Via E-mail and USPS Mail

November 17, 2016

Russell A. Kelly, Chief
Permits and Services Division
Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, AL 36130
Mailing Address: PO Box 301463
Montgomery, AL 36130-1463
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Re: Application of Tallassee Waste Disposal Center, Inc. to Alabama Department of Environmental Management for Renewal of Solid Waste Facility Permit #62-11 for the Operation of Stone’s Throw Landfill in Tallapoosa County, Alabama

Dear Mr. Kelly,

Earthjustice¹ and the NAACP Legal Defense & Educational Fund, Inc. (LDF)² write on behalf of the Ashurst Bar/Smith Community Organization (ABSCO) to vigorously oppose the request by the Tallassee Waste Disposal Center Inc. (TWDC) to the Alabama Department of Environmental Management (ADEM) to renew its permit (Solid Waste Facility Permit #62-11) to operate Stone’s Throw Landfill (the “Landfill”), a municipal solid waste facility in Tallapoosa County, Alabama. This letter also supplements the separate November 16 letter submitted by Rev. Ronald C. Smith, as President of ABSCO and a concerned citizen of Tallapoosa County.

¹ Earthjustice is America’s original and largest nonprofit environmental law organization. Earthjustice leverages its expertise and commitment to fight for justice and advance the promise of a healthy world for all.
² Since its founding in 1940, LDF has been a leading advocate for racial justice in the United States using litigation, advocacy, and public education. LDF has fought tirelessly to make the promise of equal opportunity in all areas of life for Black Americans a reality, including the right to clean air, water, land, public transportation, and other human necessities, recognizing that environmental justice is requisite to a democratic and just society.
Earthjustice and LDF represent ABSCO in its civil rights complaint against ADEM with the Office of Civil Rights (OCR) at the U.S. Environmental Protection Agency (EPA). ABSCO contends that ADEM has violated (1) Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., (2) EPA’s implementing regulations, 40 C.F.R. § 7.35(b)-(c), and (3) EPA’s 2003 recommendation to ADEM for complying with Title VI by reissuing and modifying the permit for the Landfill to operate without assessing whether the Landfill’s operations have had and continue to have a disparate impact on Black residents in the Ashurst Bar/Smith community. As discussed infra, ABSCO contends that ADEM has an independent duty to undertake an analysis of the social, economic, and health impacts of the Landfill on the Ashurst Bar/Smith community, separate and apart from the obligation of the local governing body (i.e., the Tallapoosa County Commission) to do so. The complaint further alleges that the Landfill’s operations have devastated the lives of the majority-Black Ashurst Bar/Smith community members, many of whom are members of ABSCO and live in closest proximity to the Landfill in Talladega. ABSCO’s complaint has been pending at OCR since 2003 and is currently under active investigation at the EPA.

The Landfill currently is permitted to receive a maximum of 1,500 tons of waste a day from all 67 counties in Alabama and three counties in Georgia. TWDC now seeks a renewal of its permit for the Landfill that would allow it to process an additional 1,500 tons of solid waste over five years. If ADEM renews TWDC’s permit, the Landfill will inflict additional harm on these Alabama citizens.

As described in detail below, ABSCO maintains that ADEM’s grant of TWDC’s current application would violate civil rights laws, regulations, and guidance. Indeed, the Tallapoosa County Commission’s siting of the Landfill in the Ashurst Bar/Smith community and the various permits granted to the Landfill by ADEM have had and will continue to have an adverse, disproportionate, and unjustified impact on the 98% Black population that lives in closest proximity to the Landfill.

Moreover, ADEM’s continued issuance of permits to Stone’s Throw and other landfills operating throughout Alabama potentially deprives ABSCO members and other Black Alabama citizens of their right to equal protection under the Fourteenth Amendment to the U.S. Constitution by constituting a pattern or practice of siting landfills in predominantly minority areas in Alabama.


The Yerkwood Letter requires local governing bodies, like the Tallapoosa County Commission, to submit to ADEM detailed analyses of the six minimum siting factors that were considered by the local body in connection with the site-specific permit, including: “[t]he potential impact a facility in any potential location would have on public health and safety, and the potential that such locations can be utilized in a manner so as to minimize the impact on public health and safety,” and “[t]he social and economic impacts that any proposed location would have on the affected community, including changes in property values and social or community perception.” Ala. Code § 22-27-45 (1975).

For example, ADEM has issued and modified permits in Lauderdale, Jefferson, St. Clair, and Walker counties to allow the operation of waste dumps in predominately Black communities. Compl. ¶ 2 (Dec. 22, 1999), https://assets.documentcloud.org/documents/2162712/epa_28r-99-r4.pdf. And landfills in Uniontown (in Perry County) and Dothan (in Houston, Dale and Henry counties) also are the subject of pending Title VI complaints with the OCR EPA.
As a recipient of federal funds, ADEM has civil rights enforcement obligations under Title VI. These obligations require it to consider the disproportionate and unjustified discriminatory impact of its permitting decisions on the surrounding predominately Black community in Tallassee (and other Alabama areas). In this instance, ADEM must deny TWDC’s pending application for permit renewal to operate the Landfill because, to our knowledge, no state or local governing body has ever conducted a disproportionality assessment to analyze the social, economic, and health consequences of the Landfill on the surrounding predominately Black Ashurst Bar/Smith community in Tallassee. Had ADEM or the Tallapoosa County Commission engaged in this analysis, ADEM would likely find that the Landfill has a disparate impact on the predominantly Black Ashurst Bar/Smith community in violation of Title VI, EPA’s Title VI implementing regulations, recommendations, and guidance, as we detail below.

Moreover, EPA has specifically directed ADEM to conduct and consider a disproportionality assessment in making its permitting decisions to carry out ADEM’s Title VI obligations. Yet ADEM has failed to do so and, thus, cannot assess whether its permitting decisions have the effect of subjecting the surrounding community to discrimination on the basis of race. For these reasons, ADEM cannot renew TWDC’s permit to operate the Landfill.

The comments below discuss some of the specific grounds for denying TWDC’s permit renewal request.

I. ADEM Must Deny TWDC’s Application for Permit Renewal to Operate the Stone’s Throw Landfill Because the Failure to Conduct and Consider a Disproportionate Impact Analysis Violates Title VI of the Civil Rights Act of 1964, EPA Implementing Regulations for Recipients of Its Funds, and EPA’s Directive to ADEM.

ADEM must deny TWDC’s application for a permit renewal to operate the Stone’s Throw Landfill because (1) Title VI prohibits discrimination by federally assisted programs like ADEM’s municipal solid waste permitting program, (2) EPA’s Title VI implementing regulations prohibit recipients from engaging in methods of administering EPA funds, including permitting decisions, that have a disproportionate impact on individuals based on their race, and (3) EPA has specifically directed ADEM, if the local governing has not or has not done so sufficiently, to conduct and consider a disproportionality assessment in carrying out its Title VI obligations, but ADEM and the Tallapoosa County Commission have failed to undertake this analysis.

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”\(^5\) Section 602 of Title VI requires federal agencies to create implementing regulations that specify how they will determine whether recipients of federal funds are engaging in racially discriminatory practices, as well as the process by which the agencies plans to review and investigate complaints of racial discrimination.\(^6\) EPA’s implementing regulations prevent recipients of its funds from engaging in intentional discrimination, as well as actions and methods of administration that “have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin . . .”\(^7\)

\(^6\) 40 C.F.R. § 7.35 (b)-(c).
EPA’s Title VI implementing regulations unequivocally apply to permitting decisions by recipients of its funds as set out in 40 C.F.R. § 7.35(c). EPA generally interprets Title VI to impose an affirmative obligation on recipients of federal funds to include consideration of Title VI criteria in permitting decisions.

