a).

61. But for the invalidity of "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), Plaintiffs would utilize those procedures and processes to seek administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

62. If the Court grants the declaratory and injunctive relief sought by Plaintiffs, it is likely that the Alabama

Department of Environmental Management, acting through the Environmental Management Commission, will undertake efforts to adopt valid rules prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) and to ensure the continued receipt of federal financial assistance from the U.S.

Environmental Protection Agency. The adoption of valid rules prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) will enable Plaintiffs to seek and obtain valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

COUNT IV

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."

63. Plaintiffs incorporate by reference paragraphs 1 through 17, 20 through 23, and 26.

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 "environmental polic[ies]" as that term is used in Ala. Code §§ 22-22A-5(3) and 22-22A-6(a)(3).

65. It is the duty of the Environmental Management Commission of the Alabama Department of Environmental Management to develop "environmental policy" for the State. Ala. Code § 22-22A-6(a)(3).

66. 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 of the Alabama Department of Environmental Management. Ala. Code § 22-22A-4(b).

67. The Director of the Alabama Department of Environmental Management developed and 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).

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) are "environmental polic[ies]" developed by the Director of the Alabama Department of Environmental Management in excess of his statutory authority.

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 "environmental polic[ies]" because they were developed by the Director of the Alabama Department of Environmental Management in excess of his statutory authority.

70. The invalidity of "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 the Plaintiffs' interest in filing administrative complaints of discrimination that are cognizable by the Alabama

Department of Environmental Management and in obtaining valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans - interests protected under the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, through the provisions of 40 C.F.R. §§ 7.35(b) and 7.90(a).

71. But for the invalidity of "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), Plaintiffs would utilize those procedures and processes to seek administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

72. If the Court grants the declaratory and injunctive relief sought by Plaintiffs, it is likely that the Alabama Department of Environmental Management, acting through the

Environmental Management Commission, will undertake efforts to adopt valid "environmental polic[ies]" prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) and to ensure the continued receipt of federal financial assistance from the U.S. Environmental Protection Agency. The adoption of valid "environmental polic[ies]" prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) will enable Plaintiffs to seek and obtain valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

COUNT V

The Director of the Alabama Department of Environmental Management exceeded the Department's statutory authority by developing, 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."

73. Plaintiffs incorporate by reference paragraphs 1 through 17, 21 through 23, and 26.

74. "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.

75. "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.

76. "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).

77. "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 that term is used in Ala. Code. §§ 22-22A-5(2), 22-22A-5(3), 22-22A-6(a)(2), and 22-22A-8.

78. No statute authorizes the Alabama Department of Environmental Management to adopt rules prescribing procedures and processes for filing, investigating, and resolving complaints alleging that actions of the Department have resulted in discrimination against persons of a particular race, color, national origin, or sex (e.g., adverse effects that disproportionately impact Blacks/African-Americans).

79. No statute authorizes the Alabama Department of Environmental Management to revoke or modify permits for regulated activities to "resolve" the complaints of persons alleging that the permit decisions of the Department have resulted in discrimination against persons of a particular race, color, national origin, or sex (e.g., adverse effects that disproportionately impact Blacks/African-Americans).

80. A permit issued by the Alabama Department of Environmental Management may not be revoked or modified by the Director of the Department on the basis of a finding that it has resulted in or will result in discrimination against persons of a particular race, color, national

origin, or sex (e.g., adverse effects that disproportionately impact Blacks/African-Americans). See e.g., Ala. Admin. Code rs. 335-13-5-.05 (revocation of landfill operation permits restricted to certain circumstances), 335-13-5-.06 (modification of landfill operation permits restricted to certain circumstances), 335-6-6-.17 (revocation and modification of permits for discharges of pollutants to waters restricted to certain circumstances), 335-3-14-.02(4) (revocation of certain air pollution permits limited to certain circumstances), 335-3-16-.13 (modification and amendment of major source air pollution permits restricted to certain circumstances).

81. A permit issued by the Alabama Department of Environmental Management may not be disapproved or modified by the Environmental Management Commission of the Alabama Department of Environmental Management on the basis of a finding that it has resulted in or will result in discrimination against persons of a particular race, color, national origin, or sex (e.g., adverse effects that disproportionately impact Blacks/African-Americans). See e.g., *Holmes v. Ala. Dep't of Env'tl. Mgmt.*, EMC Docket No. 98-04, 1998 AL ENV LEXIS 1, *30-31, 1998 WL 75094, *11 (Ala.

Envtl. Mgmt. Comm'n Feb. 17, 1998) ("The governing statutes and regulations do not confer on the Department any power to consider [the racial makeup of the neighborhood] in deciding whether or not to issue a permit"); *East Central Ala. Alliance for Quality Living v. Ala. Dep't of Env'tl. Mgmt.*, EMC Docket Nos. 03-01 and 03-02, 2003 AL ENV LEXIS 6, *28 (Ala. Env'tl. Mgmt. Comm'n Mar. 13, 2003) ("it clearly appears that ADEM has not been granted the statutory authority to consider disparate racial impact issues where there's an appeal of the granting of a permit.").

