

The Inside Story

## EPA Begins Title VI Coal Ash Inquiry

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EPA's Office of Civil Rights (OCR) has agreed to investigate a discrimination complaint filed by residents of Perry County, AL, who allege the state violated Title VI of the Civil Rights Act by issuing permits for the landfill that accepted spilled coal ash from the massive Tennessee Valley Authority (TVA) 2008 spill, marking one of a handful of recent petitions EPA has accepted for inquiry.

OCR in a [June 14 letter](#) to David Ludder, the attorney representing 54 Perry County residents who filed the civil rights complaints against against the Alabama Department of Environmental Management (ADEM), notified him that it “has accepted for investigation” the allegations that the state's permitting of Arrowhead Landfill “will adversely and disparately impact the African-American residents in the community.”

The landfill complaint is one of the first high-profile petitions OCR has accepted for investigation. When the complaints were filed early this year, environmentalists cited them to call on EPA [to finalize](#) its long-stalled proposal to regulate coal ash under federal waste law, a plan that was prompted by the TVA spill.

However, the complaint is likely to be difficult to resolve because while it was ADEM that issued the permits to expand the landfill to accommodate the spilled ash, it was EPA Administrator Lisa Jackson who ultimately approved TVA's plan to transfer of the coal ash from relatively wealthy Kingston, TN, to the poor, black community of Perry County, AL.

Title VI generally prohibits recipients of federal funds from engaging in discriminatory behavior. Investigation of such complaints has long been an issue for OCR, which has been accused of sitting on a decades-long backlog of petitions. OCR has been trying to address the backlog, but has never found that a recipient of EPA funds has violated the law in part over concerns that such a finding would be challenged in court, where plaintiffs are effectively required to show the discrimination was intentional.

Jackson has vowed to elevate environmental justice issues since she came to the agency, including most recently adding a Title VI supplement to the agency's long-term equity plan for which it is taking comment through mid-July.

EPA Region IV said when the TVA cleanup plan was pending that preventing risk to vulnerable populations would be a key factor in moving forward. Prior to finalizing the TVA plan to transfer the ash to Alabama, EPA vowed to “ensure the facility is operating in compliance with solid waste regulations and that potential risks to the community, especially any vulnerable populations, are addressed,” an EPA Region IV spokeswoman said in June 2009.

The Title VI complaint does not specifically mention coal ash disposal and instead alleges that ADEM violated Title VI by its permitting activities that allowed Perry County Associates LLC to expand and operate the landfill that accepted the ash.

Complaints include offensive odors, emissions of fugitive dust, tracking of dirt and other solids onto a roadway, increased noise, increased flies, increased birds and decreased property values. The complaint notes those impacts “have fallen and continue to fall disparately upon members of the African-American race.” It asks that ADEM “implement a less discriminatory alternative” and asks EPA to halt funding for ADEM.

OCR in the letter agrees to investigate two allegations, including that ADEM violated Title VI by renewing the permit on Sept. 27, 2011, and that ADEM violated Title VI by authorizing a permit modification Feb. 3, 2012, to expand the disposal area. Both of these actions “adversely and disparately impact the African-American residents in the nearby community,” the complaint says.

Acceptance for investigation means the complaints meet jurisdictional requirements, including that they are in writing, that they describe alleged discriminatory acts, that the acts occurred within 180 days of filing the complaints and that the complaints were filed against a recipient of EPA funds.

ADEM may now submit a written response to OCR within 30 days, the letter says.

An ADEM spokesman notes that it was EPA's decision to allow transfer of the TVA coal ash to the state but had no further comment on the OCR letter.

Ludder, the attorney representing the complainants, tells *Inside EPA* in a June 18 email that while the complaints do not address coal ash disposal, “we expect EPA to act with impartiality and to protect the civil rights of community residents.”