Courts have found that a plaintiff shows Title VI disparate impact discrimination by first demonstrating “that a facially neutral practice disparately and adversely impacts them, and that the disparate impact is causally linked to the contested practice.” S. Camden Citizens in Action v. N.J. Dep’t of Envtl. Mgmt., 145 F. Supp. 2d 446, 483 (D.N.J. 2001) (citing Powell v. Ridge, 189 F.3d 387 (3d Cir.1999), cert. denied, 528 U.S. 1046 (1999)); see also N.Y.C. Envtl. Justice All. v. Giuliani, 214 F.3d 65, 69 (2d Cir. 2000); Elston v. Talladega County Bd. of Ed., 997 F.2d 1394, 1415 (11th Cir. 1993). As EPA explained in its 2000 Interim Guidance, “[f]acially-neutral policies or practices that result in discriminatory effects violate EPA’s Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.” And while EPA may consider compliance with existing federal or state environmental law in assessing Title VI complaints, EPA also has stated that a recipient’s Title VI obligations exist “in addition to the Federal or state environmental laws governing its environmental permitting program.”

ADEM is a recipient of Title VI federal funds from EPA. As such, in addition to complying with federal and state environmental law, ADEM must comply with Title VI and EPA’s implementing regulations because when a “recipient receives the EPA assistance, they accept the obligation to comply with EPA’s Title VI implementing regulations.”

A. ADEM Has Engaged in a Pattern of Discriminatory Permit Modification, Expansion, and Renewal Decisions Without A Disproportionality Assessment Being Undertaken

In the 2003 Yerkwood Letter, EPA OCR gave ADEM recommendations on its solid waste disposal program, including the requirement that “local governing bodies submit to ADEM, along with their local approval of solid waste landfill permit applications, detailed analyses of the six minimum siting factors (as set out in the State’s Solid Waste Disposal Act and ADEM’s implementing regulations) that were considered by the local body in connection with the site-specific permit.” The Yerkwood Letter went on to suggest that “[w]here a local body’s analyses of the six minimum siting factors is not sufficient (as determined by ADEM) or not done, ADEM should undertake its own consideration of these factors during its permitting of a municipal solid waste landfill;” that “ADEM should put in place a program to oversee local government implementation of local solid waste management plans; and ADEM should implement its own

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11 See Compl., supra note 4, at ¶ 7-8.
‘recommendations’ as contained within Phase II of the State’s Solid Waste Management Plan.”\textsuperscript{12} Moreover, the Alabama State Code directs ADEM to require local governing bodies, like the Tallapoosa County Commission, to consider these six minimum siting factors when identifying a potential location for solid waste management facilities in their jurisdiction.\textsuperscript{13} The sixth minimum siting factor requires a local governing body and/or ADEM to consider “the social and economic impact that any proposed location would have on the affected community, including changes in property values and social or community perception.”\textsuperscript{14}

In the letter, EPA OCR also cautioned ADEM that its “failure to adequately consider socioeconomic impacts (including race) at any point in the sitting and permitting process for municipal solid waste landfills in Alabama” created a “significant potential” for failing to comply with Title VI.\textsuperscript{15} Moreover, OCR found that “this potential failure of consideration could lead, in the future, to ADEM-permitted landfills that have an adverse disparate impact on a population protected by EPA’s Part 7 regulations.”\textsuperscript{16}

Given this guidance, ABSCO contends when a local governing body like the Tallapoosa County Commission does not fulfill its obligation to conduct a disproportionality assessment when siting these landfills, it is incumbent upon ADEM to undertake such an analysis when it permits the landfills to operate. Yet, despite EPA’s explicit guidance and warning more than thirteen years ago, ADEM has continued to engage in a pattern of issuing, modifying, and renewing permits for landfills in Alabama, including in Tallassee, without either itself or the Tallapoosa County Commission having considered the disproportionate effect of these landfills on communities of color and, more specifically, the social, economic, and health impacts that the location of these landfills, including Stone’s Throw Landfill, have on the surrounding communities of color. For example, ADEM has issued and modified permits not only in Tallassee but also in Lauderdale, Jefferson, Perry, St. Clair, Tallapoosa, Walker and other counties to operate dumps in predominately Black communities, which could contribute to a pattern of Black land loss and other socioeconomic effects across the State.

Although the Tallapoosa County Commission is a local governing body that is required to submit to ADEM a detailed analysis of the six minimum siting factors considered by it, to ABSCO’s knowledge, it has never done so. TWDC’s current permit renewal request contains no mention of a disproportionality assessment and instead merely lists the property owners who live adjacent to the Landfill and their current relative property values. The application does not contain an assessment of the social, economic, and health impacts of the Landfill on those or any other property owners living near the Landfill or whether the property values of those living adjacent to the Landfill or community perception has changed over time.

ABSCO is unaware of any attempts by ADEM to receive a disproportionality assessment from the Tallapoosa County Commission. Nor is ABSCO aware of any such independent assessment conducted by ADEM. Absent a disproportionality assessment that sufficiently details the social, economic, and health impacts of the Landfill on the Ashurst Bar/Smith community, ADEM cannot renew TWDC’s permit. Furthermore, ABSCO is confident that if such an analysis

\textsuperscript{12} Yerkwood Letter, supra note 3, at 80-81.
\textsuperscript{14} Id.
\textsuperscript{15} Yerkwood Letter, supra note 3, at 80.
\textsuperscript{16} Id.
were undertaken, ADEM would find that the Tallapoosa County Commission’s siting of the Stone’s Throw Landfill, and ADEM’s permitting of the Landfill’s operations, have a disproportionate and discriminatory impact on the surrounding Black community.

B. The Operation of the Stone’s Throw Landfill Has Created a Disparate and Discriminatory Impact on the Surrounding Black Community in Tallassee in Violation of Title VI and EPA’s Implementing Regulations.

ADEM and the Tallapoosa County Commission’s failure to consider the social, economic, and health impacts of the Landfill’s operations prior to approving TWDC’s application for permit renewal, given the disparate and discriminatory impact that the operation of the Landfill has on the Ashurst Bar/Smith community, constitutes a violation of Title VI and EPA’s implementing regulations. Had ADEM itself conducted such an assessment or required the Tallapoosa County Commission to do so, the Landfill would most likely not have been reopened in 2002 and allowed to expand its operations in the Ashurst Bar/Smith community. Any grant of the application to renew TWDC’s permit will lead to the continued disparate and discriminatory impact on the predominately Black residents in Tallassee.

