May 8, 2024

Lilian Sotolongo Dorka, Deputy Assistant Administrator
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Anhthu Hoang, Acting Director
Office of External Civil Rights Compliance
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Hoang.Anhthu@epa.gov

Re: Complaint Under Title VI of the Civil Rights Act of 1964,
42 U.S.C. §2000d, 40 C.F.R. Part 7

Submitted via email to: Title_VI_Complaints@epa.gov

Dear Deputy Assistant Administrator Dorka, and Acting Director Hoang:

The following Complaint is filed on behalf of (b)(6) Privacy, (b)(7)(C) Enf. Privacy
[redacted]

(b)(6) Privacy, (b)(7)(C) Enf. Privacy under the above-referenced authorities to the Environmental Protection Agency, Office of External Civil Rights. Complainants request that the Alabama Department of Environmental Management's Air Division be found in violation of Title VI of the Civil Rights Act and its implementing regulations, and that agency be brought into compliance by EPA requiring the following relief as detailed in the Complaint:

1. ADEM's issuance Clean Air Act title V Permits – when adverse comments are received from the public – in a staggered manner.

2. ADEM's development of a cumulative impact analysis of the air pollution sources in Mobile County, including siting of additional air quality monitors for volatile organic compounds and sulfur dioxide.

3. Enhanced public outreach by ADEM in the Impacted Communities for air quality permitting and improvements to the public notices used to announce the opportunity for public comment.

We look forward to your response. Please feel free to contact us regarding the Complaint.

Sincerely,

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Complainants,

v.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL
MANAGEMENT,

Recipient.

COMPLAINT

Table of Contents

I. Introduction

This is a Complaint to the U.S. Environmental Protection Agency ("EPA"), Office of Civil Rights ("OCR") brought pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d ("Title VI) and EPA's implementing regulations at 40 C.F.R. Part 7 on behalf of (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted] (collectively, "Complainants"). This Complaint alleges discrimination by the Alabama Department of Environmental Management ("ADEM" or "Department") in its November 2022 issuance of Title V Renewal Permits (collectively, "Permits") to the following five (5) sources located in Mobile, Alabama:[1]

- Plains Marketing LP (Mobile County, AL), Permit No. 503-3013 ("Plains Marketing")
- Alabama Bulk Terminal (Mobile County, AL), Permit No. 503-3035 ("AL Bulk Terminal")
- Kimberly-Clark Corporation (Mobile County, AL), Permit No. 503-2012 ("Kimberly-Clark")
- Epic Alabama Maritime Assets, LLC – Alabama Shipyard LLC (Mobile County, AL), Permit No. 503-6001 ("Alabama Shipyard")
- UOP LLC (Mobile County, AL), Permit No. 503-8010 ("UOP")[2]

These Permits authorize the sources to emit various pollutants during their operations that EPA has determined can be harmful to human health and the environment. ADEM is responsible for permitting emissions of air pollutants in the

[1] While ADEM appears to use the terms Title V Permit and Major Source Operating Permit, or MSOP, interchangeably or together, this Complaint will consistently use the phrase "Title V Permit(s)" or "Permit(s)" to denote ADEM permits issued to fulfill the requirements of Title V of the Clean Air Act and 40 CFR Part 70. *See* ADEM's Air Permitting website, referencing the Title V Major Source Operating Permit Program and renewal MSOPs, *available at* https://adem.alabama.gov/programs/air/permitting.cnt.

[2] Note that ADEM issued the UOP Permit at issue as a "Minor Modification" to the Title V renewal permit ADEM previously issued on February 2, 2021. This "Minor Modification" attempted to address objections raised in the EPA's April 27, 2022 Title V Objection Order, which responded to a Title V petition to object to the UOP renewal permit filed by [redacted], which granted a number of objections and required additional permitting action by ADEM. *In the Matter of UOP LLC, UOP Mobile Plant*, Pet. No. IV-2021-6, Order Granting in Part and Denying in Part a Petition for Objection to Permit (April 27, 2022) ("UOP Order"), *available at https://www.epa.gov/system/files/documents/2022-05/UOP%20Order_4-27-22.pdf.*

Mobile County. These Permits and other record documents that ADEM compiled in issuing them are attached to this Complaint.[3,4]

As explained below, ADEM's issuance of these five Permits within a one-week period in November 2022 and without meaningful consideration the impact of these sources' emissions on the surrounding communities in Mobile, including the predominantly Black neighborhood of Africatown, had disparate, discriminatory impacts in violation of Title VI of the Civil Rights Act of 1964.

A. Clean Air Act Title V Operating Permits

Under Title V of the Clean Air Act ("CAA"), all major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with Title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable state plan to implement the CAA. A Title V operating permit generally does not impose new substantive control requirements on sources, but the CAA does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with the CAA and other with requirements.[5] As EPA recently explained in objecting to a Title V permit issued by ADEM:

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[3] See Attach. A at 255 (AL Bulk Terminal), 498 (Alabama Shipyard), 676 (Kimberly-Clark), 924 (Plains Marketing), and 1052 (UOP).

[4] Five PDF attachments accompany this Complaint. The first three were included in the Title V Petitions submitted to EPA to address ADEM's compliance with the Clean Air Act in issuing these Permits, as described below. Due to the overlap of the permitting information provided in those attachments, they are relied upon, attached, and cited.

- Attachment A includes all permitting documents provided in the "Public Files" for each Permit on EPA Region 4's Alabama Proposed Title V Permit Database ("Region 4 AL Permit Database"), available at https://www.epa.gov/caa-permitting/alabama-proposed-title-v-permits. The Attachments are generally provided in groups corresponding to each Permit, which include screenshots of the Public Files list, Draft Permit, Draft Statement of Basis ("SOB") available at public comment, Petitioners' Public Comments, Proposed Permit, Revised SOB, Response to Comments ("RTC"), and Final Permit.
- Attachment B includes all of the documents referenced in the January 3rd Petition that are not generally available.
- Attachment C includes additional documents added in the January 9th Petition that are not generally available.
- Attachment D includes the January 9th Title V Petition and other documents referenced in this Complaint that were not included in the above Attachments.

