

A CITIZEN'S GUIDE TO  
FILING A "DISPARATE IMPACT" ENVIRONMENTAL  
DISCRIMINATION COMPLAINT WITH THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY UNDER  
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

*Prepared by*



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## TITLE VI COMPLAINT CHECKLIST

- Is the complaint in writing, signed, and dated and does it provide sufficient information to permit EPA to contact the signatory (*e.g.*, phone number, address)?

Note: The complainant need not be among the population suffering the adverse impact and need not be an individual or member of a group protected under Title VI. Any “person who believes that . . . a specific class of persons has been discriminated against” may file a complaint. 40 C.F.R. § 7.120(a).

- Does the complaint identify the entity responsible for the discriminatory act (*e.g.*, Alabama Department of Environmental Management or Florida Department of Environmental Protection)?
- Was the entity responsible for the discriminatory act a recipient of EPA financial assistance at the time of the discriminatory act?

Reference: [http://www.epa.gov/enviro/html/gics/gics\\_query.html](http://www.epa.gov/enviro/html/gics/gics_query.html)

- Does the complaint identify the discriminatory act (*e.g.*, issuance of an initial permit, permit renewal, or permit modification)?
- Does the complaint allege that the discriminatory act has the effect of *causing* an *impact* that is *adverse* to the population affected?

*Causation:* The complaint should make clear how the alleged discriminatory act (activity authorized by a permit) has the effect of causing a specific impact. An impact that is not *caused* by the alleged discriminatory act will be disregarded.

*Impact:* The complaint should specify the impacts that will result from the alleged discriminatory act. The impacts need not be ones that the permit seeks to control, but must be the natural consequence of the activities permitted. The failure to identify any impacts resulting from the alleged discriminatory act will result in rejection of the complaint.

*Adversity:* The complaint should identify how the specified impacts will be adverse to the health or welfare of the affected population in the area of the impacts.

Note: The impact of a single facility is more likely to be considered *adverse* if it contributes to or compounds existing impacts from multiple sources where the entity responsible did not address cumulative impacts.

- Does the complaint allege that the adverse impacts are disparately imposed on an individual or group protected under Title VI (*i.e.*, race, color, or national origin) and does it identify the protected individual or group by race, color, or national origin that suffers the disparate impact?

Note: Disparity is shown by comparing the adverse impact on a protected individual or group with the impact on others (*i.e.*, non-protected individuals or group). The absence of a *disparate* impact will result in rejection of the complaint.

Reference: <http://epamap14.epa.gov/ejmap/entry.html>

- Is the complaint filed (received) within 180 days after the discriminatory act (*e.g.*, date of the issuance of the initial permit, permit renewal, or permit modification)?

Director of the Office of Civil Rights  
U.S. Environmental Protection Agency  
Mail Code 1201A  
1200 Pennsylvania Ave NW  
Washington, D.C. 20460

[Date]

**Certified Mail**

**Return Receipt Requested**

Director of the Office of Civil Rights  
U.S. Environmental Protection Agency  
Mail Code 1201A  
1200 Pennsylvania Ave NW  
Washington, D.C. 20460

Re: **Title VI Complaint** - [Facility Name]

Dear Sir:

This complaint is filed pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and 40 C.F.R. Part 7.

**Complainant**

The complainant's name, address and phone number are as follows:

[Name]  
[Address]  
[City, State, Zip Code]  
[Phone Number]

**Violator**

The alleged violator is \_\_\_\_\_ [e.g., the Alabama Department of Environmental Management (ADEM) or Florida Department of Environmental Protection (FDEP)]. The alleged violator was a recipient of financial assistance from the U.S. Environmental Protection Agency at the time of the alleged discriminatory act.

