



Yale Law School

Lilian Dorka
Director, External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency Headquarters
William Jefferson Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1201A
Washington, D.C. 20460

March 5, 2018

Re: Ashurst Bar/Smith Community Organization Complaint, EPA Case # 16R-17-R4

Dear Director Dorka:

This letter is intended to provide the External Civil Rights Compliance Office (ECRCO) with information in support of the complaint filed by the Ashurst Bar/Smith Community Organization (ABSCO) against the Alabama Department of Environmental Management (ADEM), EPA Case # 16R-17-R4. The complaint, which ECRCO accepted for investigation on May 18, 2017, challenges ADEM's February 10, 2017 decision to permit Stone's Throw Landfill to continue to operate in and thereby harm the predominately Black Ashurst Bar/Smith community in Tallassee, Alabama.

In particular, complainant offered to submit information about multiple lawsuits filed and currently pending in Alabama state court against Advanced Disposal Services, Inc. and the wholly owned subsidiaries through which Advanced Disposal Services, Inc. owns and operates the Stone's Throw Landfill. These lawsuits were mentioned during ECRCO's interviews with ABSCO members and other impacted individuals on November 8 and November 13, 2017. In follow up, attached please find complaints filed in five separate lawsuits against Advanced Disposal Services and these subsidiaries by residents of Macon County and Tallapoosa County, Alabama.

While we still are reviewing the allegations made in these complaints and cannot attest to them specifically, we believe that they provide information relevant to ECRCO's investigation of the discriminatory effects of ADEM's permitting practices with respect to ABSCO's pending 2017 complaint. These five complaints may also inform any ongoing discussions that ECRCO previously has indicated that it will have with ADEM about "broader systemic issues regarding ADEM's methods of administering its solid waste permitting process in general, as well as its non-discrimination program."¹ Indeed, the following lawsuits should be seen in the context of the mosaic of community concerns that

¹ Letter to Marianne Engelman Lado & Leah Aden from Lilian S. Dorka, Director, ECRCO, Office of General Counsel, EPA, closing ABSCO Title VI administrative complaint, at 16 (Apr. 28, 2017).

have been repeatedly brought to the attention of ECRCO through formally filed complaints,² voiced during interviews, or presented in documentary evidence relating to complainant's now-closed 2003 complaint regarding racial discrimination in environmental permitting actions by ADEM in Alabama.

Accordingly, plaintiffs in the Macon County litigation have filed four nearly identical suits: (1) *Leroy Taylor v. Advanced Disposal Services South, LLC (ADSS) et al.*; (2) *Malcom Ligon, as Executor of the Estate of Dowell Ligon, Sr. v. ADSS et al.*; (3) *Andrews Chambliss v. ADSS et al.*; (4) *Jerry Tarver, Sr. v. ADSS et al.* These lawsuits each assert the following allegations:

- The Landfill collects and stores leachate in large onsite tanks, later taking it by truck to the Tallasse Sewer Stabilization Pool (TSSP) for treatment.
- TSSP does not have the capacity to treat all this leachate, resulting in discharges of untreated or partially untreated leachate into the Tallapoosa River.
- Advanced Disposal chose to treat leachate at a bargain through TSSP while fully aware that the facility was not able to accommodate the volume of leachate produced by the Landfill.
- The Landfill has illegally discharged leachate into Chewacla Creek, which then feeds into the Tallapoosa River.

These allegations suggest that there may be adverse downstream impacts from the Landfill's activities. This is particularly relevant to ABSCO's 2017 complaint, since Macon County has a predominantly Black population, with 81.4% of the population identifying as Black. By comparison, Black Americans comprise only 26.8% of Alabama's population. These complaints, like the experiences of residents of Ashurst Bar/Smith, provide additional evidence that ADEM's permitting of the Landfill adversely and disproportionately affects Black Americans.

The Tallapoosa County litigation, *Rita Adams et al. v. Advanced Disposal Services, Inc. et al.*, is a class-action tort suit filed on July 13, 2017 by numerous residents of the Ashurst Bar/Smith community. Plaintiffs allege that the Landfill has released noxious odors and contaminated leachate into the Ashurst Bar/Smith community and has increased the presence of vermin.

² ADEM's permitting of landfills in Uniontown (in Perry County) and Dothan (in Houston, Dale and Henry counties) have been the subject of Title VI complaints with ERCO. Letter from Marianne Engelman Lado, et al. & Leah Aden, et al. to Russell Kelly, ADEM, opposing the Landfill permit renewal request at 2 n.4 (November 17, 2016). And ERCO has been on notice about challenges to ADEM's issuance and modification of permits in Lauderdale, Jefferson, St. Clair, and Walker counties to allow the operation of waste dumps in predominately Black communities. *Id.* (citing Compl. ¶ 2 (Dec. 22, 1999), https://assets.documentcloud.org/documents/2162712/epa_28r-99-r4.pdf).

Though the harms alleged in the Macon and Tallapoosa County suits are relevant to ABSCO's Title VI complaint, the claims are entirely distinguishable. Plaintiffs have brought tort suits in state court against the Landfill and its owners, not ADEM, and have raised no civil rights claims.

We will update you as we continue to review and monitor these complaints, but please feel free to let us know if these materials raise any questions.

Sincerely,



Marianne Engelman Lado
Visiting Clinical Professor of Law
Yume Hoshijima
José Argueta Funes
Student Clinicians
Environmental Justice Clinic
Yale Law School
127 Wall Street
New Haven, CT 06511
(203) 432-2184
Marianne.engelman-lado@ylsclinics.org
Yume.hoshijima@ylsclinics.org
Jose.arguetafunes@ylsclinics.org



Suzanne Novak
Jonathan Smith
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005
(212) 823-4981
snovak@earthjustice.org
jjsmith@earthjustice.org



Leah Aden
Senior Counsel
NAACP Legal Defense & Educational Fund, Inc.
40 Rector St., 5th Fl.
New York, NY 10006
laden@naacpldf.org

On behalf of the Ashurst Bar/Smith Community Organization