These Attachments generally include a Table of Contents (and relevant Bookmarks in the PDF) listing the documents and an overall page number for easy reference, and are *available at* (b)(6) Privacy, (b)(7)(C) Enf. Privacy

[5] 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* CAA § 504(c), 42 U.S.C. § 7661c(c).

> One purpose of the title V program is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.[6]

For example, Complainants' comments on ADEM's Title V permits in Africatown and Mobile raised issues regarding substantive permit defects that once corrected would decrease air emissions and improve air quality in the Impacted Communities.

Issuing Title V permits, either initially or during the renewals that occur approximately every five (5) years, is a multi-step process. First, after receiving and reviewing a permit application for a particular source, permitting authorities (such as ADEM) issue a draft permit for public notice and comment, usually with supporting information in a statement of basis ("SOB").[7] Following the public comment period, the permitting authority makes any changes necessary to the permit and then must provide the proposed permit to EPA for a 45-day review (along with the SOB and any response to comments ("RTC")), and the EPA may object to a proposed permit it determines does not comply with CAA applicable requirements.[8] If EPA does not object to the permit during that period, the permitting authority may issue the final permit, and other parties (such as Complainants) can – within 60 days of the expiration of the EPA's 45-day review period – file a petition to the EPA Administrator to object to a permit that does not comply with the CAA.[9] EPA considers the claims in these Title V petitions and "shall grant or deny such petition…[and] issue an objection…if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements" of the CAA and relevant state implementation plans.[10] If EPA issues an objection, either during its 45-day review period or in response to a petition to object, the Clean Air Act specifies that the permitting authority has 90 days to submit a revised permit addressing the objection or the EPA Administrator will issue or deny the Title V permit at issue.[11] EPA's review period and the deadline for a party to petition the Administrator to object to a permit are in the CAA and thus cannot be extended.

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[6] UOP Order at 2.
[7] 40 C.F.R. § 70.7(h).
[8] CAA § 505(a) and (b), 42 U.S.C. § 7661d(a) and (b), and 40 C.F.R. § 70.8(a) and (c).
[9] CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).
[10] *Id.* Note that while the CAA requires EPA to respond to these petitions within 60 days, these petitions often raise numerous complex issues, and EPA usually takes more than 60 days to issue its response. *See, generally,* EPA Title V Petition Database, *available at* https://www.epa.gov/title-v-operating-permits/title-v-petition-database.
[11] CAA § 505(c), 42 U.S.C. § 7661d(c).

Additionally, the Title V operating permit program is based on fees collected from the sources subject to the program. Each permitting authority collects fees from sources required to obtain operating permits.[12] These fees must be sufficient to fund all reasonable permit program costs.[13] The EPA considers the total program revenue to be presumptively adequate if fees are collected at or above the presumptive minimum level, and the presumptive minimum fee rate is adjusted for inflation in September of each year.[14] The part 70 presumptive minimum fee rate ($/ton) effective for the 12-month period of September 1, 2022 through August 31, 2023 is $58.55.[15]

II. Parties

(b)(6) Privacy, (b)(7)(C) Enf. Privacy bring this Complaint against ADEM for violations of Title VI of the Civil Rights Act and EPA implementing regulations specifically for issuing the Title V Permits to the five sources (AL Bulk Terminal, Alabama Shipyard, Kimberly-Clark, Plains Marketing and UOP) and generally for completely failing to comply with or acknowledge its anti-discrimination obligations under 40 C.F.R. Part 7 as recipients of federal funding.

A. Complainants

(b)(6) Privacy, (b)(7)(C) Enf is a nonprofit organization formed (b)(6) Privacy, (b)(7)(C) En by residents of Africatown, Alabama (a predominately Black area in Mobile) in partnership with regional stakeholders and advocates. (b)(6) Privacy, (b)(7)(C) Enf. P mission is to engage and organize with others in Mobile, Alabama's most threatened communities in order to defend the inalienable rights to clean air, water, soil, health, and safety, and to take direct action when the government fails to do so, ensuring community self-determination, including environmental justice.

(b)(6) Privacy, (b)(7 is a nonprofit organization with a mission to enhance the health and well-being of Alabamians by reducing air pollution, advancing environmental justice, and promoting climate solutions through education, advocacy, and collaboration. That mission includes actively engaging impacted communities on air pollution issues, reviewing air pollution permits, and addressing concerns related to

[12] *See* EPA, Title V Operating Permits, Permit Fees, *available at* https://www.epa.gov/title-v-operating-permits/permit-fees.
[13] *Id.*
[14] *Id.*
[15] See Memorandum from Corey Sugerik Operating Permits Group, AQPD, OAQPS, EPA, to Operating Permits Contact, EPA Regions I-X, "Calculation of the Part 70 Presumptive Minimum Fee Effective September 1, 2022 through August 31, 2023," (Oct. 3, 2022), *available at* https://www.epa.gov/title-v-operating-permits/permit-fees.

air quality, including environmental justice issues. [redacted] advocates for more robust public participation and community involvement in matters that affect community members.

[redacted]. is a community-based organization in historic Africatown located in Mobile, Alabama, is dedicated to preserving the Africatown community and achieving environmental justice.

[redacted] is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. The Mobile [redacted] has been working actively with Africatown residents and stakeholders since 2015 to address a variety of community challenges including environmental concerns, public participation opportunities, and law enforcement accountability.