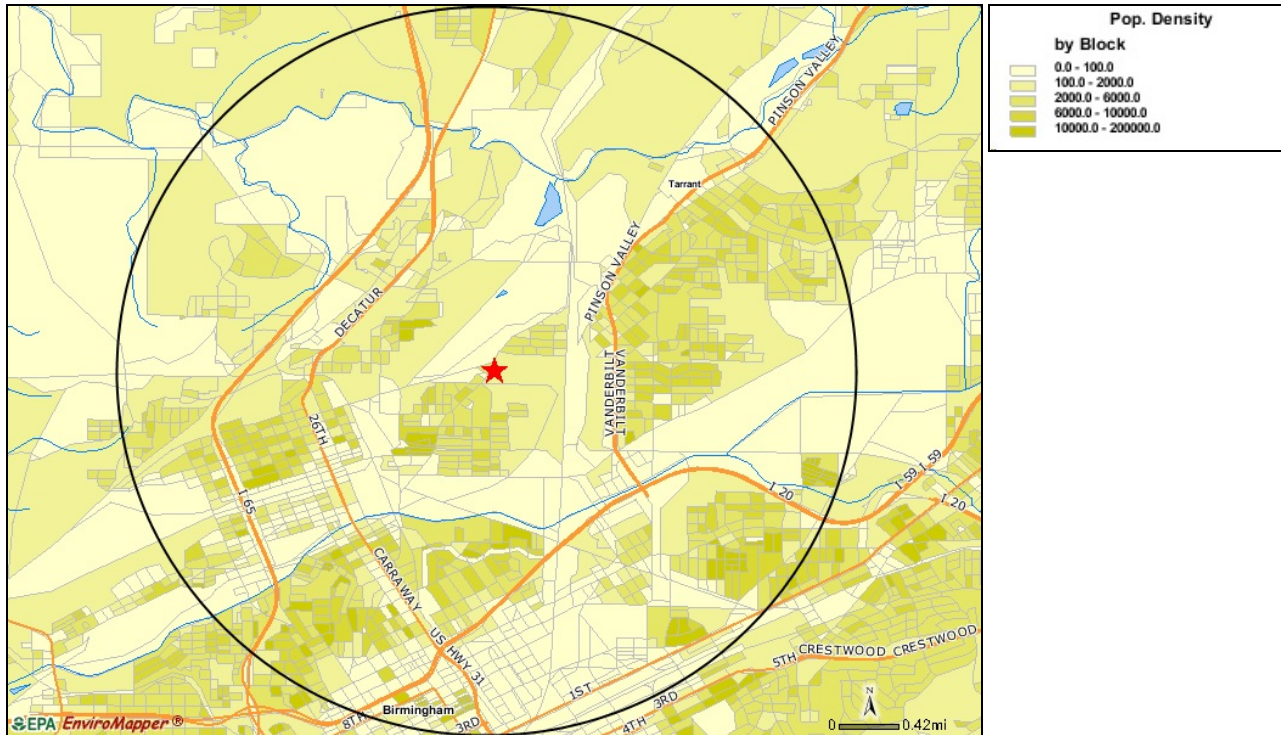
**Discriminatory Act**

The alleged discriminatory act is the [issuance, reissuance, modification] of \_\_\_\_\_ to \_\_\_\_\_ on \_\_\_\_\_. Attachment A. The permit authorizes the following activities:

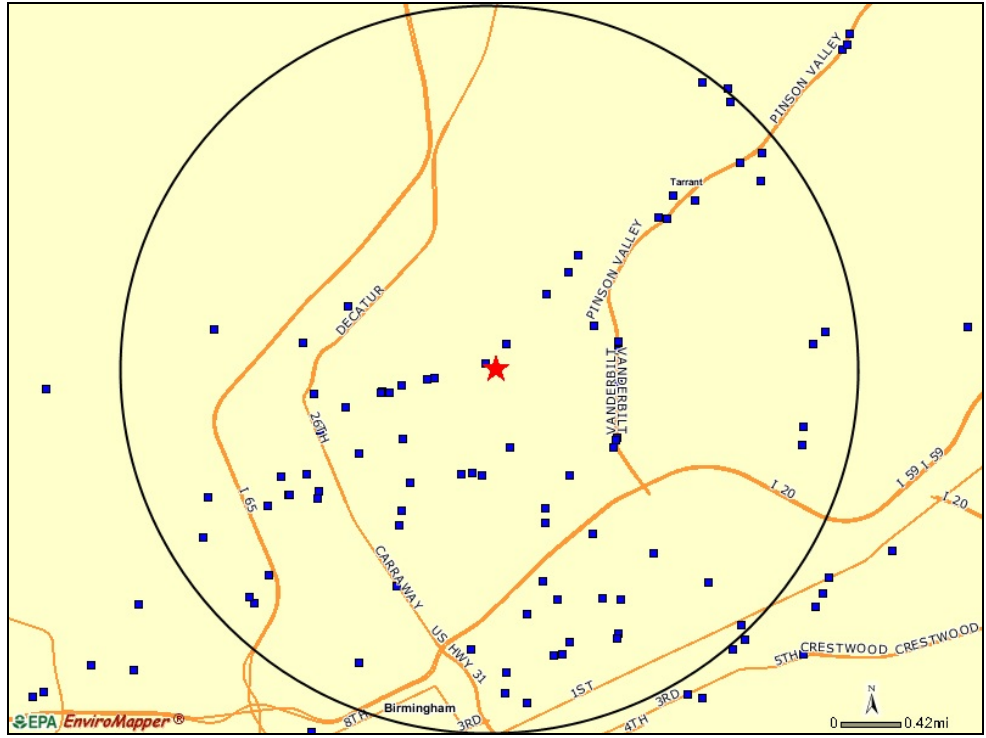
## Impacts

The alleged impacts resulting from the authorized activities are as follows:

