

The Inside Story

EPA Again Rejects Rights Petition

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EPA's Office of Civil Rights (OCR) has rejected a request from Alabama residents to reconsider an earlier dismissal of a claim that state officials violated their civil rights by approving a landfill expansion to handle tons of coal ash from the 2008 Tennessee Valley Authority (TVA) spill.

[In a letter](#) to residents of Perry County, AL, recently obtained by *Inside EPA*, OCR says it “rejects the reconsideration request” after concluding that it “has not made a major substantive error” in rejecting the original rights claim, and “therefore has decided to uphold OCR's Sept. 26, 2012, decision to dismiss the complaint without prejudice.”

The petitioners are 54 poor, black residents of Perry County, AL, who say they are suffering a disproportionate environmental impact from the transport of the waste to the landfill. EPA agreed to investigate claims that the Alabama Department of Environmental Management (ADEM) violated civil rights law by permitting the Arrowhead Landfill to accept the TVA coal waste.

But OCR dismissed the complaint because [there is separate litigation pending on the issue](#). “In situations where the allegations raised in the complaint involve the same facts that are also the subject of litigation in federal court . . . it is OCR's general practice to dismiss without prejudice the administrative complaint, pending results of the litigation,” OCR said.

The residents asked OCR to reconsider the dismissal in an Oct. 4 letter, noting that not all of the petitioners are part of the lawsuit. Additionally, the suit “will not adjudicate ADEM's non-compliance with Title VI” of the rights law, which prohibits discrimination by recipients of agency funds.

OCR's June 14 acceptance of the complaint was seen as [difficult for the office to resolve](#) because, while ADEM issued the landfill permits at issue in the complaint, it was EPA Administrator Lisa Jackson who ultimately approved the plan to transfer the coal ash from relatively wealthy Kingston, TN, to Perry County.

The lawsuit over the landfill, *Abrahams, et al. v. Phill-Con Services, LLC, et al*, which was filed in 2010 in the U.S. District Court for the Southern District of Alabama but was since transferred to bankruptcy court, is set for a Jan. 17 settlement conference. It asserts claims such as “negligence, wantonness, nuisance and trespass.”

An attorney familiar with the petition says, “Now we wait for the courts to finish before we can refile the Title VI complaint against ADEM.”