B. Recipients

The Alabama Department of Environmental Management (ADEM) was created under Title 22 of the Code of Alabama 1975. ADEM is authorized by state statute to implement and enforce various state environmental laws, including Water Pollution Control, Chapter 22, Solid Waste, Chapter 27, and Hazardous Wastes Management, Chapter 30. ADEM administers the state's CAA Title V, Part 70 Operating Permit Program under the Alabama Air Pollution Control Act, Chapter 28 of Title 22 of the Code of Alabama, and implementing regulations promulgated by the Alabama Environmental Management Commission. Alabama's state statute and regulations set forth ADEM's powers and duties, which include evaluation of applications for permits for regulated air contaminant sources, and issuance of permits for sources which meet state and federal requirements. EPA approved ADEM the authority to implement and enforce Title V of the Clean Air Act in the State of Alabama.[16] Within ADEM, the Air Division is responsible for implementing and enforcing the Alabama Air Pollution Control Act and the CAA within the State of Alabama and the County of Mobile. ADEM is a recipient of federal funds from EPA, as explained in more detail below.

III. Jurisdiction

EPA has jurisdiction over this Complaint because it meets all the factors required for OCR to investigate a Title VI complaint.[17] This Complaint is in writing,

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[16] *See* Appendix A to 40 C.F.R. Part 70, ADEM received final full approval effective November 28, 2001.

[17] 40 C.F.R.§ 7.120. *See also* Case Resolution Manual (January 2021) ("Case Resolution Manual"), U.S. EPA External Civil Rights Compliance Office, at 5-10, *available at*

is filed with OCR by an authorized representative of the Complainants, and describes the alleged discriminatory acts in section VI.A. below. In addition, based on the facts set forth below, ADEM is a program that receives Federal funding, the Complaint is timely filed, and the Complaint otherwise meets EPA's prudential factors to assert jurisdiction over the Complaint.

A. Program

ADEM is a program or activity that receives federal funding and is, therefore, subject to EPA's Title VI regulations in 40 C.F.R. Part 7. According to the Civil Rights Act and EPA Title VI regulations, "[p]rogram or activity...mean[s] all of the operations of...a department, agency, special purpose district, or other instrumentality of a State or of a local government...any part of which is extended Federal financial assistance."[18] If a state or local governmental agency receives *any* federal funding, all of that agency's operations are covered by Title VI.[19] ADEM and the Air Division process and issue air pollution control and Title V permits under the CAA and Alabama Air Pollution Control Act, are programs and activities of a state government agency that receive Federal financial assistance, and are, therefore, programs or activities as those terms are defined in 40 C.F.R. § 7.25. Correspondingly, ADEM and Air Division are subject to the requirements of Title VI and related regulations.

B. Federal Funding

ADEM receives federal funding as defined by EPA's Title VI implementing regulations. EPA's regulations define "[r]ecipient" as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient . . ."[20]

ADEM, a state agency, has received more than $447 million in grants from EPA between 2021 and 2023.[21] It is immaterial that much of the funding that ADEM receives from EPA is unrelated to air pollution control permitting or air quality. By accepting any EPA funding, ADEM takes on an affirmative nondiscrimination obligation that extends to all of its programs and actions.[22] For

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https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

[18] 42 U.S. Code § 2000d–4a. *See also* 40 C.F.R.§7.25.

[19] *Ass'n. of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-5 (9th Cir. 1999), rev'd in part on other grounds, 231 F.3d 572 (9th Cir. 2000) (*en banc*).

[20] 40 C.F.R. § 7.25.

[21] *See generally* USASpending.gov, located at: https://files.usaspending.gov/generated_downloads/PrimeAwardSummariesAndSubawards_2023-05-03_H16M53S04284082.zip (last visited May 3, 2023) ("USASpending").

[22] 42 U.S. Code § 2000d–4a. *See also* 40 C.F.R.§7.25.

example, ADEM received "Performance Partnership Grants" that totaled more than $41 million in 2022 and 2023;[23] and $500,000 in 2021 for the "Gulf of Mexico Program." Additionally, ADEM receives funding specifically used to operate the Air Division and to implement and enforce the CAA and the Alabama Air Pollution Control Act within the State and the County of Mobile. For example, EPA will largely fund a special PM_{10} NAAQS monitoring study in Mobile County for a period of three years.[24] Based on these various federal funding sources – and the Governor's ongoing recommendations for Federal Grants for ADEM's various programs[25] – it is indisputable that ADEM, including the Air Division, is a recipient of federal funds and is subject to Title VI of the Civil Rights Act and EPA's regulations at 40 C.F.R. Part 7.

C. Timeliness

This Complaint is timely filed because it is based on the discriminatory effects of ADEM's issuance of five Title V permits in November 2022, which occurred less than 180 days ago. EPA Title VI regulations require complaints to be filed with 180 days of the last act of alleged discrimination.[26] ADEM issued these Permits on November 4, 2022 (AL Bulk Terminal, Plains Marketing), November 8, 2022 (UOP), and November 9, 2022 (Alabama Shipyard, Kimberly-Clark).[27] Not only could EPA have objected to these permits at any time during their 45 day review period, but ADEM could have revised these permits to address their disparate impact on the communities surrounding these sources and resubmitted them to EPA at any prior to finalizing them. Thus, this Complaint alleging discriminatory acts in the issuance of these five Permits is timely, as it is being filed on or before May 8, 2023, which is 180 days from the issuance of the last of these final Permits on November 9, 2022.

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[23] *See* USASpending. Performance Partnership Grants received from EPA in 2022 and 2023 include: $13,555,163 (awarded on Feb. 16, 2023), $13,216,905 (awarded on Oct. 14, 2022), $13,586,864 (awarded on Feb. 18, 2022), and $13,523,604 (awarded on Aug. 30, 2022).

[24] Attach. D at 98. Letter from Ronald W. Gore, Chief, Air Division, ADEM, to Sidni Elise Smith, Staff Attorney, Michael Hansen, Executive Director, GASP, Response to Comments on the Addendum to ADEM's 2022/23 Ambient Air Monitoring Plan (April 4, 2023); *see also*, EPA's award of $200,000 in 2001 for a State Environmental Justice Cooperative Agreement Program Grant, *supra* n.23.