ABSCO members submitted a complaint to EPA in 2003 that detailed the disparate impact that the Landfill has had on the predominately Black community in which it is currently located. That impact is ongoing. In its complaint, ABSCO cited Census Data that showed that the community directly surrounding the Landfill was 98% Black and that the Landfill provided waste services to communities that were 74% white. EPA OCR used Census Bureau data to calculate the demographics of the community within ½, 1, 2, and 3 miles of the Landfill and found that they were 90.6%, 88.2%, 57.1%, and 44.1% Black, respectively.17

At the time of the 2003 complaint, residents of the Ashurst Bar/Smith community detailed the adverse impacts of the Landfill including:

- the presence of toluene in a local drinking spring prior to the reopening of the Landfill in 2002 and the failure of the Tallapoosa County Commission to address the impact of the Landfill’s expansion on future toluene levels in the drinking water;
- the Landfill borders the only local church and school in the community;
- although the Ashurst Bar/Smith community is rural and residents mostly used well water, no studies were performed to demonstrate how the water would be protected from toxic runoff from the Landfill that could contaminate the well water;
- Ashurst Bar/Smith community members could not trust their well water, and many community members were forced to switch to tap or bottled water at significant financial cost;
- surface water contamination from toxic runoff from the Landfill was having a deleterious impact on local wildlife, and thus, hunting, farmers’ animals, and residents’ gardens were no longer being used to produce food; and,

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17 See Letter from Rafael DeLeon, Dir., EPA OCR, to Lance R. LeFleur, Dir., ADEM (Jan. 25, 2013). As of the 2010 Census: the city of Tallassee is 72.4% white and 24% Black, and Tallapoosa County is 71% white and 27% African American (2014 data).
• the Landfill was leading to the devaluation of residential property and having a negative impact on social and community perception of the Ashurst Bar/Smith community because of its proximity to the Landfill.

Earthjustice and LDF, on behalf of ABSCO, continue to document the impact of the Landfill on members of the Ashurst Bar/Smith community to EPA OCR in support of its Title VI complaint.18 The following list of current adverse and unjustified impacts mirror those identified in the original EPA complaint or otherwise reflect impacts that have come to light over time:

• large amounts of garbage truck-traffic travel in and out of the community to access the Landfill, beginning in the early morning and continuing through the early evening, at fast speeds on rural, residential roads, pose safety risks to school-age children and damage the roads;
• putrid smells, emanating from the Landfill, and persistent bugs, attracted to the garbage at the Landfill, dissuade families from eating and spending time outside together, parishioners at the neighboring church from engaging in fellowship activities with one another, and households from opening their windows as part of their daily life;
• vultures and other pests that are harbingers of disease have increased and pose safety and health concerns;
• community members complain of health impacts such as cancer, respiratory problems, migraines, and dizziness, which residents have reason to believe are related to contamination from the Landfill;
• community members complain of the psychological harm of living next to a dump;
• residents no longer garden, fish from the waterways, or use well water or springs and streams because of fear of contamination; they instead buy food and water at greater costs and have changed their ways of life that had been passed down from one generation to the next; and,
• community members complain that they do not want to sell land that has been held in their families, sometimes since the late 1880s, and, even if they did, there is no buyer for this land except the Landfill; families that have sold their land to get away from the Landfill’s harms have sold it to the Landfill; and community members who have chosen not to retire to the Ashurst Bar/Smith community and enjoy their family land because of all of the negative impacts stemming from the Landfill’s operation.19

Had the Tallapoosa County Commission or ADEM conducted an impact analysis of both the disproportionate impact and uniquely adverse consequences that the Landfill continues to have on the predominately Black community where the Landfill is currently located, ADEM, in fulfilling its Title VI obligations, would likely not have permitted the Landfill to reopen and expand. ADEM cannot allow TWDC to renew its permit to operate the Landfill until a disproportionate impact analysis is conducted and ADEM finds, after fully considering the information therein, that the Landfill does not have a disparate and adverse impact on the surrounding Black community.

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18 The November 16 letter from Ron Smith also shines a light on the impact of the Landfill on the Ashurst Bar/Smith community.

C. TWDC Seeks Variances that Will Exacerbate the Health and Psychological Consequences of the Landfill and Have a Disparate and Discriminatory Impact on the Majority-Black Ashurst Bar/Smith Community

In addition to the issues described above, TWDC’s renewal request seeks dispensation from the bare minimum health and safety requirements of Alabama law, raising additional concerns for the health and welfare of community residents. In particular, many of the variances requested by TWDC would serve to exacerbate the health and psychological consequences of the Landfill on Black residents. Further, the variances sought by TWDC potentially violate ADEM’s state law obligations, codified in ADEM’s Solid Waste Program Administrative Code.20

For example, ADEM Rule 335-13-4-.12(d)(f) requires a 100-foot buffer zone around the perimeter of the landfill, and ADEM Rule 335-13-4-.22(1)(b) requires waste water to be confined to as small an area as possible, and for a landfill to use tarps, contaminated soils and petroleum, and automotive shredders residue as an alternative daily cover.21 TWDC seeks variances from rules adopted by ADEM to fulfill its environmental law obligations explicated in the Alabama Solid Waste Management Plan. Thus, the permit should be rejected on this additional ground.

As members of the Ashurst Bar/Smith community have outlined in their written correspondence to EPA, some of which are described above, many of the most psychologically and physically harmful impacts of the Landfill are associated with the variances sought by TWDC. For example, the improper covering of the dump’s contents is a phenomenon that serves as an eyesore to the otherwise serene, rural life in Tallassee, and has brought putrid odors, vultures, wildlife, and other pests, which are harbingers of disease, into the Ashurst Bar/Smith community. The variance described above would allow the Landfill to continue to improperly and inadequately cover the Landfill’s contents.

Similarly, many residents have documented how their inability to use their well-water—because of the belief that its contaminated—and the deleterious effects of toxin-contaminated surface water has prevented them from using free, natural resources (for gardening, eating, and feeding their animals), and engaging in outdoor activities at a substantial financial and psychological cost. ADEM will aggravate this problem by allowing the Landfill to deviate from state law requirements that waste water be confined to as small of an area as possible.

ADEM’s duty to deny these variances arises not only from its Title VI obligations, but also its obligations under state law. ADEM, as an executive agency of Alabama, is charged with administering state laws regulating potential environmental hazards.22 The Alabama Legislature

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22 Ala. Code. § 22-22A-4(a); Ala. Code. § 41-22-3(1).

has directed ADEM to develop a State Solid Waste Management Plan. In enacting Alabama’s Solid Waste Management Plan, the Legislature intended to “to protect the public health and the state’s environmental quality.” To achieve this purpose, the law provides that “[t]he terms and obligations of this article shall be liberally construed to achieve remedies intended.” Id. The Alabama Legislature determined that the state must properly manage wastes “to reduce the likelihood of both short-term and long-term threat to human health and the environment . . .” The Legislature also found that “[p]roper planning for solid waste management must include the evaluation of facility sites based on a broad group of factors including, but not limited to, environmental conditions, local needs for waste management, social and economic impacts on the host community, the availability and impact on public services, and the consistency of a proposed facility with any final solid waste management plan[.]”

Moreover, on September 15, 2016, Alabama’s Governor created the Alabama Solid Waste Management Task Force “to study and identify areas for specific revision regarding the permitting process for solid waste management facilities,” having recognized that “the disposal of solid waste impacts the economic vitality and health of the citizens” of the area surrounding solid waste facilities, and the “the current process for permitting solid waste disposal does not provide for a comprehensive review of the broader effects of solid waste disposal on the people of the State of Alabama before awarding a permit.”

Accordingly, the state’s Solid Waste Management Plan, particularly the breadth of its coverage, and the Governor’s recognition of the need for a review of a landfill’s impact before a permit is awarded, all counsel against ADEM renewing TWDC’s permit to operate the Stone’s Throw Landfill with the aforementioned variances. The variances sought by TWDC are contrary to the State’s Solid Waste Management Plan and the legislative intent that guided the creation of the law. Because the variances sought by TWDC will increase the likelihood of both short and long-term socioeconomic threats to the community and the environment (particularly the air and water resources), the variances conflict with the state’s mandate.

