



## DAILY NEWS

# EPA Launches Novel Investigation Of States' Rights Compliance Program

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EPA is launching what appears to be a first-time investigation of a claim that Alabama environment regulators lack a compliance program ensuring that entities they oversee do not violate civil rights laws -- a requirement for all states that receive grants from the agency, but which federal officials have to date never enforced.

Velveta Golightly-Howell, director of EPA's Office of Civil Rights (OCR), says in a [Feb. 24 letter](#) to a lawyer repenting Alabama residents that the agency will formally investigate their charges that the Alabama Department of Environmental Management (ADEM) is failing to comply with a mandate to implement a civil rights compliance program.

How the agency deals with the complaint "absolutely will" set a standard for how other states should design programs to comply with requirements under Title VI of the Civil Rights Act of 1964, says an attorney close to the case. "This is language that has been in EPA's grants since 2013, and as far as I know, it hasn't been enforced before."

Title VI, together with other rights laws, bars programs or contractors that receive federal funds from discriminating on the basis of race, national origin, English proficiency, disability, sex and age. A finding that an agency is violating Title VI can trigger a suspension of all its federal funding -- though [EPA has never made such a determination](#).

However, since Jan. 23, 2013, EPA has included a condition in its grant agreements that reads, "In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations."

Both the source close to [the Feb. 3 complaint against ADEM](#) and a second attorney who litigates civil rights issues say EPA has never taken action to enforce the 2013 grant condition, meaning how the agency resolves of the new complaint could set a standard for how other states must craft their compliance regimes.

The second attorney adds that it could be easier for EPA to reach agreement with ADEM on such procedures than on a finding that specific communities have suffered civil rights violations, since the fault being identified would be procedural rather than a direct injury.

### 'Low-Hanging Fruit'

"There have been a number of complaints that have raised a state's practice of not considering civil rights law in carrying out their permit activities. . . . But looking at putting mechanisms in place, in a sense, is low-hanging fruit. It can be an area of Title VI enforcement that EPA and states can move forward with, because perhaps it's less controversial," the attorney says.

But the source says that such a precedent might not be completely novel, because it could overlap with the requirements EPA has set out for states' consideration of civil rights concerns in the past. There is "a fine line" between setting requirements for acting in accordance with Title VI and setting requirements for creating a compliance regime, the source continues.

"I have a problem disentangling patterns and practices of noncompliance, and the failure to have pieces in place that would prevent noncompliance. There's a lot of overlap there," the attorney says.

The source says the language added to grant agreements can be seen as a "clarification" of the existing Title VI requirement rather than a new mandate. Other agencies' civil rights offices have long-standing compliance assurance provisions requiring states to show how they will ensure rights concerns are considered, and the 2013 language adds similar requirements for environmental authorities, the source says.

"I think it was a clarification. Other agencies require compliance assurance, and should be requiring compliance assurance. So I think the new piece is EPA itself taking a step forward in developing a compliance assurance program," the source says.

The attorney close to the complaint says it appears clear that ADEM has no formal Title VI procedures, because the agency has responded to public-records requests by saying that no documents reflecting a civil rights compliance regime exist, but that the state could still claim that an informal program still exists in practice. "They don't have any written compliance program. They could contend, I guess, that they have some kind of program in their head that they are enforcing, or EPA could give them some other way to show they are complying," the attorney says.

The source says a more significant obstacle to resolving the complaint could be that ADEM lacks statutory authority to consider factors beyond environmental quality and overall public health when taking action. "The problem with Alabama and most other states is that they don't have statutory authority to make decisions specifically to comply with Title VI. . . . That, to me, is going to be a major obstacle for many states."

### **Landfill Expansion**

Golightly-Howell's letter says EPA will also review whether ADEM ignored adverse impacts on vulnerable groups when it allowed the expansion of a landfill in Dothan, AL.

That site-specific portion of the residents' complaint concerns a landfill expansion in the city of Dothan that rights advocates claim creates a disparate impact on the area's African-American population.

Community members are asking EPA to overturn ADEM's decision approving a permit for Dothan to expand a municipal solid waste landfill in an area where African-Americans make up 89 percent of residents. They argue that the city should have investigated other alternatives for garbage disposal.

The complaint mirrors a 2012 OCR investigation of ADEM for approving a landfill to accept coal ash waste from the massive 2009 Tennessee Valley Authority spill in a majority African-American community. EPA twice investigated that permit, with the first investigation cut short in order to allow a suit against the landfill operator to resolve, but EPA did not make a discrimination finding in either phase of the case. -- *David LaRoss* ([dlaross@iwpnews.com](mailto:dlaross@iwpnews.com))

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