[25] Governor Kay Ivey, *State of Alabama Executive Budget, Fiscal Year 2021*, at 99-101 (Department of Environmental Management detailed budget shows federal grants received in 2019, federal grants budgeted in 2020, and federal grants requested in 2021), *available at* https://budget.alabama.gov/executive_budget_document/; *see also*, Governor Kay Ivey, *State of Alabama Executive Budget, Fiscal Year 2022*, at 117-119, *available at* https://budget.alabama.gov/executive_budget_document/.

[26] 40 C.F.R.§7.120(b)(2) and Case Resolution Manual at 8 (stating that OCR "will accept as timely those allegations that have been filed within 180 calendar days of the date of the last act of alleged discrimination").

[27] See Attach. A at 255 (AL Bulk Terminal), 498 (Alabama Shipyard), 676 (Kimberly-Clark), 924 (Plains Marketing), and 1052 (UOP).

Moreover, OCR has ongoing authority to review recipients' programs and activities for Title VI compliance, such as ADEM's air permitting program.[28] This Complaint alleges discriminatory actions in ADEM's issuance of these five Permits, but information provided in the Complaint below also makes clear that ADEM has a demonstrated a pattern and practice that fails to comply with its Title VI obligations in the issuance of Title V Permits.[29] Accordingly, this complaint is also timely because ADEM's discriminatory acts in Title V permitting are ongoing or within OCR's investigatory authorities.

D. Other Prudential Factors

This Complaint satisfies the other prudential considerations of EPA's Title VI implementing regulations and the Case Resolution Manual.[30] EPA has subject matter jurisdiction over this Complaint because it alleges disparate impacts in ADEM's Title V permitting that violate Title VI of the Civil Rights Act of 1964. The Complaint's allegations regarding the racially disparate impacts of ADEM's final issuance of these Permits in a one-week period and the racially disparate impacts of the emissions authorized by these Permits have not been alleged in other proceedings. While Complainants were among the Petitioners that filed a CAA Title V Petition to Object to the EPA Administrator on January 8, 2023,[31] that Title V Petition focuses on consideration of ADEM's compliance with the CAA and Alabama's corresponding air controls plans in issuing these Permits.[32] This Complaint addresses ADEM's compliance with Title VI of the Civil Rights Act and requests specific relief to address those disparate discriminatory impacts that can only be granted through OCR's action on this Complaint. Accordingly, Complainants respectfully request EPA to investigate this Complaint and take affirmative steps to remedy ADEMs noncompliance with Title VI, including the specific relief requested below.

IV. Factual Background

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[28] 40 C.F.R. § 7.115(a).

[29] Complainants have submitted comments on other title V permits, which are discussed below.

[30] *See* n.19, *supra.*

[31] Attach. D at 2, *In the Matter of Clean Air Act Final Title V Permits Issued to Plains Marketing LP, Alabama Bulk Terminal, Kimberly-Clark Corporation, Epic Alabama Maritime Assets, LLC – Alabama Shipyard LLC, and UOP LLC*, Issued by the Alabama Department of Environmental Management ("Title V Petition"), *also available at* https://www.epa.gov/title-v-operating-permits/title-v-petition-database.

[32] *See* Clean Air Act § 505(b), 42 U.S.C. § 7661d(b), and 40 C.F.R. § 70.8(d) (limiting EPA Title V petition objections to issuance of permits that do not comply with the application requirements of the Clean Air Act); *see also* 40 C.F.R. § 70.2 (defining applicable requirement by reference to specific requirements of the Clean Air Act and not including any other statutes, such as the Civil Rights Act).

A. History of the Impacted Communities

1. Historical Discussion of Africatown's Origins and Significance

A group of West Africans arrived in Mobile on the Clotilda – the last documented slave ship to reach the United States – and ultimately settled in the area now known as Africatown.

In July 1860, the Clotilda sailed secretly into Mobile Bay with 110 men, women, and children hailing from Yoruba, Atakora, Nupe and Dendi. Most of the group had been captured in present day Benin. The international slave trade had been made illegal in the United States in 1808. Fearing they would be caught; the captain and his financier transferred the trafficked Africans to a riverboat and burned and sunk the Clotilda in the Mobile River at Twelve Mile Island in the Mobile Bay Delta.

After their arrival to the Mobile area about 25 enslaved Clotilda shipmates were sold upriver. Timothy Meaher, who had arranged and financed the illegal expedition, and his family kept 60 of the enslaved shipmates. After the end of the Civil War, many Clotilda shipmates who had been trafficked and formerly enslaved on a plantation in Clarke County joined their fellow newly emancipated West Africans in present-day Africatown. Unable to afford passage back to Africa and unaware of efforts that may have afforded them passage to Liberia, they remained in unincorporated Mobile County and founded African Town, the first town established and controlled by African-born freedmen in the United States.

Working in local shipyards and mills, including those of their former enslavers, they saved money to buy land including some from their former enslavers. African Town originally included a 50-acre community in the Plateau area and a smaller one, Lewis Quarters, which consisted of seven acres over a mile to the west of the larger settlement. Lewis Quarters was named after one of its founders, Charlie Lewis. The settlers appointed Peter Lee as their chief and established a governmental system based on African law.

The residents of African Town built the first school for the children of freedmen in the area. (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted] While the community retained much of their West African culture, construction of the church signaled the conversion to Christianity by many of the Africans. They were a tight-knit community known for sharing and helping one another but reportedly had tense relations with both whites and African Americans and so largely kept to themselves.