ADEM is aware that TWDC may be violating Alabama state environmental law, including the Alabama Clean Water Act, and yet, incredibly, TWDC requests variances from compliance with those laws. For example, TWDC’s request for a variance from ADEM Rule 335-13-4-.22(1)(b)—requiring waste water to be confined to as small an area as possible—is potentially problematic given TWDC’s prior notices of potential waste water violations and TWDC’s Clean Water Act permit. For example, on October 29, 2007, the Landfill was issued a Notice of Violation from ADEM for “unapproved placement of special waste in the lined [Municipal Solid Waste] MSW cell at the Stone’s Throw Landfill.” More recently, on July 10, 2015 an inspection of the

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23 Ala. Code. § 22-27-45; see also Ala. Code §§ 9-7-10 to 9-7-20.
25 Id. § 22-27-40(2).
26 Id. § 22-27-40(5) (emphasis added); see also Ala. Admin. Code r. 335-13-4-.01 (the landfill siting factors are designed “to prevent adverse effects on health or the environment”).
28 See Attachment B, Letter from Heather Griffin to Registrant, TWDC (Aug. 11, 2010).
Landfill identified additional concerns about Alabama law potential violations regarding waste water management. The warning letter, prepared by a senior environmental scientist at ADEM, states that:

[1] “appropriate, effective Best Management Practices (BMPs) for the control of pollutants in stormwater run-off have not been fully implemented and regularly maintained to the maximum extent practicable resulting in the potential for uncontrolled discharges of sediment and other pollutants to a water of the state of Alabama,” [2] that “[e]ffective stabilization practices designed to dissipate stormwater runoff energy and provide for non-erosive flow velocity at stormwater discharge outlets to prevent erosion in downgradient draining features or water(s) of the State have not been fully implemented and/or maintained,” and that [3] “[s]ediment accumulation in the sediment basin or other treatment structure appears to be excessive, resulting in the potential for noncompliant discharges from reduced treatment/storage capacity.”

Ultimately, Ashurst Bar/Smith community members have identified the putrid smells, presence of pests and vultures, and inability to trust their drinking water as particularly problematic impacts, yet TWDC seeks variances to the Landfill’s operation that not only potentially violate Alabama state law and the Alabama Solid Waste Management Plan, but also would serve to reinforce and worsen the specific adverse impacts cited by the community that violate Title VI. As such, the variances requested by TWDC underscore the imperative that ADEM deny TWDC’s permit to renew its operation of the Landfill.

Conclusion

Based on the foregoing, Earthjustice and LDF, on behalf of ABSCO, request that ADEM deny TWDC’s application for permit renewal to operate the Stone’s Throw Landfill (Permit #62-11). TWDC’s permit renewal request must be denied because (1) Title VI of the Civil Rights Act of 1964 prohibits discrimination by federally assisted programs like ADEM’s municipal solid waste permitting program; (2) EPA’s Title VI implementing regulations prohibit recipients, like ADEM, from engaging in actions, including permitting decisions, that have a disproportionate and discriminatory impact on individuals based on their race; and (3) EPA has specifically directed ADEM and/or the Tallapoosa County Commission to conduct and consider a disproportionality assessment in carrying out its Title VI obligations, which ADEM and the Tallapoosa County have failed to conduct to date. Earthjustice and LDF are confident that if such a disproportionality analysis were undertaken, ADEM would find the permitting and siting of the Landfill, including the requested variances to the Landfill’s operations, have a disproportionate and discriminatory impact on the surrounding majority-Black community in violation of Title VI and state laws.

Sincerely,

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CC (via email): Betsy Biffl, EPA  
Jeryl Covington, EPA  
Lilian Dorka, Interim Director, EPA OCR  
Mary O’Lone, EPA  
Jonathan Stein, EPA  
Kurt Temple, EPA  
M. Andrew Zee, U.S. Department of Justice
Attachment A
September 16, 2016

Via E-Mail
Betsy Biffl
Attorney Adviser
Civil Rights Law Practice Group
Office of General Counsel
U.S. Environmental Protection Agency
Biffl.Betsy@epa.gov

Re: Ashurst Bar/Smith Community Organization, Case No. 06R-03-R4.

Dear Ms. Biffl:

On behalf of Ashurst Bar/Smith Community Organization (“ABSCO”), Complainant in Case No. 06R-03-R4, Earthjustice and the NAACP Legal Defense & Educational Fund, Inc. (“LDF”)¹ submit this letter and accompanying documents to supplement the record in the Environmental Protection Agency’s (“EPA”) Office of Civil Rights (“OCR”) investigation of the Complaint filed pursuant to Title VI of the Civil Rights Act (“Title VI”) by ABSCO on or about September 3, 2003, which EPA OCR accepted for investigation on September 7, 2005. EPA OCR accepted two claims for investigation, one of which was dismissed by EPA OCR on January 25, 2013. The remaining claim, for which the investigation is pending, concerns whether the Alabama Department of Environmental Management’s (“ADEM”) failure to require the Tallapoosa County Commission to properly use the siting factors, listed in EPA OCR’s June 2003 Investigative Report for Title VI Administrative Complaint File No. 28 R-99-R4 (“Yerkwood Report”), had a discriminatory effect on the African American residents in East Tallassee living in proximity to the Landfill that ADEM permitted to operate and expand there.²

¹ LDF is serving as co-counsel with Earthjustice on behalf of ABSCO in Case No. 06R-03-R4, and Complainant requests that OCR include Leah Aden, Senior Counsel at LDF, on correspondence related to the case investigation. Please find Ms. Aden’s contact information on the signature line of this letter.
² See Letter from Karen D. Higginbotham, Dir., EPA OCR, to unnamed individual (Sept. 7, 2005).
On February 10, 2016, more than a decade after ABSCO filed its complaint, EPA OCR had a telephone conference with four leaders and members of the Complainant organization: Phyllis Gosa, Ronald Smith, Jackie Haynes, and Janetta Brooks. Despite Earthjustice’s request, on behalf of Complainant, to discuss the investigation and potential remedies broadly, EPA OCR circumscribed the call to a rote set of investigatory questions about individual experiences. Given the passage of time, we made clear that this investigation is all the more difficult, as some witnesses are no longer available, memories have become clouded, and documentation is harder to find. As such, Complainant and community members are among the most knowledgeable resources to help EPA OCR determine which allegations or impacts related to the Landfill remain relevant, and whether time and conditions may have affected the salience of the allegations or effects in the years since the filing of the 2003 Title VI complaint. In this case, the lingering effects of the challenged actions remain and Complainant and other community members are in the best position to share information about what is happening today and potential remedies.

Subsequently, on March 4 and March 8, Earthjustice, representing ABSCO, submitted documents discussed on the February 10 call in further support of the Complaint and indicated that we would continue to provide such documentation as well as names of potential witnesses, during the pendency of the investigation. We also encouraged you and others at EPA involved in the investigation to tour the site and meet with residents, which we remain willing to help arrange.