These impacts will affect an estimated population of \_\_\_\_\_ within a \_\_\_ mile radius zone of impact. That population is distributed as depicted in the following graphic:



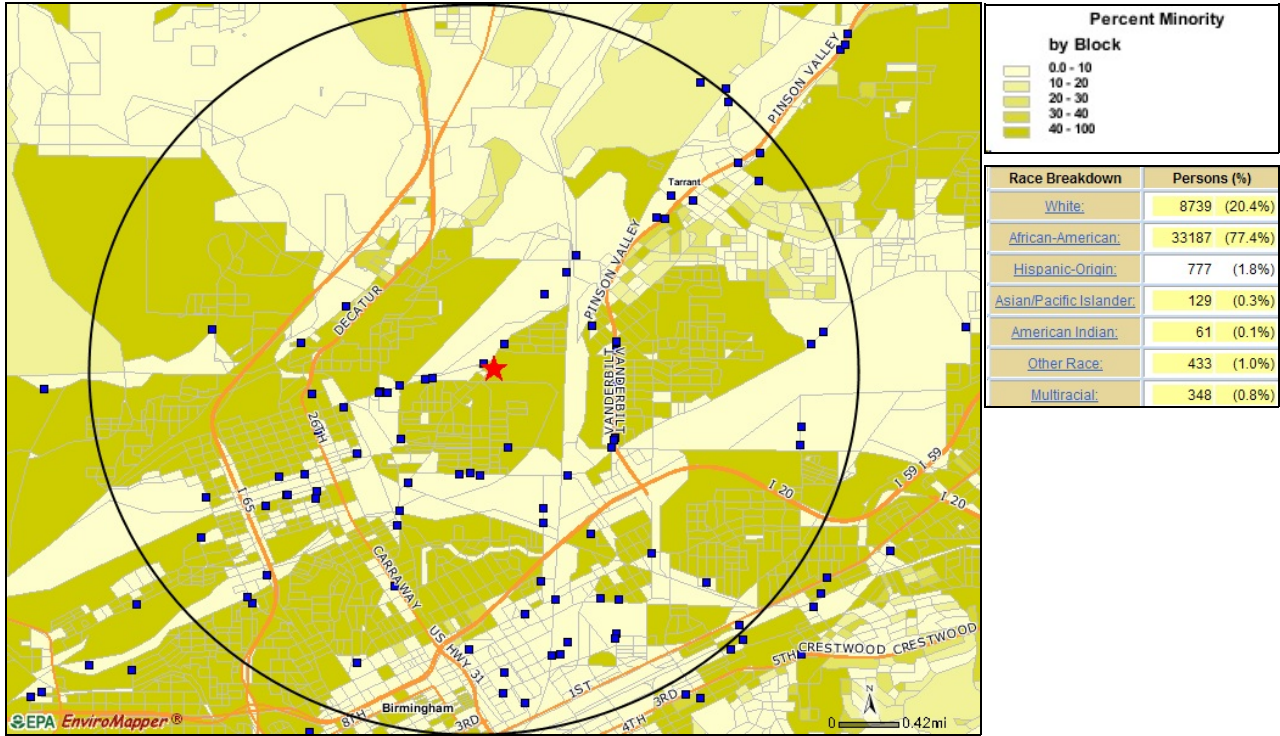
In addition, the impact to the affected population caused by the permitted activity will aggravate and compound existing impacts now suffered by the affected population from existing facilities within the zone of impact. Existing facilities are depicted in the following graphic and listed in Attachment B.



These impacts are adverse because they are detrimental to the health or welfare of the affected population within the zone of impact. Such detriments include the following:

**Disparate Impact**

The adverse impacts described above will fall disparately upon members of the African-American race. This is illustrated in the following data and graphic depicting the racial demographics of the affected population within a \_\_\_\_ mile radius zone of impact.



**Request**

Based upon the foregoing, complainant requests that the Office of Civil Rights conduct an investigation to determine whether \_\_\_\_\_ [e.g., the Alabama Department of Environmental Management or Florida Department of Environmental Protection] violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 in the [issuance, reissuance, modification] of \_\_\_\_\_ to \_\_\_\_\_ on \_\_\_\_\_.

Sincerely,

[Signature]

[Name]  
Complainant

**PART 7- NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY** Subpart E - Agency Compliance Procedures

**§ 7.120 Complaint investigations.**

The OCR shall promptly investigate all complaints filed under this section unless the complainant and the party complained against agree to a delay pending settlement negotiations.

(a) *Who may file a complaint.* 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. The complaint may be filed by an authorized representative. A complaint alleging employment discrimination must identify at least one individual aggrieved by such discrimination. Complaints solely alleging employment discrimination against an individual on the basis of race, color, national origin, sex or religion shall be processed under the procedures for complaints of employment discrimination filed against recipients of Federal assistance (see 28 CFR part 42, subpart H and 29 CFR part 1691). Complainants are encouraged but not required to make use of any grievance procedure established under §7.90 before filing a complaint. Filing a complaint through a grievance procedure does not extend the 180 day calendar requirement of paragraph (b)(2) of this section.

