

June 13, 2018

**Delivered Via Electronic Mail**

Ms. Lilian Dorka, Director  
External Civil Rights Compliance Office  
U.S. Environmental Protection Agency  
Washington, D.C. 20460  
Title\_VI\_Complaints@epa.gov  
Dorka.lilian@epa.gov

**Re: Complaint Against Alabama Department of Environmental Management for  
Violation of 40 C.F.R. § 7.90(a) Regarding Discrimination Grievance  
Procedures**

Dear Ms. Dorka:

**Background**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Pursuant to 42 U.S.C. § 2000d-1, the U.S. Environmental Protection Agency (EPA) is authorized to issue regulations to achieve the objectives of 42 U.S.C. § 2000d. In accordance therewith, EPA has promulgated 40 C.F.R. § 7.90(a) which provides:

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

This Complaint is filed pursuant to 40 C.F.R. § 7.120(a) which provides, *inter alia*:

A person who believes that he or she or a specific class of persons has been discriminated against in violation of this part may file a complaint.

Complainants allege that the Alabama Department of Environmental Management (ADEM) is in violation of 40 C.F.R. § 7.90(a). From October 18, 2004 through June 4, 2018, ADEM asserted that it had valid discrimination grievance procedures sufficient to comply with 40 C.F.R. § 7.90(a).<sup>1</sup> On January 9, 2017, several Black residents of Alabama, including the complainants named herein, filed suit against the Director of ADEM in the Montgomery County Circuit Court seeking a declaration that the discrimination grievance procedures are invalid and an injunction prohibiting the implementation and invocation of the procedures for any purpose. *Keith v. LeFleur*, No. CV-2017-900021.00 (Montgomery Cnty. Cir. Ct.) (Doc. 2). The Court dismissed the complaint on April 12, 2017 as non-justiciable. *Id.* (Doc. 45). A notice of appeal was filed on April 25, 2017. *Id.*

In the meantime, on March 1, 2018, EPA's External Civil Rights Compliance Office (ECRCO) issued a letter "resolving and closing" an administrative complaint alleging that ADEM is not complying with the procedural safeguard provisions delineated in 40 C.F.R. Part 7 Subpart D, which require recipients of EPA financial assistance to have specific policies and procedures in place to comply with their affirmative non-discrimination obligations. *Closure of Administrative Complaint*, EPA File No. 13R-16-R4 (Mar. 1, 2018) at 1. Among those obligations is the obligation to adopt discrimination grievance procedures as required by 40 C.F.R. § 7.90(a). EPA concluded that "as of the date of this letter, there is insufficient evidence

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<sup>1</sup> ADEM's discrimination grievance procedures were known as "Memorandum #108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints" and the website version of Memorandum #108 – "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process."

of current noncompliance with Title VI and EPA’s nondiscrimination regulation.” However, EPA also said:

ECRCO is aware that Complainant represents plaintiffs in a pending lawsuit challenging the validity of ADEM’s procedures titled “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.” However, there has not been a finding affecting the validity of these procedures and so that lawsuit does not affect our finding in this complaint.

*Closure of Administrative Complaint*, EPA File No. 13R-16-R4 (Mar. 1, 2018) at footnote 3.

On January 26, 2018, the Alabama Court of Civil Appeals reversed the order of the Montgomery County Circuit Court dismissing the complaint against Director LeFleur and remanded the case to the trial court for further proceedings. *Keith v. Le Fleur*, No. 2160598, 2018 Ala. Civ. App. LEXIS 11 (Ala. Civ. App. Jan. 26, 2018) . On June 5, 2018, Director LeFleur filed a “Suggestion of Mootness.” *Keith v. LeFleur*, No. CV-2017-900021.00 (Montgomery Cnty. Cir. Ct.) (Doc. 82); Exhibit A. Attached thereto is a document purportedly signed by Director LeFleur that “rescinds” ADEM’s discrimination grievance procedures. *Id.* (Doc. 83) . Consequently, the evidence is now unequivocal that ADEM does not have discrimination grievance procedures as required by 40 C.F.R. § 7.90(a).