With this letter, Earthjustice and LDF, representing Complainant, provide additional information, including potential witnesses, in support of the Title VI Complaint. First, Complainant encloses four declarations from current and former residents of the Ashurst Bar/Smith community—namely Mrs. Gosa, Mr. Smith, Kenneth Gauntt, and Michael Cunningham—providing more detail on the significant and various effects of the Stone’s Throw Landfill on their community. We will continue to provide you with declarations and other documentation on an ongoing basis.

As you know, the Ashurst Bar/Smith community is majority-Black, despite being located in a majority-white city (72% white under the 2010 Census) and county (70% white under the 2010 Census). These declarations describe: significant truck traffic to and from the Landfill on residential roads that pose a safety risk to school-age children; putrid smells that dissuade families from engaging in communal activities; an increase in vultures and other pests that are harbingers of disease; health impacts such as cancer, respiratory problems, migraines, and dizziness, which residents have reason to believe are related to contamination from the Landfill; and community residents who no longer garden, fish from the waterways, or use well water or springs and streams because of fear of contamination.

For example, Mr. Gauntt, who was born and raised in the Ashurst Bar/Smith community and continues to have family and friends who live there, described the impacts of the Landfill on the way of life in the community as follows:
We are a community of hardworking people who were taught and became accustomed to living off the land, raising livestock, and growing crops like cotton and corn. I distinctly remember the smell of the fresh earth when it was planting season and the delicious smell and taste of the fresh fruits and vegetables that we grew. . . . Since the Landfill has come into our community . . . [we] fear that gardening and raising livestock is no longer safe. As a result, many people have given up on these traditions.

Mrs. Gosa, an ABSCO member, poignantly explained the shame, fear, and financial costs that the Landfill has imposed on members of Ashurst Bar/Smith, a community now forced to distrust its own resources, saying:

In a community where many people are impoverished, it is a shame that they feel that they have to pay for water when they used to have access to free water. . . these already under-resourced families buy bottled water to provide themselves with some peace of mind about what they are putting into their bodies and that of their children.

Ron Smith, a civil servant and local pastor, returned to Ashurst Bar/Smith to join his parents “in their more than 10-year fight to defend [his] family’s property and quality of life . . . from continuing to be encroached on, devalued, and diminished by the Landfill.” According to Mr. Smith, today, Alabama “state officials have permitted the Landfill to expand and receive more and more garbage in our backyards, such that now we bear the burden of living surrounded by garbage – asbestos to septic sewage – from every one of the 67 counties in Alabama and three counties in Georgia.” Mr. Smith, like others in his community, is “angry and saddened by the reality that [this] remarkable Black majority community bears the effects of the Landfill, when it already is overburdened by lack of opportunity.”

These declarations also describe how many Ashurst Bar/Smith residents have owned and passed down land in the community for generations. Mrs. Gosa, for example, traces her land ownership to the 1800s when her great-grandparents, as former slaves, invested in land as the only form of transferable wealth available to them. As Mrs. Gosa puts it: “[t]o take this land away from their descendants, like me and my brother, who live on and maintain ownership of the land – by the [L]andfill essentially making our family’s land unbearable to live on – is to extinguish everything that we have to connect us to our heritage and history.” Similarly, the land that Mr. Smith and his family are now forced to defend has been in their family since 1813, when Mr. Smith’s great-grandfather came from South Carolina to Tallassee and acquired, incredibly, about 600 acres of land through federal land grants for farmers. “The Ashurst/Bar Smith community was created through pioneering Black landowners like my ancestors,” said Smith. He, like other residents of this tight-knit community, is “deeply concerned that the ever-expanding Landfill will do away with the hundreds of years of history here.” Like Mrs. Gosa, Mr. Smith contends that this resilient community in the heart of the former Confederacy is being torn apart.
Mr. Cunningham, who was born and raised in the Ashurst Bar/Smith community, explained why he no longer plans to retire in his hometown, saying:

As the [L]andfill continues to expand and take over additional acreage within the community . . . I fear the effects that it is currently having on the community and am concerned that its operations and expansion will eventually result in the [L]andfill destroying and taking over the entire Ashurst Bar/Smith community. Although I enjoy and cherish my visits with family and friends within the community, I have serious safety and health concerns for everyone who continues to reside in the community. Consequently, I do not plan on residing in the Ashurst Bar/Smith community in the senior years of my life, as I once planned to do, due to the health and safety concerns while the [L]andfill continues and/or expands its operations, which are fouling the air and water and degrading the quality of life in my beloved community.

The testimony of these individuals is supported by the assertions of many other residents of the Ashurst Bar/Smith community, echoing similar and other deleterious effects that the Landfill has on their community.³ The undersigned met with at least 50 community members in late March 2016 and requested that they respond to a questionnaire/survey that sought their perspectives on whether the Landfill affected them, their family and friends, and their community. Almost all of the attendees responded to the questionnaire (i.e., 44 residents) and, since that meeting, the undersigned have received additional responses from other community members. Individually and collectively, these community members’ assertions are indicative of how the Landfill is affecting people in the Ashurst Bar/Smith community. As examples, we have learned from community members that:

- Most, if not all of the residents no longer use well water. As an alternative, residents choose to use public water serviced by Tallassee. Among the reasons given for not using well water were either that their wells were closed or dried up, or they perceived the well water to be unsafe. All of the residents that responded to the question said that their well had never been tested or at least not to their knowledge.
- Given that free well water is no longer an option for residents, but rather costly city water is available, many households reported that they spent between $10-100 a month on this public water.
- Almost all of the households surveyed reported that they purchased bottled water on a monthly basis, with most of the households spending $15-60 per month.

³ When the 2003 Title VI complaint was filed, Ashurst Bar/Smith had 175 residents and was 98% African-American. First Am. Compl. For Declaratory & Injunctive Relief, Californians for Renewable Energy v. EPA, No. 4:15-cv-03292-SBA, at 4 ¶ 12 (N.D. Ca. Jan. 7, 2016). Indeed, according to EPA OCR, using Census data, the demographics of the community within 1/2, 1, 2, and 3 miles of the Landfill was 90.6%, 88.2%, 57.1%, and 44.1% African-American, respectively. See Letter from Rafael DeLeon, Dir., EPA OCR, to Lance R. LeFleur, Dir., ADEM (Jan. 25, 2013).
Many residents reported that there was water runoff from the Landfill, and several residents specified that water runoff occurred around Washington Boulevard, Ashurst Bar Road, and Wall Street, or behind their house or land.

All of the residents reported foul odors coming from the Landfill, which were described as the stench of “decay,” “rot,” “dead animals,” “pesticides,” and “gas.” A significant number of respondents reported that the foul odors were present in the morning and the night.

A large number of residents who owned or observed animals also perceived the Landfill to have had a negative impact on animals. Among those impacts were reports of wildlife and pets (especially cats and dogs) dying, getting sick, or being in poor health.

Numerous health problems perceived to be connected to the Landfill were reported by residents, including respiratory issues, cancer, diabetes, migraines/dizziness, eye problems, dry throats, skin problems, and sinus problems.

Many respondents said that the Landfill’s presence depreciated the value of their property and property near the Landfill. Many residents who perceived their property value to have declined due to the Landfill either: (1) expressed that nobody wants to buy “contaminated” land in their community; (2) actually tried to sell their property but were unsuccessful; or (3) moved away from their home – or knew of former residents who moved – just to get away from the Landfill.