(b) *Where, when and how to file complaint.* The complainant may file a complaint at any EPA office. The complaint may be referred to the region in which the alleged discriminatory acts occurred.

(1) The complaint must be in writing and it must describe the alleged discriminatory acts which violate this part.

(2) The complaint must be filed within 180 calendar days of the alleged discriminatory acts, unless the OCR waives the time limit for good cause. The filing of a grievance with the recipient does not satisfy the requirement that complaints must be filed within 180 days of the alleged discriminatory acts.

(c) *Notification.* The OCR will notify the complainant and the recipient of the agency's

receipt of the complaint within five (5) calendar days.

(d) *Complaint processing procedures.* After acknowledging receipt of a complaint, the OCR will immediately initiate complaint processing procedures.

(1) *Preliminary investigation.* (i) Within twenty (20) calendar days of acknowledgment of the complaint, the OCR will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the OCR will notify the complainant and the Award Official. The OCR will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the OCR a response to the notice of complaint within thirty (30) calendar days of receiving it.

(2) *Informal resolution.* (i) OCR shall attempt to resolve complaints informally whenever possible. When a complaint cannot be resolved informally, OCR shall follow the procedures established by paragraphs (c) through (e) of §7.115.

(ii) [Reserved]

(e) *Confidentiality.* EPA agrees to keep the complainant's identity confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Ordinarily in complaints of employment discrimination, the name of the complainant will be given to the recipient with the notice of complaint.

(f) [Reserved]

(g) *Dismissal of complaint.* If OCR's investigation reveals no violation of this part, the Director, OCR, will dismiss the complaint and notify the complainant and recipient.



### **§ 7.125 Coordination with other agencies.**

If, in the conduct of a compliance review or an investigation, it becomes evident that another agency has jurisdiction over the subject matter, OCR will cooperate with that agency during the continuation of the review of investigation. EPA will:

(a) Coordinate its efforts with the other agency, and

(b) Ensure that one of the agencies is designated the lead agency for this purpose. When an agency other than EPA serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency, other than a final determination to terminate funds, shall have the same effect as though such action had been taken by EPA.

### **§ 7.130 Actions available to EPA to obtain compliance.**

(a) *General.* If compliance with this part cannot be assured by informal means, EPA may terminate or refuse to award or to continue assistance. EPA may also use any other means authorized by law to get compliance, including a referral of the matter to the Department of Justice.

(b) *Procedure to deny, annul, suspend or terminate EPA assistance—(1) OCR finding.* If OCR determines that an applicant or recipient is not in compliance with this part, and if compliance cannot be achieved voluntarily, OCR shall make a finding of noncompliance. The OCR will notify the applicant or recipient (by registered mail, return receipt requested) of the finding, the action proposed to be taken, and the opportunity for an evidentiary hearing.

(2) *Hearing.* (i) Within 30 days of receipt of the above notice, the applicant or recipient shall file a written answer, under oath or affirmation, and may request a hearing.

(ii) The answer and request for a hearing shall be sent by registered mail, return receipt requested, to the Chief Administrative Law Judge (ALJ) (A-110), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460. Upon receipt of a request for a hearing, the ALJ will send the applicant or recipient a copy of the ALJ's procedures. If the recipient does not request a hearing, it shall be deemed to have waived its right to a hearing, and the OCR finding shall be deemed to be the ALJ's determination.

(3) *Final decision and disposition.* (i) The applicant or recipient may, within 30 days of receipt of the ALJ's determination, file with the Administrator its exceptions to that determination. When such exceptions are filed, the Administrator may, within 45 days after the ALJ's determination, serve to the applicant or recipient, a notice that he/she will review the determination. In the absence of either exceptions or notice of review, the ALJ's determination shall constitute the Administrator's final decision.

(ii) If the Administrator reviews the ALJ's determination, all parties shall be given reasonable opportunity to file written statements. A copy of the Administrator's decision will be sent to the applicant or recipient.

(iii) If the Administrator's decision is to deny an application, or annul, suspend or terminate EPA assistance, that decision becomes effective thirty (30) days from the date on which the Administrator submits a full written report of the circumstances and grounds for such action to the Committees of the House and Senate having legislative jurisdiction over the program or activity involved. The decision of the Administrator shall not be subject to further administrative appeal under EPA's General Regulation for Assistance Programs (40 CFR part 30, subpart L).

(4) *Scope of decision.* The denial, annulment, termination or suspension shall be limited to the particular applicant or recipient who was found to have discriminated, and shall be limited in its effect to the particular program or activity or the part of it in which the discrimination was found.