Kossola "Cudjo" Lewis, who was a teenager when he was trafficked aboard the Clotilda, is one of the most renowned of Africatown's original settlers, and his story is by far the most documented first person account of the Trans-Atlantic Slave journey that so many millions were forced to make before him. He rang the bell at Old Landmark Baptist Church, worked as a shingle maker and shared the story of the Clotilda Africans with journalists, writers and historians. Having died in 1935 at the age of 94, Lewis is one of the last known African-born slave in the United States and the only one to have been captured on film.[33]

2. A Summary of Africatown's Marginalization within Mobile since its Founding

For having been proximate to sites of some of the earliest contacts between Native American societies and European conquistadors as early as 1500, the Mobile area's Native American population suffered tremendously from imported diseases and direct warfare. Hernando de Soto's expedition in 1540 saw his forces destroy the Native American village of Mauvila, also spelled Maubila, from which the name Mobile was later derived.

Two centuries later, Mobile was founded as the capital of colonial French Louisiana in 1702 and remained a part of New France for over 60 years. During 1720, when France warred with Spain, Mobile was on the battlefront, so the capital moved west to Biloxi. In 1763, Britain took control of the colony following their victory in the Seven Years' War. During the American Revolutionary War, the Spanish captured Mobile and retained it by the terms of the Treaty of Paris in 1783.

Mobile first became a part of the United States in 1813, when it was captured by American forces and added to the Mississippi Territory, then later re-zoned into the Alabama Territory in August 1817. Finally on December 14, 1819, Mobile became part of the new 22nd state, Alabama, one of the earlier states of the U.S. Forty-one years later, Alabama left the Union and joined the Confederate States of America in 1861. It returned in 1865 after the American Civil War.

The first enslaved Africans were trafficked into Mobile in 1704, a practice which continued until 1860 with the then-illegal Clotilda expedition.[34] According to the 1860 census, 1,785 slave owners in Mobile County held 11,376 people in bondage, about one-quarter of the total county population of 41,130 people.[35]

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[33] *See e.g.*, "Encyclopedia of Alabama", Somerset Publishers, Inc., St. Clair Shores, MI (1998); Diouf, "Dreams of Africa in Alabama"; *see also* Robertson, "The Slave Ship Clotilda and the Making of AfricaTown, USA: Spirit of Our Ancestors" ("Robertson"); *see also* Tabor, Nick, Africatown: America's last slave ship and the community it created, 125-143. New York: St. Partin's Press (2023). ("Tabor").
[34] *See e.g.*, "Encyclopedia of Alabama", Somerset Publishers, Inc., St. Clair Shores, MI (1998); *see also* Thomason, Michael, ed., "Mobile: the New History of Alabama's First City." Tuscaloosa, AL: University of Alabama Press. ISBN 0-8173-1065-7 (2001).
[35] University of Virginia census records.

In the post-Reconstruction era, Africatown's unique history was suppressed locally by the implicit threat of violence against those who spoke of the Clotilda, since the trafficking of enslaved Africans was illegal at the time and mentioning the history was an accusation against the powerful Meaher family and their business associates of that crime.

In 1901, the Alabama legislature passed a new constitution in 1901 that disenfranchised most blacks and many poor whites; and the white Democratic-dominated legislature passed other discriminatory legislation. In 1902, the city government passed Mobile's first racial segregation ordinance, segregating the city streetcars. It legislated what had been informal practice, enforced by convention, as was common in the Jim Crow period.[36]

This was also around the time during which two of the African Town co-founder and Clotilda shipmate Kossola "Cudjo" Lewis' children were murdered under very suspicious circumstances with no accountability in 1902 and 1905. Additionally, three of the six documented Mobile-area Jim Crow-era lynchings happened just within Africatown's Lewis Quarters and Happy Hill neighborhoods, specifically the lynchings of Will Thompson (1906), Richard Robinson (1906), and More Dorsett (1907).[37]

In 1911, the Mobile city government switched from Single Member Districts to the At Large system that dominated Mobile politics until the 1980 *Bolden v. Mobile* case was decided.[38]

The African Town area, also known during the period by outsiders as "Plateau", was reported to be one of the largest Black settlements in the country with around 1,500 residents. Mobile expanded in the Jim Crow era but never annexed any parts of Africatown until much later.[39]

Isiah J. Whitley arrived in Plateau Africatown in 1910 and worked with the remaining Clotilda shipmates and their descendants and neighbors and brought the community school, which the descendants from the Clotilda had established to educate their children in 1880, into the Mobile County school system from the Plateau Normal and Industrial Institute to the Mobile County Training School in 1910.[40] His efforts led to the school's ability to secure monetary aid from the state of Alabama. Whitley served as the principal there from 1910 until his death in 1923.

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[36] Thomason at 154–169.
[37] Tabor at 125-143.
[38] *See e.g.*, Thomason.
[39] *See e.g.*, Tabor.
[40] Anna Thornton, "Mobile County Training School, Class of 1921," Mobile Bay Magazine, (April 27, 2022), https://mobilebaymag.com/mobile-county-training-school-class-of-1921/.

The school was a critical source of trained teachers for Black schools throughout the region for generations since its founding until it was downgraded to a middle school in the early 1970s during desegregation.[41]

By 1926, four railways had been established through Africatown including today's Terminal Railway, CSX, Norfolk Southern, and CN rail lines.[42, 43]

In 1927, the Cochrane Bridge opened in Africatown. Taking almost a year to complete construction, the Cochrane Bridge featured five separate bridge spans and featured a vertical lift bridge to allow traffic to continue traveling north and south along the Mobile River. It was sited in the Africatown part of the region, three miles north of the present day Bankhead Tunnel "so as to cause no hindrance or delay to the movement of ships in the harbor." The bridge was the first road connecting the Mobile region directly with points further east and was an integral part of the historic Old Spanish Trail transcontinental east-west corridor, portions of which eventually became Interstate 10. It was the only direct road east from Mobile to Baldwin County until the Bankhead Tunnel opened on February 20, 1941, in downtown. It is known today as simply the Africatown Bridge.[44]

Then, on September 23, 1929, International Paper opened its kraft paper mill in Africatown. International Paper's Mobile kraft paper mill in Africatown would grow to be "the most important paper manufacturing center in the South" after dramatic expansions in the 1940s and 50s to its Paper and Chemical Divisions at the site. Longtime Africatown residents have reported frequent raining of ash on the Impacted Community so heavy and toxic that it corroded cars, decimated the community's fruit and nut groves, stained clothing, and ate away at and caved-in

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[41] *See e.g.*, Tabor.