### **Complainants**

The names, addresses and telephone numbers of the persons making this complaint are as follows:

Ronald C. Smith

Esther Calhoun

Anthony Keith

██  
██  
██

The undersigned is the attorney for and authorized representative of the Complainants. All contacts with the Complainants should be made through the undersigned or with the express permission of the undersigned.

### **Recipient**

A “recipient” includes “any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.” 40 C.F.R. § 7.25. ADEM is a recipient of financial assistance from EPA. For example, EPA has awarded grants to ADEM as shown in Exhibit B.

### **Discriminatory Act**

The alleged discriminatory act is ADEM’s failure to provide discrimination grievance procedures as required by 40 C.F.R. § 7.90(a). This status commenced on June 5, 2018 when the Director of ADEM rescinded the discrimination grievance procedures which existed from October 18, 2004 through June 4, 2018.

### **Timeliness of Complaint**

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving EPA financial assistance must be filed within 180 days after the alleged discriminatory act. The rescission of the discrimination grievance procedures by the Director of ADEM on June 5, 2018 commenced ADEM’s violation of 40 C.F.R. § 7.90(a). Accordingly, the filing of this complaint is timely if received by EPA on or before December 2, 2018.

### **Adverse and Disparate Impacts**

Each of the complainants are Black and reside less than one mile from polluting facilities that are periodically issued permits by the Department. The communities in which they live are predominantly comprised of Black residents. Absent the adoption of valid discrimination grievance procedures by ADEM as required by 40 C.F.R. § 7.90(a), these individuals and the other Black members of their communities are deprived of the opportunity to seek and obtain the prompt and fair resolutions of their complaints of discrimination from ADEM.

### **Request**

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency acknowledge receipt of this complaint within five calendar days, *see* 40 C.F.R. § 7.120(c) (“The [EPA] will notify the complainant and the recipient of the agency’s receipt of the complaint within five (5) calendar days.”); accept this complaint within 20 calendar days after its receipt is acknowledged, *see* 40 C.F.R. § 7.120(d)(1)(i) (“Within twenty (20) calendar days of acknowledgment of the complaint, the [EPA] will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.”); promptly conduct an investigation thereof, *see* 40 C.F.R. § 7.120 (“The [EPA] shall promptly investigate all complaints filed under [40 C.F.R. § 7.120] . . .”); make a preliminary finding of noncompliance with 40 C.F.R. § 7.90(a) within 180 days from the start of complaint investigation, *see* 40 C.F.R. § 7.115(c)(1) (“Within 180 calendar days from the start of the . . . complaint investigation, [EPA] will notify the recipient . . . of . . . [p]reliminary findings . . .”); issue a formal determination of noncompliance with 40 C.F.R. § 7.90(a), *see* 40 C.F.R. § 7.115(d) (“If the recipient does not take one of [three specified] actions within fifty (50) calendar days after receiving this preliminary notice, [EPA] shall, within

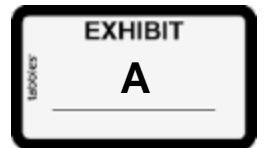
fourteen (14) calendar days, send a formal written determination of noncompliance to the recipient . . .”); and commence proceedings to deny, annul, suspend or terminate EPA assistance to ADEM, *see* 40 C.F.R. § 7.115(e) (“The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance in which to come into voluntary compliance. If the recipient fails to meet this deadline, the [EPA] must start proceedings under [40 C.F.R. § 7.130(b)].”).

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Ludder". The signature is fluid and cursive, written in a professional style.

