

August 13, 2013

***Delivered via U.S.
Mail and Electronic Mail***

H. Lanier Brown, Chair
Alabama Environmental Management Commission
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Re: *Public Comment Period Request from David A. Ludder, Esq.*
*SUBJECT: Title VI Compliance at the Alabama Department of Environmental
Management*

Dear Commissioner Brown:

I was disappointed to receive your letter dated August 12, 2013 indicating that you have reconsidered and reversed your earlier recommendation to the Environmental Management Commission to allow my presentation to the Commission on *Title VI Compliance at the Alabama Department of Environmental Management*.

The reason given for your reversal is that I have “filed a Title VI Complaint with the EPA on this very issue.” I do represent persons who have filed a Title VI complaint with EPA concerning alleged racially discriminatory effects of the Alabama Department of Environmental Management’s decision to renew and modify a permit for the Arrowhead Landfill in Perry County, Alabama. However, the proposed presentation I have submitted to the Commission makes no reference to the Arrowhead Landfill or to any Title VI complaint filed with EPA. The presentation merely addresses ADEM’s Title VI obligations in general (including obligations imposed in 2013) and makes recommendations for ADEM’s future compliance with Title VI. With many millions of dollars in EPA grants dependent on ADEM’s compliance with Title VI, I had thought that the Commission would want to learn about ADEM’s Title VI obligations and how ADEM might avoid sanctions by EPA.

Furthermore, the Commission has adopted rules regarding public presentations to the Commission. Ala. Admin. Code r. 335-2-3-.05(3) discourages discussion of any case or legal proceeding *pending before the Commission*, or of any decision by the Commission in a case or legal proceeding *pending appeal before the Courts of this State*; and prohibits use of the public comment period to circumvent administrative or judicial procedures which specify the time and manner of presenting testimony, evidence, or comment *to the Commission* in a formal manner designed to provide due process to all parties. This rule has no application to the proposed presentation on *Title VI Compliance at the Alabama Department of Environmental Management*. The proposed

presentation addresses no case or proceeding pending before the Commission or Courts of this State and offers no comment on the Arrowhead Landfill permit that could circumvent available administrative or judicial procedures for the presentation of testimony, evidence, or comment to the Commission. Indeed, the time to appeal ADEM's Arrowhead Landfill permit decisions has long expired.

I think the Commission will agree that ADEM must take its Title VI obligations seriously. In the past year, those obligations have become more demanding. If ADEM does not fulfill its Title VI obligations, millions of dollars in EPA grants will be in jeopardy. Accordingly, I hope the full Commission will allow the presentation to proceed.

Please find attached the latest revision of the proposed presentation.

Sincerely,

A handwritten signature in cursive script that reads "David A. Ludder".

David A. Ludder

cc: AEMC (via e-mail)
AEMC members (via e-mail)
Robert Tambling (via e-mail)