[42] *See e.g.*, Tabor; *see also* James H. Lemly, "The Gulf, Mobile and Ohio: A Dynamic History of the Tigrett Road," Ch. XII, (1940); *see also* Art Richardson, "Gulf, Mobile & Ohio Railroad Significant Dates and Events," GM&O Historical Society (Aug. 10, 1972); *see also* "History | Who We Are | About CN," Canadian National Railway Company, (July 1, 1999); *see also* Marie Bankhead Owen, "The Story of Alabama: A History of the State," 150, New York, New York: Lewis Historical Publishing Co. (1949); *id.* at 151; *see also* William H. Jones, "Rail Merger Set," The Washington Post, (March 25, 1982); *see also* Dr. Maury Klein, "History of the Louisville & Nashville Railroad," 137 New York, New York: The Macmillan Company (1972); *see also* Kincaid Herr, "The Louisville and Nashville Railroad 1850-1963," 60, Lexington, Kentucky: The University Press of Kentucky (1964); *see also* "History & Evolution – CSX.com" CSX Corporation, ch. 6-7, (March 11, 2018); *see also* John Glennon and Agnes Anderson, "Early History of the Alabama State Docks: 1915-1938. Mobile, Alabama: The Alabama State Docks," 2, Folder: Ala State Docks thru 1949, Vertical File, Local History and Genealogy Library, Mobile Public Library.

[43] Dade, Thompson & Co. Printers, "Proceedings of the Fourth Annual Meeting of the Stockholders of the Mobile and Ohio Railroad Company. Mobile, Alabama: The Mobile and Ohio Railroad Company," 14-15 (1852).

[44] Angela Levins, "How to get to the other side? Vintage photos document storied past of Mobile's tunnels and roadways," (June 19, 2015), *available at* https://www.al.com/news/mobile/index.ssf/2015/06/how_to_get_to_the_other_side_v.html; *see also* John Glennon and Agnes Anderson, "Early History of the Alabama State Docks: 1915-1938," 4.

the roofs upon which it collected. The company's waste water discharges into Hog Bayou are remembered by some in the Impacted Community for creating times where a strata of rainbow colors were visibly suspended in the water column and others when copious amounts of chemical foam floated on the water's surface.[45]

During this period, neither the City of Mobile to its south nor the City of Prichard to its west offered municipal services to the area of unincorporated Mobile County known widely as Plateau and Magazine Point. It was not until the early 1960s that Plateau, Magazine Point, and present-day Happy Hills and Lewis Quarters neighborhoods of present-day Africatown were annexed by the City of Mobile. Indoor plumbing, sewage systems, municipal drinking water, fire hydrants, and paved roads were not afforded to Africatown residents until the late 1960s.

On January 12, 1960, the City of Mobile annexed Africatown. By the mid-50s Mobile industrialists recognized that the waterfront access perceived at the time as necessary to expand the city's port-related activities could be annexed into other nearby cities if the City of Mobile did not work to annex the vast swaths of wetland areas to its north and other points further west and south. The push eventually more than tripled the size of the city. To promote the effort, the City Commission of Mobile created the Plateau's Citizens' Committee in the mid-1950s, which then began petitioning the City of Mobile for annexation in exchange for water and sewer services. In letters to City Commissioners, Solomon Bradley, Sr., chairman of the group, complained that Mobile was poised to annex the Magazine Point neighborhood, which would hedge Plateau off from both the cities of Prichard and Mobile. Plateau residents, he noted, were paying fire insurance but had no fire hydrants to use. He also noted that "hundreds of children" at Mobile County Training School were having to drink "pump water, which is really unfit to drink." It is not inconceivable that the well water the neighborhoods depended upon had by that time become contaminated by the industrial activities and the accumulation of raw sewage in and around the community.[46]

Between 1960 through 1971, Africatown's first petrochemical tank farm expanded dramatically. Above ground chemical storage tanks have been sporadic

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[45] Chantilly, Virginia, "The History Factory, Generations of pride: A Centennial History of International Paper: The International Paper Company," 192 (1998); *see also* "Mobile Is Selected As Site For $20,000,000 Paper Mill," The Mobile Register, 16-A (March 5, 1955).

[46] City of Mobile City Clerk. "A Resolution To Extend The Corporate Limits Of The City Of Mobile, Alabama," (Jan. 12, 1960) (Record Group 6: Records of the Board of Commissioners of the City of Mobile, 1911-1985, Section 7: Annexation 1911-1984, Box 2, Mobile Municipal Archives, Mobile, Alabama); *see also* George R. Irvine, Letter to Solomon Bradley, Sr., (Jan. 20, 1955) (Record Group 6: Records of the Board of Commissioners of the City of Mobile, 1911-1985, Section 7: Annexation 1911-1984, Box 2, Mobile Municipal Archives, Mobile, Alabama); *see also* Solomon Bradley Sr. Letter to Joseph N. Langham [sic], 2 (Sept. 20, 1954) (Record Group 6: Records of the Board of Commissioners of the City of Mobile, 1911-1985, Section 7: Annexation 1911-1984, Box 2, Mobile Municipal Archives, Mobile, Alabama)

features of the Mobile Riverfront in Africatown since the Naval Stores era (1890-1960) of lumber product processing in the community, but starting in 1960 seventeen new above ground oil storage tanks with a combined capacity of over 72 million gallons, more than six times the volume of the Exxon Valdez spill's lowest release estimates, were constructed on the Mobile River shoreline of Magazine Point. After passing through many operational hands, this one tank farm (there are more than nine near the Impacted Community) is now owned and operated by a subsidiary of the middle-market transporter Plains All American called Plains Marketing LP. Despite scientifically well documented risks to public health like birth defects and cancers brought to the public's attention, Africatown residents report having to deal with noxious oil fumes routinely both in the open air and in their homes.[47]

