



DAILY NEWS

Rights Petition Dismissal Signals EPA's Lack Of Political Will, Critics Say

January 04, 2019

EPA's recent decision dismissing a discrimination complaint against Alabama's environment department sets a disturbing precedent that the agency's civil rights office lacks political will, and is allowing states to play hardball and get away with it, even though EPA found the state action in this case harmed the petitioners, critics say. "The signal here is, if you don't play with us, we're not going to flex our muscles at all," says one attorney involved in the complaint.

EPA did not respond to a request for comment on its investigation or the allegations by the attorney that the agency lacks political will to do its job.

But in a [Dec. 10 preliminary finding](#), EPA's External Civil Rights Compliance Office (ECRCO) said it dismissed the complaint alleging that the Alabama Department of Environmental Management (ADEM) discriminated in how it implemented permit requirements because of "insufficient evidence" to show intentional discrimination. In the finding, EPA acknowledges that state officials refused to discuss a possible informal resolution -- even though the agency found there had been adverse impacts as the petition alleged.

The May 2017 complaint, filed under Title VI of the Civil Rights Act (CRA), alleged that local residents from the historic African-American Ashurst Bar/Smith Community Association in Tallahassee, AL, were disproportionately harmed by the Stone's Throw Landfill because ADEM did not enforce its permit terms. The complaint did not allege intentional discrimination.

The residents charged the state's failure to enforce the permit led to them not being able to enjoy their property, with values plummeting due to odors and other issues. The petition focused on the state's re-issuance of the landfill's permit allowing it to receive waste from all 67 Alabama counties and three in Georgia alleging it was renewed without sufficient public health and environmental protections. The landfill is sited in the

middle of a historic black community where many residents can trace their land ownership to emancipation soon after the Civil War.

EPA investigated and found “by a preponderance of the evidence that a lack of enforcement did result in adverse impacts” and sought to engage state officials, according to the document. However, the state refused to participate and said it had done nothing wrong.

EPA then determined there was insufficient evidence to show intentional discrimination. “ECRCO and ADEM discussed the possibility of informal resolution of this case. During that meeting, ADEM's Director stated that he had no interest in informally resolving this case. . . . He stated that ADEM had done nothing wrong and expressed his desire to receive ECRCO's written findings with respect to this investigation,” the finding says. ECRCO adds that it contacted ADEM on Dec. 6 to share the preliminary findings and to discuss recommendations “to address the issues identified with respect to enforcement of the daily cover requirement. ADEM responded that it is not interested in discussing the identified issues and will wait for ECRCO's Letter of Findings.”

Historic Finding

Instead of moving forward with what would have been a first-time bombshell finding of discrimination, EPA instead looked at issues that were not raised in the complaint -- including intentional discrimination and the question of whether nearby white communities were similarly impacted -- and then dismissed it for lack of evidence, the attorney complains.

The source adds that EPA set a disappointing precedent signaling that other subjects of its civil rights investigations can refuse to engage with its civil rights office and face no harm.

If EPA does find that the subject of a petition did discriminate in violation of the Civil Rights Act, then that agency would lose its EPA funding, which is the only outcome that can result from a CRA violation -- a harsh measure that EPA has never imposed. EPA has also never made a final affirmative finding in a CRA case, though it has issued preliminary ones that were then resolved. All of these actions raise doubts about the agency's willingness to enforce the rights law.

The attorney says here it is unclear what is “preliminary” about the finding, because that term is used only when EPA determines there is discrimination, and then the recipient has the chance to implement the recommendations to avoid losing its funding. Given that EPA found no discrimination here, the finding is not considered to be preliminary.

The source adds that EPA went “out of its way,” raising the bar and finding insufficient evidence for intentional discrimination, to conclude that ADEM's actions were not based on race because nearby white communities were also impacted.

EPA did not “really investigate what the initial complaint was,” which was that the Ashurst Bar/Smith residents suffered a disparate impact from the state's failure to regulate and enforce the landfill's permit. “And then they twisted what the analysis should be in those things they investigated,” including intentional discrimination. “The community didn't allege intentional discrimination” but argued that ADEM violated its civil rights by failing to enforce the landfill's permit provisions, and renewing the permit without adding additional protections.

One of the most disconcerting aspects of the decision is that it shows, “If you stonewall, EPA doesn't have the political grit to find discrimination. . . . They went up to the edge of making a finding. . . . And then they get up to that ledge and under tortured reasoning walk it back.”

The decision is “extraordinarily disappointing” to the community, which is left with “a facility that is harming them, a state government [that is] failing to protect them and a federal government that doesn't have the political will to enforce the law,” the source says.

In a Dec. 11 statement, the Ashurst Bar/Smith Community Organization says it is “astounded” that EPA closed the case. The residents also vowed to continue to pursue the claims, noting they are supported by “substantial evidence,” and could sue EPA over its response.

EPA's dismissal of this complaint comes just days after it dismissed a second CRA petition against ADEM. The [Dec. 3 dismissal](#) found insufficient evidence that ADEM was out of compliance with the rights law when it rescinded its rules for filing a discrimination grievance claim. Here, ADEM did engage with EPA and made agency-suggested changes to an interim grievance policy and then posted that policy on its website, resulting in the dismissal.

The attorney says it is unclear what next steps the community will take but that it will not let the issue die. “Though this decision is grim and not reflective of an agency wanting to enforce civil rights, we are still hopeful EPA will enforce civil rights and don't see this as the end of the road, both on behalf of this community and others will still push EPA to do its job.”

-- Dawn Reeves (dreeves@iwpnews.com)