



The Inside Story

## EPA Plans Second Review Of Ash Landfill Rights Complaint

Posted: July 10, 2013

EPA's Office of Civil Rights (OCR) has accepted for investigation for the second time a complaint that the Alabama Department of Environmental Management (ADEM) violated the Civil Rights Act when it issued a permit for a landfill to accept coal ash waste from the massive 2009 Tennessee Valley Authority (TVA) spill.

OCR originally accepted the same complaint last June but then dismissed it in the fall due to [pending litigation](#). The dismissal letter said the petitioners could refile once the lawsuit was resolved. The litigation was filed against the landfill's operator, asserting claims such as negligence, wantonness, nuisance and trespass resulting from construction and operation of the landfill. The suit, in the U.S. District Court for the Southern District of Alabama, was dismissed April 13.

Following the suit, the petitioners re-filed their rights complaint and EPA accepted it in a [June 27 letter](#) where OCR says it will investigate ADEM's approval of permits to Perry County Associates to accept the TVA coal ash waste that the petitioners allege "adversely and disparately impact the African-American residents in the adjacent community."

Acceptance of the complaint for investigation only means that OCR determined the petition meets jurisdictional requirements, including that ADEM receives EPA funding. The agency invites ADEM to respond to the allegations, which it had in the original complaint last year asking the agency to dismiss it.

The petitioners filed their new complaint in a [May 30 letter](#) to OCR which says, "If a violation is found and ADEM is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, complainants petition EPA to initiate proceedings to deny, annul, suspend, or terminate EPA financial assistance to ADEM."

When EPA accepted the first complaint it was seen as [difficult for EPA to resolve](#) because while ADEM issued the landfill permit at issue, it was former EPA Administrator Lisa Jackson who ultimately approved the plan to transfer the coal ash from relatively wealthy, white Kingston,

TN, to poor, black Perry County, AL. Jackson also strove to better address environmental justice issues including discrimination complaints at the agency.

The complaint was filed under Title VI of the rights law, which 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.

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.

But Perry County residents have long complained about dirt from the ash settling on their homes and cars, noise and extra pollution from the transport, lower property values and more.