In 1963, three African-American students brought a case against the Mobile County School Board for being denied admission to Murphy High School. This was nearly a decade after the United States Supreme Court had ruled in *Brown v. Board of Education*, 347 U.S. 483 (1954) that segregation of public schools was unconstitutional. The federal district court ordered that the three students be admitted to Murphy for the 1964 school year, leading to the desegregation of Mobile County's school system.[48]

The first Civil Rights march in Mobile occurred after the assassination of Martin Luther King Jr in 1968. That march was led by a descendant of the Clotilda shipmates Kuppollee "Pollee" and Rose Allen named Dr. Jerry Houston Pogue who was a Field Staff Coordinator for the Southern Christian Leadership Conference in Atlanta, Georgia at the time and became a founding member of Neighborhood Organized Workers (NOW). Dr. Pogue led Mobile's MLK Memorial March every year from 1968 until 2016.

People the world over have heard of Martin Luther King Jr., the dogs and water hoses of Birmingham, and the Bloody Sunday events of Selma. Few, however, have heard of John LeFlore, Joseph Langan, or Albert Foley, or of the bombing of LeFlore's home in 1967 that destroyed his home or the protests over segregated seating in Mobile.[49]

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[47] Corey Holmes, "Statement of Basis," Facility No. 503-3013, Chemical Branch, Air Division, Alabama Department of Environmental Management, 1 (Oct. 29, 2015); *see also* W. Wertelecki, M.D., "Mobile, Alabama – Promotion of Petrochemical Industries; Pregnancies – Birth Defects – Cancer – Public Health" No Petro-Chemical Storage Tanks on our West Bank: A Compendium of Citizen Concerns. Mobile, Alabama, 37-38 (March 15, 2015), *available at* https://mejac.files.wordpress.com/2015/06/petro-compendium.pdf.

[48] *See e.g.*, Thomason.

[49] University of South Alabama, The Doy Leale McCall Rare Book and Manuscript Library, T*he Civil Rights Movement in Mobile*, *available at* https://www.southalabama.edu/libraries/mccallarchives/civil.html.

Civil rights activist John L. LeFlore was born in Mobile in 1903. In 1925, he reorganized the city's insolvent NAACP Branch and inaugurated a fifty-year career of service to African Americans in Mobile. LeFlore recruited Vivian Malone to desegregate the University of Alabama, Birdie Mae Davis to desegregate the city's schools, and Wiley Bolden to change the city's form of government. He died of a heart attack in 1976. Joseph Langan (1912-2004) was a lawyer, state representative, state senator, and city commissioner in Mobile from 1953 to 1969. In 1957 Langan ran against the leader of Ku Klux Klan, for a city commission position and at that time he was a racial progressive. Father Albert Sidney "Steve" Foley (1912-1990), a Jesuit priest and sociology professor at Spring Hill College, worked closely with John LeFlore and Joseph Langan in their efforts to bring about peaceful change in race relations in Mobile.

All throughout the Civil Rights Era, local grassroots organizations exerted influence on city politics. NOW and the Non-Partisan Voters' League initiated several important legal suits, including the desegregation suit for Mobile's public schools—one of the longest-running cases of its kind. The league also sponsored the case *Bolden v. Mobile*, 446 U.S. 55 (1980), which held that the At-Large election of municipal government representation was inherently discriminatory to marginalized populations. The suit resulted in the first female and African American commissioners in the City of Mobile's long history. In 2005, Samuel Jones was elected as Mobile's first African American mayor.[50]

In 2013, William S. "Sandy" Stimpson was elected as Mobile's mayor. He is currently serving a third term. Stimpson's family is ingrained in Africatown industrial business affairs, though he has claimed divestment of family business interests.

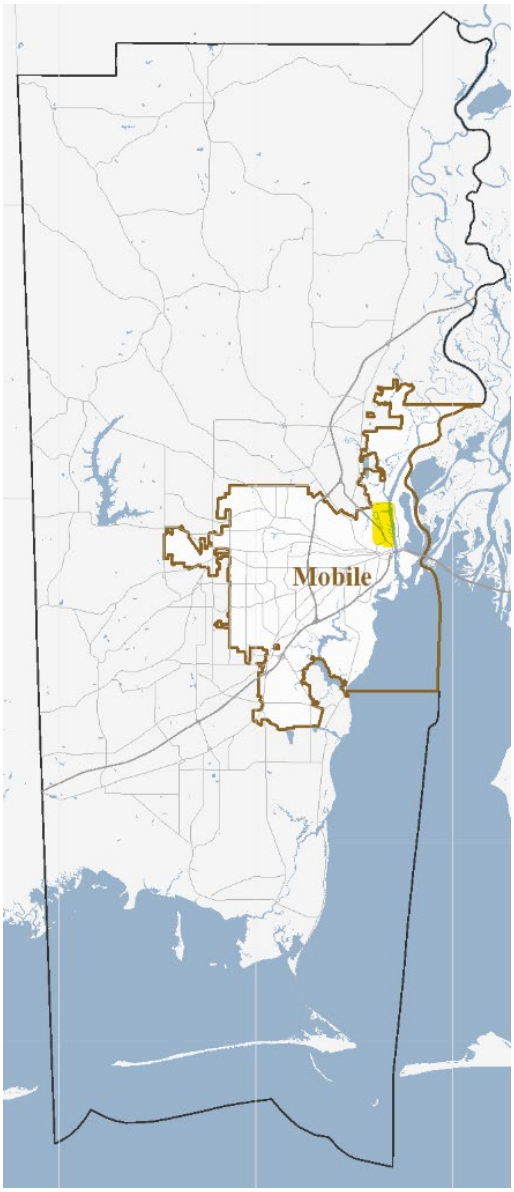
3. The Demographics of the Impacted Communities

