

# ADEM drops civil rights complaint policy. It might cost Alabama millions

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Gallery: Arrowhead Landfill in Perry County, Ala.

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The Alabama Department of Environmental Management has rescinded its policy for receiving and investigating civil rights complaints, an action one lawyer says should call into question the department's millions of dollars in federal funding.

ADEM rescinded its civil rights policies in response to a lawsuit filed in state court, which argued that the policies functioned as a "rule" under state law but had not gone through the required public notice and other procedures mandated by state law.

The Alabama Attorney General's office on June 5 filed a motion with the court that complaints about the policy were moot because the policy had been rescinded.

The court filing included a letter from ADEM Director Lance LeFleur stating that the Department had rescinded Memorandum No. 108, otherwise titled "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process."

LeFleur's letter was one sentence long, stating "Memorandum #108 and associated web-based version of the same are hereby rescinded and Number 108 is reserved for future use."

ADEM External Affairs Chief Lynn Battle told AL.com the department would not comment on the matter due to the ongoing litigation.

David Ludder, attorney for the plaintiffs, said entities that receive federal funding are prohibited from discriminating on the basis of race by Title VI of the Civil Rights Act of 1964, and are also required to have procedures in place for investigating complaints from people who believe they have been discriminated against. Ludder said ADEM is now in violation of those requirements.

"The evidence is now unequivocal that ADEM does not have discrimination grievance procedures as required by 40 C.F.R.," Ludder wrote in a letter to the U.S. Environmental Protection Agency's External Civil Rights Compliance Office.

Ludder asked the EPA to require ADEM to take immediate action, or "commence proceedings to deny, annul, suspend or terminate EPA assistance to ADEM."

That EPA assistance consists of grants, awards and federal programs that provide millions of dollars to the state environmental department every year.

Ludder said that while part of his argument is procedural -- that ADEM did not follow the legal process in adopting these civil rights guidelines -- he also believes the substance of ADEM's old policy was inadequate.

"My contention is that the procedures that were rescinded were not supported by statutory authority and they were just a sham, a pretense, so ADEM could collect financial assistance from EPA without any real intention of providing protection for minorities," Ludder said in a phone interview.

Ludder said he believes implementing an adequate civil rights complaint policy may require action the state legislature, and will take some time to accomplish.

"It'll probably take a year, at minimum," Ludder said. "But ADEM needs to get moving on it."

The complaint that prompted ADEM to rescind its policy was filed in January 2017 by five Alabama residents who live near landfills or wastewater treatment plants.

The plaintiffs argued that the department's permitting of the facilities in areas where high percentages of minorities live amounted to racial discrimination, and that the policy for investigating complaints was "invalid."

It was not the first time the Department's civil rights policies have been challenged. The EPA [dismissed two civil rights complaints against ADEM](#) in March, stating it found insufficient evidence of discrimination. In that decision, the EPA did not address the procedural matters of state law that are at issue in the state court complaint.

Ludder's complaint was initially dismissed, but an appeals court overturned that decision and sent the matter forward to trial. Ludder said the state's decision to dismiss the policy more than a year after he filed suit was "frustrating."

"It's just unfortunate that they put us through all this effort, yet they really do know that they were wrong to begin with," Ludder said.

Read the documents below for Ludder's full complaint and the letter from ADEM rescinding the policy.

[ADEM EPA Complaint](#) on Scribd