82. "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 prescribing procedures and processes that are in excess of the statutory authority granted to the Alabama Department of Environmental Management. See *e.g.*, *Holmes v. Ala. Dep't of Env'tl. Mgmt.*, EMC Docket No. 98-04, 1998 AL ENV LEXIS 1, *30-31, 1998 WL 75094, *11 (Ala. Env'tl. Mgmt. Comm'n Feb. 17, 1998) ("The governing statutes and regulations do not confer on the Department any power to consider [the racial makeup of the neighborhood] in deciding

whether or not to issue a permit"); *East Central Ala. Alliance for Quality Living v. Ala. Dep't of Env'tl. Mgmt.*, EMC Docket Nos. 03-01 and 03-02, 2003 AL ENV LEXIS 6, *28 (Ala. Env'tl. Mgmt. Comm'n Mar. 13, 2003) ("it clearly appears that ADEM has not been granted the statutory authority to consider disparate racial impact issues where there's an appeal of the granting of a permit.").

83. "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 because they exceed the statutory authority of the Alabama Department of Environmental Management.

84. The invalidity of "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 the Plaintiffs' interest in filing administrative complaints of discrimination that are cognizable by the Alabama Department of Environmental Management and in obtaining

valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans - interests protected under the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, through the provisions of 40 C.F.R. §§ 7.35(b) and 7.90(a).

85. But for the invalidity of "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), Plaintiffs would utilize those procedures and processes to seek administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

86. If the Court grants the declaratory and injunctive relief sought by Plaintiffs, it is likely that the Alabama Department of Environmental Management will undertake efforts to adopt valid rules prescribing procedures and

processes to comply with 40 C.F.R. § 7.90(a) and to ensure the continued receipt of federal financial assistance from the U.S. Environmental Protection Agency. The adoption of valid rules prescribing procedures and processes to comply with 40 C.F.R. § 7.90(a) will enable Plaintiffs to seek and obtain valid administrative resolutions of their complaints that Department actions, including the issuance of permits, have resulted in discrimination, *i.e.*, adverse effects that disproportionately impact them and other Blacks/African-Americans.

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.

87. Plaintiffs incorporate by reference paragraphs 1 through 10, and 27 through 29.

88. 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).

89. 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).

90. 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).

91. 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.

92. 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.

93. 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.

94. 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 because they exceed the authority granted to the Alabama Department of Environmental Management by the Solid Wastes and Recyclable Materials Management Act.

95. Implementation of the invalid rules at Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. by the Director of the Alabama Department of Environmental Management, and Department employees to whom he has delegated his authority, threatens

to interfere with or impair the rights of Plaintiffs not to suffer offensive odors and disease vectors resulting from the use of materials other than to earth for periodic cover of solid waste at landfills - rights secured to Plaintiffs by the Solid Wastes and Recyclable Materials Management Act.

96. But for the implementation of the invalid rules at Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. by the Director of the Alabama Department of Environmental Management, and Department employees to whom he has delegated his authority, authorizing the use of materials other than earth for periodic cover of solid waste at landfills, including the Stone's Throw Landfill and Arrowhead Landfill, Plaintiffs would suffer less frequent and less offensive odors and disease vectors originating from such landfills.

97. If the Court grants the declaratory and injunctive relief sought by Plaintiffs, it is likely that the Director of the Alabama Department of Environmental Management, and Department employees to whom he has delegated his authority, will cease to issue permits that approve the use of cover materials other than earth for periodic cover of solid waste at landfills. The exclusive use of earth for periodic cover

material at the Stone's Throw Landfill and Arrowhead Landfill is likely to reduce the offensive odors and disease vectors to which Plaintiffs Ronald C. Smith, William T. Gipson, and Latonya J. Gipson are presently subjected.

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 "rules" and invalid "environmental policies;"

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;"

C. That the Court grant a permanent injunction prohibiting the Director of the Alabama Department of Environmental Management, and his officers, agents, servants, employees, attorneys, successors, assigns, and other persons in active concert or participation with him

who receive actual notice of the injunction, from implementing or invoking for any purpose, "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);

D. That the Court grant a permanent injunction prohibiting the Director of the Alabama Department of Environmental Management, and his officers, agents, servants, employees, attorneys, successor, assigns, and other persons in active concert or participation with him who receive actual notice of the injunction, from implementing those provisions of Ala. Admin. Code rs. 335-13-4-.15(2), 335-13-4-.22(1)(a)1., and 335-13-4-.23(1)(a)1. that authorize the use of materials other than earth for periodic cover of solid waste at landfills; and

E. 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

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ADEM**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

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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



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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

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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.

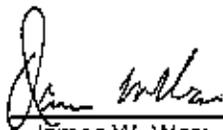
B. Request for Information Involving Third Party Entities.

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.

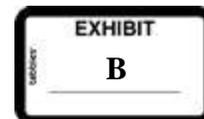
DISPOSITION OF COMPLAINTS

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
- (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.