David A. Ludder  
Attorney for Complainants

cc: Brittany Robinson (Robinson.brittany@epa.gov)  
Betsy Biffl (Biffl.betsy@epa.gov)



## AlaFile E-Notice

03-CV-2017-900021.00

Judge: J. R. GAINES

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

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

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

The following matter was FILED on 6/5/2018 5:47:28 PM

**D001 LANCE R. LEFLEUR, DIRECTOR**  
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[Filer: SIBLEY STEVEN SHAWN]

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CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

TIFFANY B. MCCORD, CLERK

**STATE OF ALABAMA**

Revised 3/5/08

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Unified Judicial System

03-MONTGOMERY

 District Court  Circuit Court

CV21

**CIVIL MOTION COVER SHEET**ANTHONY KEITH ET AL V. LANCE R. LEFLEUR,  
DIRECTOR

Name of Filing Party: D001 - LANCE R. LEFLEUR, DIRECTOR

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

STEVEN SHAWN SIBLEY  
POST OFFICE BOX 301463  
MONTGOMERY, AL 36130

Attorney Bar No.: SIB002

 Oral Arguments Requested**TYPE OF MOTION****Motions Requiring Fee**

- Default Judgment (\$50.00)  
Joinder in Other Party's Dispositive Motion  
(i.e. Summary Judgment, Judgment on the Pleadings,  
or other Dispositive Motion not pursuant to Rule 12(b))  
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative  
Summary Judgment (\$50.00)
- Renewed Dispositive Motion (Summary  
Judgment, Judgment on the Pleadings, or other  
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other \_\_\_\_\_  
pursuant to Rule \_\_\_\_\_ (\$50.00)

\*Motion fees are enumerated in §12-19-71(a). Fees  
pursuant to Local Act are not included. Please contact the  
Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0 \_\_\_\_\_

**Motions Not Requiring Fee**

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other Suggestion of Mootness  
pursuant to Rule Rule 12 ARCP (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously  
with this motion an Affidavit of Substantial Hardship or if you  
are filing on behalf of an agency or department of the State,  
county, or municipal government. (Pursuant to §6-5-1 Code  
of Alabama (1975), governmental entities are exempt from  
prepayment of filing fees)

Date:  
6/5/2018 5:44:08 PM

Signature of Attorney or Party  
/s/ STEVEN SHAWN SIBLEY

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



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03-CV-2017-900021.00  
CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA  
TIFFANY B. MCCORD, CLERK

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

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ANTHONY KEITH, RONALD C. SMITH, )  
 ESTHER CALHOUN, WILLIAM T. )  
 GIPSON, and LATONYA GIPSON, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 LANCE R. LEFLEUR, in his official )  
 capacity as Director of the Alabama )  
 Department of Environmental Management, )  
 )  
 Defendant. )

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CIVIL ACTION NO.:  
CV-2017-900021.00-JRG

SUGGESTION OF MOOTNESS

Counts I through V of this action concern challenges to ADEM Guidance Memorandum No. 108 and its web-based version entitled “ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process.” On June 5, 2018, the Director rescinded Memorandum 108 and its web-based version. *See Exhibit “A.”*

Because these documents are rescinded, the challenge to them in Counts I through V is moot.

DONE this 5<sup>th</sup> day of June, 2018.

Respectfully submitted,

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ S. Shawn Sibley  
S. Shawn Sibley (SIB002)  
Assistant Attorney General and  
Associate General Counsel

/s/ Paul Christian Sasser, Jr.  
Paul Christian Sasser, Jr. (SAS006)  
Assistant Attorney General and  
Associate General Counsel

ADDRESS OF COUNSEL:

Alabama Department of Environmental Management  
Office of General Counsel  
P.O. Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7855/Office  
(334) 260-4544 (Office/Facsimile)  
[ssibley@adem.alabama.gov](mailto:ssibley@adem.alabama.gov)  
[pcsasser@adem.alabama.gov](mailto:pcsasser@adem.alabama.gov)

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing “Suggestion of Mootness” with the Clerk of Court using the AlaFile system and service will be perfected upon any AlaFile participant(s) electronically on this 5<sup>th</sup> day of June, 2018:

David A. Ludder  
Attorney for Plaintiffs  
Law Office of David A. Ludder, PLLC  
9150 McDougal Court  
Tallahassee, FL 32312-4208  
(850) 386-5671/Office  
(267) 873-5848/Fax  
[davidaludder@enviro-lawyer.com](mailto:davidaludder@enviro-lawyer.com)

