



DAILY NEWS

EPA Launches Rights Investigation After Alabama Scraps Grievance Policy

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EPA is launching an investigation into whether Alabama's environment department is violating Title VI of the Civil Rights Act that prohibits recipients of federal funds from discriminatory actions, in the midst of a legal battle between Alabama residents and the state over what critics say is a “sham” grievance policy the state has now withdrawn.

In [a July 2 acceptance letter](#) to residents that filed a rights complaint with EPA, the agency's Office of Civil Rights (OCR) says it will investigate whether the Alabama Department of Environmental Management (ADEM) “is complying with the regulatory requirement” under Civil Rights Law, and “specifically whether ADEM has adopted grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the regulation.”

The state faces a potential loss of its EPA funding, if OCR finds that ADEM violated the rights law, though the agency has never gone so far as to finalize such a determination in [prior complaints](#).

In the latest case, sources familiar with the issue say ADEM now has no policy as required by EPA Title VI compliance rules for addressing discrimination complaints. They claim this makes the violation egregious, noting that it could put additional pressure on OCR to issue an affirmative finding of violation.

ADEM declined to comment, noting that the issue is in litigation. A lawsuit over the merits of the since-scrapped grievance policy filed by Alabama residents is ongoing at the state court level.

Attorney David Ludder, who is representing the Alabama residents that filed [the June 13 Title VI complaint](#) as well as the state suit, told *Inside EPA* late last month that his clients challenged the “sham” civil rights policy in state court about two years ago. They raised the issue with EPA at the time, also alleging the state was out of compliance with Civil Rights law, but EPA then said it would have to wait until the court took action.

The residents lost their case in the lower state circuit court, but then early this year [won on appeal](#) before Alabama's Court of Civil Appeals, which held the plaintiffs had standing and remanded the issue back to the circuit court for either trial or summary judgment against ADEM Director Lance LeFleur.

But in the midst of the litigation, ADEM rescinded the rights grievance procedure policy at issue, and then state attorneys filed [a June 5 “suggestion of mootness”](#) that says, “Because these documents are rescinded, the challenge to them in Courts 1 through V is moot.”

Ludder said he shared that with EPA, “saying now ADEM no longer has the discrimination procedures which it is required to have.” EPA suggested that Ludder file a formal complaint, which he then filed with the agency last month.

The complaint says, “On January 26, 2017, the Alabama Court of Civil Appeals reversed the order of the Montgomery County Circuit Court dismissing the complaint against [ADEM] Director LeFleur and remanded the case to the trial court for further proceedings. On June 5, 2018, Director LeFleur filed a 'Suggestion of Mootness.' Attached thereto is a document purportedly signed by Director LeFleur that 'rescinds' ADEM's discrimination grievance procedures. Consequently, the evidence is now unequivocal that ADEM does not have discrimination grievance procedures as required.”

'Improper Rulemaking'

Ludder noted that the state gave no reason to the court for why the documents were rescinded but “no doubt the reason was because they knew they were going to lose on at least the aspect of the case that involved improper rulemaking.”

He argued that the rule did not follow the proper procedures because it was done without public notice, public comment or any hearings, also claiming that ADEM did not have statutory authority to issue it in the first place.

Ludder said ADEM has not indicated any plan to rewrite the rules, though he added, “I fully expect them to” but notes the department would have to get authority to do so from the state legislature. “It would have to be ADEM telling the legislature, 'Unless we get this authority, EPA can take our funding away.'”

One environmentalist who is familiar with ADEM's Title VI history says the state “is not interested in civil rights enforcement and has taken very aggressive steps not to look at demographics and racial disparities. Our position is that it is inconsistent with federal law. Each time it gets a grant from EPA it says that it is complying with Title VI but has no way of knowing if its actions have a racially disparate impact.”

The pending case, over the state's lack of a grievance policy, shows the state's hostility, the source alleges. “The appellate court ruled that the case can go forward, and rather than face the music, ADEM withdrew the policy and then moved in court to moot out the case. . . . I don't have inside information into their intent but clearly it seems like it had the appearance of being in response to losing in court.”

As far as what OCR might do, the source notes that EPA regulations are clear that recipients of federal funds must have a grievance procedure, among other policies. “And if ADEM doesn't have those, then they are in violation of the regulations, and each time they get a grant and they say they are in compliance they could be committing another act that they could be prosecuted for. So that's a problem for ADEM and a problem for EPA. And EPA has an obligation to ensure compliance with Title VI. . . . This is certainly one to watch and see what they do.” -- *Dawn Reeves*(dreeves@iwppnews.com)