



DAILY NEWS

EPA Dismissal Of Rights Petition Raises Fears Over Discrimination Findings

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Environmentalists and at least one Democratic senator are concerned that EPA's recent dismissal of a petition alleging Alabama regulators violated the Civil Rights Act (CRA) when they approved a landfill expansion to accept coal ash in a minority community suggests the agency will never make an affirmative finding of discrimination. The environmentalists say that the petition filed by resident of Uniontown, AL, under Title VI of the CRA was the "poster child" for environmental discrimination against poor and minority residents.

EPA's rejection of this petition means the agency, in all likelihood, will never affirmatively answer such a petition, which provides local communities with leverage to challenge siting and other decisions and can result in the loss of federal funds for the offending state agency.

"Part of our concern is that there was really such compelling evidence in this case, that I think if EPA did not reach a finding here, that we're pretty dubious they would find it anywhere," one environmentalist says.

And Sen. Cory Booker (D-NJ), a member of the Senate environment committee who visited the community last summer, said EPA's rejection of the petition is “wholly unacceptable.”

“The EPA has abdicated its responsibility to protect people of color and low-income communities from blatant discrimination,” he said in a statement.

EPA's External Civil Rights Compliance Office (ECRCO) March 1 [formally rejected](#) the Uniontown residents' 2013 Title VI complaint that the Alabama Department of Environmental Management (ADEM) discriminated against them by exposing them to excess air and water pollution by approving an expansion of the Arrowhead Landfill to handle coal ash from a 2008 Tennessee Valley Authority (TVA) spill.

Had EPA found a “disparate impact” on the residents, it would have triggered a first-time finding of a state-level violation.

The agency has never formally found that a decision by a state that it oversees would have such an impact, though the Supreme Court has set a high bar that such findings must be based on intentional discrimination.

EPA at the tail end of the Obama administration issued a preliminary disparate impact finding against the Michigan Department of Environmental Quality (DEQ) over impacts from its approval of the Genesee Power Station (GPS).

“EPA finds that the preponderance of evidence supports a finding of discriminatory treatment of African Americans by MDEQ in the public participation process for the GPS permit considered and issued from 1992 to 1994. In addition, EPA has concerns that MDEQ's current policies are insufficient to address the potential for discrimination,” the agency said in [a Jan. 18, 2017 decision](#).

But the Obama administration closed the complaint immediately after issuing its preliminary finding and the Trump administration continues to investigate it as part of a more generic complaint against DEQ policies, the environmentalist says.

The Obama administration had also issued a draft discrimination finding in a petition known as Angelita C, over Latino school children's exposure to methyl bromide in schools. But that was resolved before the draft was released, and it only became public after the agency settled the matter and ultimately denied the petition.

Environmentalists challenged the denial in an appellate court, which unanimously [sided with EPA](#) in a 2015 ruling.

Insufficient Evidence

ERCO's [March 1 letter](#) over the ADEM Arrowhead complaint says the office found “insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation.”

Nevertheless, the office suggested that ADEM “could increase its leadership role by bringing together the Arrowhead community, permittees, as well as other local government entities” to address concerns and share information.

ECRCO also dismissed a separate retaliation claim that petitioners had filed and similarly recommended that ADEM improve its nondiscrimination complaint process and improve underlying processes and environmental complaint determinations, which form the basis for some of the retaliation claims.

It sent a similar [March 1 letter](#) dismissing a similar complaint against ADEM over its Dothan landfill expansion, which did not include the coal ash issue, finding that

ADEM now does have proper procedures in place to comply with its affirmative non-discrimination obligations.

The closure of the two complaints against ADEM are among eight Title VI complaints that the Trump EPA has resolved without finding discrimination since taking office -- a fast pace compared to other administrations, including the Obama EPA which faced criticism for its slow pace of addressing a Title VI complaint backlog and its refusal to find discrimination.

But environmentalists say the complaint against ADEM over its approval of the Arrowhead Landfill expansion is the most egregious example of intentional discrimination that exists.

Residents say they suffered illness and asthma from landfill odors, that their property was covered in dust, and that their property values declined after coal ash was shipped from a predominantly white neighborhood of Kingston, TN, near the TVA spill to the poor black community of Uniontown, AL.

One environmentalist says “the new EPA administration has paid lip service to environmental justice.” This includes having Administrator Scott Pruitt meet with a handful of members of the National Environmental Justice Advisory Council in December and raising equity issues in memos and messages to staff.

That includes a Jan. 16 Martin Luther King Jr. Day message from Pruitt linking MLK's work to environmental justice and inviting staff to a panel discussion called “MLK50 Forward: Together We Win with Love for Humanity.”

“Obviously, however, we don't feel that EPA's recent actions bear out those commitments,” the source says.

A second source familiar with the ADEM complaints notes that aspects of the Dothan complaint are being heard in state circuit court and should be decided by the summer. However, the source notes even if the court sides with the residents, then either the state legislature or EPA would have to act to withdraw state or federal funding to ADEM. "History shows us that we should expect very little," the source notes.

A third environmentalist says that advocacy groups are also skeptical of EPA's decision to move of the civil rights office from the enforcement office to the general counsel's office.

The source says there is new "concern about how the new leadership is transitioning, and whether this [ADEM decision] might reflect a shift away from civil rights enforcement" even though "EPA's civil rights program has long been dysfunctional."

The source adds that the Obama administration had taken baby steps to "professionalize the office and at least to send a message to recipients of federal funds that the law should be obeyed. This decision is a step backward."

This source says Uniontown residents are considering their options, which could include going to court to challenge EPA's closure of their petitions.

No Binding Agreement

The first source agrees that the decision does not bode well for civil rights law enforcement under the Trump EPA. The source says while the progress under the Obama administration was "far short of where it should have been" that pales in comparison to the dismissal of the Uniontown complaint.

EPA “didn't adequately address the issues the complainants were raising. They did this odd move where they encouraged ADEM to communicate more clearly and have better procedures, but it's all *dicta*, they are not entering into any binding agreement. And then when it comes to the impacts that were at the heart of complaint, they don't treat a lot of them in depth.”

The source adds that under the Obama EPA's interpretation, facilities can be in compliance with their permits but still have a dramatic impact on a community regarding odors, noise, quality of life and property value impacts. Past practice was to not equate environmental law compliance with a presumption of civil rights compliance, which here EPA does, departing from an Obama-era guidance issued in early 2017 in response to a critical 2016 U.S. Commission on Civil Rights report. -- *Dawn*

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