/s/ S. Shawn Sibley  
S. Shawn Sibley (SIB002)

**LANCE R. LEFLEUR**  
DIRECTOR



**Alabama Department of Environmental Management**  
adem.alabama.gov

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CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA  
TIFFANY B. MCCORD, CLERK



June 5, 2018

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MEMORANDUM #108 - *RESCINDED*

SUBJECT: PROCEDURE FOR TITLE VI OR ENVIRONMENTAL JUSTICE FILING OF  
DISCRIMINATION COMPLAINTS – RESCINDED AND RESERVED

Memorandum #108 and associated web-based version of the same are hereby rescinded and Number 108 is reserved for future use.

Lance R. LeFleur, Director

SPECIAL INSTRUCTIONS: Supersedes and Rescinds memoranda dated October 18, 2004.

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Birmingham, AL 35209-4702  
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(205) 941-1603 (FAX)

**Decatur Branch**  
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Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

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**Applicant Name:** AL Dept of environmental management

**End Date Between:** 06/13/2018 And 06/12/2021

**State:** AL

Click on the Grant Family ID to view the Grant Family Detailed Report.

Grant Family ID	CFDA Number	Applicant Name	Address	Award Date	Cumulative Award	Project Start	Project End
<a href="#">00474717</a>	66.454	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	DEC-06-2016	\$150,000	OCT-01-2016	SEP-30-2018
<a href="#">00474718</a>	66.454	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	DEC-14-2017	\$50,000	OCT-01-2017	SEP-30-2019
<a href="#">00D22914</a>	66.461	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	DEC-03-2014	\$273,604	OCT-01-2014	FEB-28-2019
<a href="#">00D28715</a>	66.034	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	MAY-04-2015	\$1,995,837	APR-01-2015	MAR-31-2020
<a href="#">00D34617</a>	66.805	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	AUG-22-2017	\$1,122,000	OCT-01-2016	SEP-30-2018
<a href="#">00D35917</a>	66.802	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	AUG-08-2017	\$222,091	OCT-01-2017	SEP-30-2020
<a href="#">00D57817</a>	66.802	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-14-2017	\$68,890	OCT-01-2017	SEP-30-2019
<a href="#">00D62117</a>	66.802	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-07-2017	\$12,174	OCT-01-2017	SEP-30-2019
<a href="#">00D62217</a>	66.802	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-13-2017	\$33,880	OCT-01-2017	SEP-30-2019
<a href="#">00D62417</a>	66.809	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	AUG-30-2017	\$33,000	OCT-01-2017	SEP-30-2019
<a href="#">00D62517</a>	66.040	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-21-2017	\$241,039	OCT-01-2017	SEP-30-2018
<a href="#">01000114</a>	66.458	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	AUG-07-2014	\$15,678,000	JUL-01-2014	JUN-30-2018
<a href="#">01000115</a>	66.458	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-04-2015	\$15,597,000	AUG-01-2015	JUL-31-2019
<a href="#">01000116</a>	66.458	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-22-2016	\$14,940,000	AUG-01-2016	JUL-31-2020
<a href="#">95411117</a>	66.804	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	AUG-04-2017	\$646,000	OCT-01-2016	SEP-30-2018
<a href="#">96464614</a>	66.605	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-11-2013	\$11,986,881	OCT-01-2013	SEP-30-2018
<a href="#">96464615</a>	66.605	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-02-2014	\$12,184,507	OCT-01-2014	SEP-30-2019
<a href="#">96464616</a>	66.605	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-15-2015	\$12,324,771	OCT-01-2015	SEP-30-2020
<a href="#">98447214</a>	66.468	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	AUG-07-2014	\$16,892,000	JUL-01-2014	JUN-30-2018
<a href="#">98447215</a>	66.468	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-29-2015	\$16,781,000	AUG-01-2015	JUL-31-2019
<a href="#">98447216</a>	66.468	AL Dept of Environmental Management	1400 Coliseum Blvd Montgomery, AL 36110	SEP-22-2016	\$15,876,000	AUG-01-2016	JUL-31-2020

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**Discover.**

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