Most residents reported complaints about the trucks accessing the Landfill. The top complaints were (1) potholes and other wear and tear caused by trucks traversing major roads and bridges; and (2) trucks speeding and running people, including children on school buses, off the road. Many residents also reported that the trucks operate all day long.

Most of the surveyed residents reported disruptive noises from Landfill operations. Some residents specifically noted the loud sounds of trucks, tractors, and heavy machinery banging, emptying and slamming trash cans, slapping tail gates, and honking their horns.

Many of the surveyed residents reported that the Landfill negatively affected their quality of life through its various environmental, social, and personal impacts. The most frequently mentioned impact of the Landfill, however, involved its psychological effects on residents. Reports revealed a community that felt “dehumanized,” citing experiences of anxiety, fear, depression, and stress, as well as feelings of defeat and isolation.

Complainant offers these survey responses as indicative of the Landfill’s impact on Tallassee residents.

Moreover, we urge you to seriously consider these declarations and the survey responses, as well as to speak to community members yourselves as you conduct a thorough investigation and carry out your responsibility to enforce Title VI. Our expectation is that this information will prompt you to engage with the Complainant and other community
stakeholders, as EPA OCR reinitiates investigations and moves toward resolution of the civil rights complaint. As a separate letter to Lilian Dorka, Interim Director, EPA OCR, dated June 6, 2016, most recently articulated, that it is a mistake to fail to engage key stakeholders in the investigative process.\(^4\) As you will read in the supporting documents to this letter, Complainant and community stakeholders have much to say about the impact of the Landfill on their community and daily lives, \textit{nearly 15 years after the Landfill was reopened in 2002}, which reinforces the need for a thorough investigation.

In conclusion, given that the Ashurst Bar/Smith community has had to live with the impacts of the challenged action during the long pendency of its Complaint, the investigation into what happened so long ago will not at this point fully redress the alleged violations by recipients of federal funds, nor EPA OCR’s unreasonable delay. Yet recipients of federal funds like ADEM should nonetheless be accountable for discriminatory policies and practices, and the continuing effects of such policies and practices should be addressed. Complainant and community stakeholders have thoughts about possible remedies and EPA OCR should consult with them toward that end.

Sincerely,

\[\text{Signature}\]

Marianne Engelman Lado  
Jonathan Smith  
Earthjustice  
48 Wall Street, 19th Floor  
New York, NY 10025  
(212) 845-7393 (Marianne)  
(212) 845-7379 (Jonathan)

\[\text{Signature}\]

Leah Aden  
Senior Counsel  
NAACP Legal Defense & Educational Fund, Inc.  
40 Rector Street, 5th Floor  
New York, NY 10006

\(^{4}\) See Letter from Marianne Engelman Lado & Jonathan Smith to Lilian Dorka, Interim Dir., EPA OCR (June 6, 2016).
Attachments

CC (via email):
Jeryl Covington
Lilian Dorka, Interim Director, EPA OCR
Mary O’Lone
Jonathan Stein
Kurt Temple
M. Andrew Zee
Attachment B
August 11, 2010

NOTICE OF REGISTRATION (NOR) RECEIVED

NOR Rec: August 2, 2010 NOR Complete: August 10, 2010 By: Heather Griffin County: Tallapoosa (123)

NPDES #: ALR16EFT5 Expiration Date: August 9, 2011 Disturbed Acres Registered: 4.9

Registrant: Tallassee Waste Disposal Center, Inc. Facility/Site: Stone’s Throw Borrow Area

This is to acknowledge receipt of the Notice of Registration (NOR) requesting National Pollutant Discharge Elimination System (NPDES) registration under ADEM Admin. Code Ch. 335-6-12 for discharge of treated stormwater from regulated construction, nonmetallic, noncoal mining, dry processing, and related activity, for the above-referenced facility which was received by ADEM on the date indicated above.

It remains the responsibility of the operator to ensure that information submitted in the NOR, including any attachments, is true, complete, and accurate in order for the registration to remain in effect. Failure to ensure that the site/activity remains in full compliance with all provisions of the rules may result in suspension, termination, and/or subsequent denial of the request for registration. Please be advised that the registrant, operator, owner, developer, home builder(s), property owners association, etc., separately or collectively, must retain registration until all regulated disturbance activity is complete. The rules, forms 498, 499, 500, & 501, registration fee schedule, the Alabama Handbook BMP document, example site identification sign, qualified credentialed inspection program (QCIP) description, and other helpful information can be viewed or downloaded from the ADEM WebPage at http://www.adem.state.al.us/programs/water/constructionstormwater.cnt

Registration does not authorize the discharge of any pollutant or wastewater to a receiving water not specifically identified in the rules or in the submitted NOR. Should a need for the registration of an additional discharge(s) or increased acreage under the rules occur, the registrant must submit a complete NOR to ADEM requesting modification of the registration prior to the commencement of additional disturbance or discharge(s). Required inspections must begin immediately following commencement of activity authorized under this registration and continue until registration is properly terminated. Results from the required inspections should be reported on ADEM Form 500. A copy of Form 500 is attached for your convenience.

Compliance with all provisions of ADEM Admin. Code Ch. 335-6-12 and this registration is required, including but not limited to, the full implementation and regular maintenance of effective Best Management Practices (BMPs), prior to and concurrent with the commencement of regulated activities, the submittal of required reports, and the preparation and implementation of a construction best management practices plan (CBMPP) and any other plans as may be required. The required, comprehensive CBMPP shall comply with ADEM Admin. Code r. 335-6-12-21. An example CBMPP template is located on the ADEM webpage at http://www.adem.state.al.us/programs/water/constructionstormwater.cnt for your convenience.

This registration neither precludes nor negates an operator’s responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals.

The Department encourages you to voluntarily consider additional pollution prevention practices/alternatives as part of your implemented best management practices (BMPs) which may assist you to possibly reduce or eliminate pollutant discharges.

If you have any questions concerning your registration, please contact the Montgomery office at (334) 271-7700.

File: NOR
Attachment: ADEM Form 500
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (ADEM)
FIELD OPERATIONS DIVISION NPDES STORMWATER PROGRAM
NOTICE OF REGISTRATION (NOR)
THIS FORM IS TO BE USED FOR ADEM ADMINISTRATIVE CODE CHAPTER 335-6-12 - NPDES CONSTRUCTION, NONCOAL/NONMETALLIC MINING AND DRY PROCESSING LESS THAN FIVE ACRES, OTHER LAND DISTURBANCE ACTIVITIES, AND AREAS ASSOCIATED WITH THESE ACTIVITIES

PLEASE READ THE INSTRUCTIONS BEGINNING ON PAGE 3 OF THIS FORM CAREFULLY BEFORE COMPLETING. COMPLETE ALL QUESTIONS. RESPOND WITH “N/A” AS APPROPRIATE. INCOMPLETE OR INCORRECT ANSWERS, OR MISSING SIGNATURES WILL DELAY ACCEPTANCE OF REGISTRATION. IF SPACE IS INSUFFICIENT, CONTINUE ON AN ATTACHED SHEET(S) AS NEEDED. PLEASE TYPE OR PRINT LEGIBLY IN INK.

I. REGISTRANT INFORMATION

<table>
<thead>
<tr>
<th>Registrant Name</th>
<th>Facility/Site Name</th>
<th>Coverage Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tallassee Waste Disposal Center, Inc.</td>
<td>Stone's Throw Borrow Area</td>
<td>1</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Responsible Owner/Operator or Official, and Title</th>
<th>Site Contact and Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gerald Allen, Vice President of Landfills</td>
<td>Trey Allen, General Manager</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mailing Address of Registrant</th>
<th>Site Street Address or Location Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7915 Baymeadows Way, Suite 300</td>
<td>1303 Washington Boulevard</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>Zip</th>
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<tbody>
<tr>
<td>Jacksonville</td>
<td>FL</td>
<td>32256</td>
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<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tallassee</td>
<td>AL</td>
<td>36078</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Phone Number</th>
<th>Site Phone Number</th>
<th>Fax Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>(904) 737-7900</td>
<td>(334) 252-1210</td>
<td>(904) 636-0699</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsible Official (RO) Street/Physical Address</th>
<th>RO Phone Number</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>7915 Baymeadows Way, Suite 300, Jacksonville, FL 32256</td>
<td>(904) 737-7900</td>
<td><a href="mailto:Gallen@advanceddisposal.com">Gallen@advanceddisposal.com</a></td>
</tr>
</tbody>
</table>

III. ACTIVITY DESCRIPTION & INFORMATION

County(s): Tallapoosa
Township(s), Range(s), Section(s): 18N, 22E, 26 & 27
Directions To Site: From I-85 North, take HWY 49 north to Washington Blvd., left 1.5 miles

Is/will this facility: (a) [ ] an existing site which currently discharges to State waters?
(b) [ ] discharge to waters of or be located in the Coastal Zone?
(c) [ ] a proposed site which will result in a discharge to State waters?
(d) [ ] be located on Indian/ historically significant lands?

IV. PROPOSED SCHEDULE - Used to determine potential registration duration & applicable fee amount, considering responses to Item VIII.

Anticipated Activity schedule: Commencement date: 07/31/2010
Completion date: 12/15/2010

Area of the Registered site: Total site area in acres: 4.9
Total disturbed area in acres: 4.9

V. VIOLATION HISTORY

Identify every Notice of Violation (NOV), Administrative Order, Directive, or Litigation filed by ADEM or EPA during the three year (36 months) period preceding the date on which this form is signed issued to the operator, owner, registrant, partner, parent corporation, subsidiary, LLP, or LLC Member. Indicate the date of issuance, briefly describe alleged violations, list actions (if any) to abate alleged violations, and indicate date of final resolution:

See attached.

VI. MAP SUBMITTAL

[ ] Yes [ ] No A 7.5 minute series USGS topographic map(s) or equivalent map(s) is attached according to the instructions beginning on Page 3. If “No”, explain:
VII. PROPOSED ACTIVITY(S) TO BE CONDUCTED

If Non-Coal, Non-Metallic Mining, Recovery, or Construction Material Management Site: □ Dirt-Chert □ Sand-Gravel □ Shale-Clay □ Crushed-Dimension Stone □ Other Soil □ Other □ Other

Primary SIC Code: 1499

Brief Description Construction, Noncoal Mining, or Materials Management Activity: Soil borrow pit

VIII. RECEIVING WATERS

List name of receiving water(s), latitude & longitude (decimal or deg, min, sec) of location(s) that run-off enters the receiving water, total number of disturbed acres, the total number of drainage acres which will drain through each treatment system or BMP, and the waterbody classification. If receiving water is designated as ONRW and/or Tier 1 waterbody, attach/submit copy of CBMPP.

<table>
<thead>
<tr>
<th>Receiving Water</th>
<th>Latitude</th>
<th>Longitude</th>
<th>Disturbed Acres</th>
<th>Drainage Acres</th>
<th>Waterbody Classification</th>
<th>ONRW</th>
<th>Tier 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unnamed Tributary of Gleeden Branch</td>
<td>32°30'30&quot; N</td>
<td>85°49'44&quot; W</td>
<td>4.9</td>
<td>75</td>
<td>F&amp;W</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>

IX. MODIFICATION & RE-REGISTRATION - CONTINUING EDUCATION & INSPECTION INFORMATION

☐ Yes  ☐ No  Required inspections/monitoring by QCP/QCI have been performed and records retained. If "No", explain:

List name(s) and designation/certification #s of QCPs/QCIs that performed required inspections/monitoring:

X. QUALIFIED CREDENTIALED PROFESSIONAL (QCP) CERTIFICATION

"I certify under penalty of law that a comprehensive Construction Best Management Practices Plan (CBMPP) for the prevention and minimization of all sources of pollution in stormwater and authorized related process wastewater runoff has been prepared under my supervision for this site/activity, and associated regulated areas/activities, utilizing effective BMPs from the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas, Alabama Soil and Water Conservation Committee, as amended (ASWCC). If the CBMPP is properly implemented and maintained by the registrant, discharges of pollutants in stormwater runoff can reasonably be expected to be effectively minimized to the maximum extent practicable according to the requirements of ADEM Administrative Code Chapter 335-6-12. The CBMPP describes the pollution abatement/prevention management and effective structural & nonstructural BMPs that must be fully implemented and regularly maintained as needed at the registered site in accordance with sound sediment and erosion practices to ensure the protection of water quality."

QCP Designation/Description: W. Michael Stubbs, P.E.

Address: 484 Mulberry Street, Suite 265, Macon, GA 31201

Registration/Certification: 24638

Phone Number: (478) 743-7175

Signature

Date Signed

XI. OPERATOR - RESPONSIBLE OFFICIAL SIGNATURE

Pursuant to ADEM Administrative Code Rule 335-6-6-09, this NOR must be signed by a Responsible Official of the registrant who is the operator, owner, the sole proprietor of a sole proprietorship, a general/controlling member or partner, a ranking elected official or other duly authorized representative for a unit of government, or an executive officer of at least the level of vice-president for a corporation, having overall responsibility and decision making for the site/activity: "I certify under penalty of law that this form, the CBMPP, and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the qualified credentialed professional (QCP) and other persons or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, correct, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine or imprisonment for knowing violations. I certify that this form has not been altered, and if copied or reproduced, is consistent in format and identical in content to the ADEM approved form. I further certify that the proposed discharges described in this registration have been evaluated for the presence of any non-construction and/or coal/mineral mining stormwater, or process wastewaters have been fully identified."

Name (type or print): Gerald Allen

Official Title: Vice President of Landfills

Signature

Date Signed

ADEMForm4981-03.doc
VII. PROPOSED ACTIVITY(S) TO BE CONDUCTED

If Non-Coal, Non-Metallic Mining, Recovery, or Construction Material Management Site:
- [ ] Dirt-Chert
- [ ] Sand-Gravel
- [ ] Shale-Clay
- [ ] Crushed-Dimension Stone
- [ ] Other soil
- [ ] Other

Primary SIC Code: 1499

Brief Description of Construction, Noncoal Mining, or Materials Management Activity:

VIII. RECEIVING WATERS

List name(s), latitude & longitude (decimal or deg.min.sec) of location(s) that run-off enters the receiving water, total number of disturbed acres, the total number of drainage acres which will drain through each treatment system or BMP, and the waterbody classification. If receiving water is designated as ONRW and/or Tier I waterbody, attach/submit copy of CBMPP.

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<td>F&amp;W</td>
<td>N</td>
<td>Y or N</td>
</tr>
</tbody>
</table>

IX. MODIFICATION & RE-REGISTRATION - CONTINUING EDUCATION & INSPECTION INFORMATION

☐ Yes  ☐ No  Required inspections/monitoring by QCP/QCI have been performed and records retained. If “No”, explain:

New NOR

List name(s) and designation/certification #s of QCPs/QCIs that performed required inspections/monitoring:

X. QUALIFIED CREDENTIALED PROFESSIONAL (QCP) CERTIFICATION

“I certify under penalty of law that a comprehensive Construction Best Management Practices Plan (CBMPP) for the prevention and minimization of all sources of pollution in stormwater and authorized related process wastewater runoff has been prepared under my supervision for this site/activity, and associated regulated areas/activities, utilizing effective BMPs from the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Constructions Sites And Urban Areas, Alabama Soil and Water Conservation Committee, as amended (ASWCC). If the CBMPP is properly implemented and maintained by the registrant, discharges of pollutants in stormwater runoff can reasonably be expected to be effectively minimized to the maximum extent practicable according to the requirements of ADEM Administrative Code Chapter 335-6-12. The CBMPP describes the pollution abatement/prevention management and effective structural & nonstructural BMPs that must be fully implemented and regularly maintained as needed at the registered site in accordance with sound sediment and erosion practices to ensure the protection of water quality.”

QCP Designation/Description: W. Michael Stubbs, P.E.

Address 484 Mulberry Street, Suite 265, Macon, GA 31201

Name and Title (type or print) W. Michael Stubbs, P.E.

Signature

XII. OPERATOR - RESPONSIBLE OFFICIAL SIGNATURE

Pursuant to ADEM Administrative Code Rule 335-6-6-.09, this NOR must be signed by a Responsible Official of the registrant who is the operator, owner, the sole proprietor of a sole proprietorship, a general/controlling member or partner, a ranking elected official or other duly authorized representative for a unit of government; or an executive officer of at least the level of vice-president for a corporation, having overall responsibility and decision making for the site/activity. “I certify under penalty of law that this form, the CBMPP, and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the qualified credentialed professional (QCP) and other person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, correct, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine or imprisonment for knowing violations. I certify that this form has not been altered, and if copied or reproduced, is consistent in format and identical in content to the ADEM approved form. I further certify that the proposed discharges described in this registration have been evaluated for the presence of any non-construction and/or coal/mineral mining stormwater, or process wastewaters have been fully identified.”

Name (type or print) Gerald Allen  Official Title Vice President of Landfills

Signature

Date Signed 7/14/10
V. Violation History

Stone's Throw Landfill (Tallassee Waste Disposal Center, Inc.) was issued a NOV on October 29, 2007, for the unapproved placement of a special waste in the lined MSW cell at the Stone's Throw Landfill. The facility responded in a November 28, 2007 letter to ADEM. Stone's Throw followed the recommendations listed in the November 2007 letter and ADEM issued the special waste approval for this material and the facility continues to accept this material. No fines or other enforcement actions were taken on this violation and the matter is considered as resolved with ADEM and Stone's Throw.
Certified Mail

July 29, 2010

ADEM
Attn: Water Division
NPDES Permit Branch
Construction Storm Water / General Permit Section
P.O. Box 301463
Montgomery, Alabama 36130-1463

Re: Stone’s Throw Landfill – Borrow Area
Notice of Registration
HHNT Project No. 1210-280-01

To Whom It May Concern:

I have attached the Notice of Registration (NOR) and the required fee for the above mentioned project.

Should you have any questions, please call.

Sincerely,

HODGES, HARBIN, NEWBERRY & TRIBBLE, INC.

W. Michael Stubbs, P.E.
Professional Engineer

WMS/cs

Enclosures

cc: Wally Hall (w/o enclosure)
Gerald Allen (w/o enclosure)
Trey Allen (w/ enclosure)
Rodney Griffith (w/o enclosure)
Jeff Helvey, P.E. (w/o enclosure)
Nathan Dunn (w/o enclosure)
Robert Heller (w/o enclosure)
Heather,

As requested, I have attached the revised NOR which indicates that the disturbed area for this project is 4.9 acres.

Please let me know if you need anything else. Thanks,

Robert D. Heller
Environmental Scientist
Hodges, Harbin, Newberry & Tribble, Inc.
484 Mulberry Street, Suite 265
Macon, Georgia 31201
(478) 743-7175
(478) 743-1703 Fax
rheller@hhnt.com
Attachment C
July 10, 2015
CERTIFIED MAIL

Charlie Gray
Tallassee Waste Disposal Center, Inc.
300 Colonial Center Parkway, Suite 230
Roswell, GA 30076

RE:           WARNING LETTER
              NPDES Permit ALR10AW66
              Facility/Site: Stone's Throw Sediment Pond No. 3
              Tallapoosa County (123)

Dear Charlie Gray:

Attached please find a report prepared as a result of an inspection conducted at the
above referenced facility on July 6, 2015.

The following concerns were noted during the inspection which may constitute
violation(s) of the Alabama Water Pollution Control Act Ala. Code §§22-22-1 through 22-

1. Appropriate, effective Best Management Practices (BMPs) for the control of
pollutants in stormwater run-off have not been fully implemented and regularly
maintained to the maximum extent practicable resulting in the potential for
uncontrolled discharges of sediment and other pollutants to a water of the State of
Alabama. (Permit Part III. A)

2. Effective stabilization practices designed to dissipate stormwater runoff energy
and provide for non-erosive flow velocity at stormwater discharge outlets to
prevent erosion in downgradient drainage features or water(s) of the State have
not been fully implemented and/or maintained. (Permit Part III. A. 2.)

3. Sediment accumulation in the sediment basin or other treatment structure appears
to be excessive, resulting in the potential for noncompliant discharges from
reduced treatment/storage capacity. (Permit Part III. A. 13(b).)

Please submit to Ryan Cooper at Office of Field Services, 1350 Coliseum Blvd,
Montgomery, AL 36110 within ten (10) days of receipt of this letter, unless extended in
writing by the Department, confirmation detailing how and when corrective action was
taken to effectively address any items noted above. Please provide photographs as
supporting documentation of completed/repairs/enhanced BMPs and steps taken to
ensure permanent stabilization of the site.
Tallassee Waste Disposal Center, Inc.
July 10, 2015
Page 2 of 2

Please be advised that effective erosion control measures, sediment control measures, and other site pollution management practices are required to be designed, implemented, and continually maintained consistent with the Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas (http://swcc.alabama.gov/pages/erosion_control.aspx) to prevent/minimize pollution discharges to the maximum extent practicable.

Upon receipt of this letter all necessary measures should immediately be implemented to prevent/minimize sediment and other pollutants from leaving the site or associated areas.

The determination to pursue further enforcement action will be dependent on the timeliness and content of your response to this letter, including but not limited to the documentation of site corrective actions implemented.

Should you have any questions concerning this matter, please contact Ryan Cooper by email at rcooper@adem.state.al.us or by phone at (334) 274-4205.

Sincerely,

[Signature]

Shelane P. Bergquist, Chief
Facilities Unit
Office of Field Services
Field Operations Division

SPB/rdc File: EWL/14950

Enclosure: Inspection Report Photographs
Date: July 21, 2015

Mary Thompson:

The following is in response to your July 21, 2015 request for delivery information on your Certified Mail™ item number 9171082133393671130385. The delivery record shows that this item was delivered on July 20, 2015 at 1:54 pm in ROSWELL, GA 30076. The scanned image of the recipient information is provided below.

Signature of Recipient:

Address of Recipient:

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service