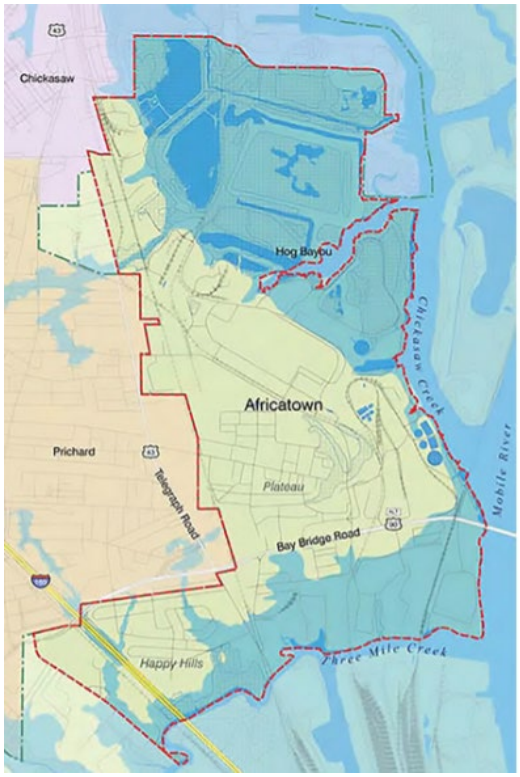
For the purposes of this Complaint, the Impacted Communities are Africatown and other communities in the city of Mobile surrounding the sources authorized by the five Permits. The boundaries of Mobile city within Mobile county

[50] Encyclopedia of Alabama, Mobile, *available at* https://encyclopediaofalabama.org/article/mobile/.

as a whole are shown in the larger map below, with the general location of Africatown (the smaller map) noted in yellow.

Figures 1 and 2: Maps of the Impacted Communities, Mobile and Africatown





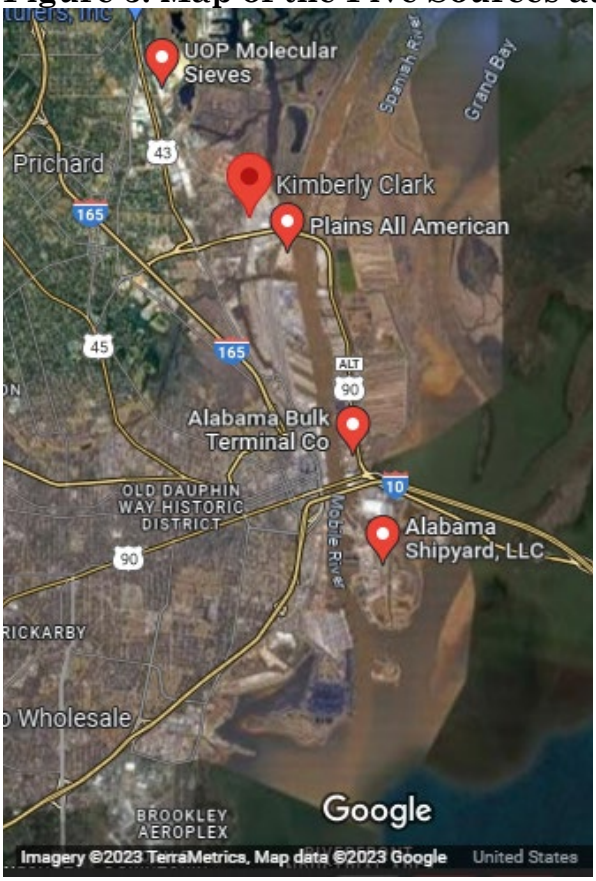
The city of Mobile, Alabama is home to almost 190,000 people, and according to information provided from EPA's EJScreen database has a population that is majority minority, with 57% of residents identifying as people of color and 51% of residents identifying as Black.[51] And those numbers are even higher in the

[51] *See* Attach. D at 104 and 108. EJScreen Report for Mobile, Alabama, and EJScreen ACS Summary Report for Mobile city, Alabama.

Africatown neighborhood, with EJScreen reporting 63% of the residents identifying as people of color and 58% identifying as Black.[52] Both Mobile as a whole and Africatown specifically are comprised of minority residents in a significantly higher than Mobile County as a whole, in which only 43% of residents identifying as people of color and 36% identify as Black.[53]

This concentrated racial demographic shift is even more when you look at the communities directly surrounding the five sources at issue, which are shown in the map below (note that Plains Marketing is identified as Plains All American). The Kimberly Clark and UOP facilities are located in the Africatown neighborhood, while Plains Marketing is directly to the south.

Figure 3: Map of the Five Sources at Issue in this Complaint



The EJScreen information provided by ADEM during the permitting of these sources is summarized below and shows that the percent of community members

[52] *See* Attach. D at 111 and 115, EJScreen Report for Africatown, and EJScreen ACS Summary Report for Africatown.
[53] *See* Attach. D at 118 and 122, EJScreen Report for Mobile County, Alabama, and EJScreen ACS Summary Report for Mobile County, Alabama.

within 3 miles of each facility identifying as people of color is greater than 69% at all sources, with the three sources closest to Africatown having a percentage of people of color of 83-87%:

Table 1: Summary of EJScreen Demographic Information for the Five Sources

Facility	EJScreen Radius	Demographic Index – % of Population and State Percentile		People of Color – % of Population and State Percentile	
AL Bulk Terminal[54]	3 Miles	63	85	69	84
AL Shipyard[55]	3 Miles	63	86	74	85
Kimberly-Clark[56]	3 Miles	75	93	87	91
Plains Marketing[57]	3 Miles	75	93	88	91
UOP[58]	3 Miles	74	89	83	86

ADEM did not provide EJScreen ACS Summary Reports for any of these sources, so we cannot examine the specific percentage of these community residents identifying as Black. However, based on the general demographics trends for Mobile and Africatown noted above, we would expect most people of color to identify as Black.

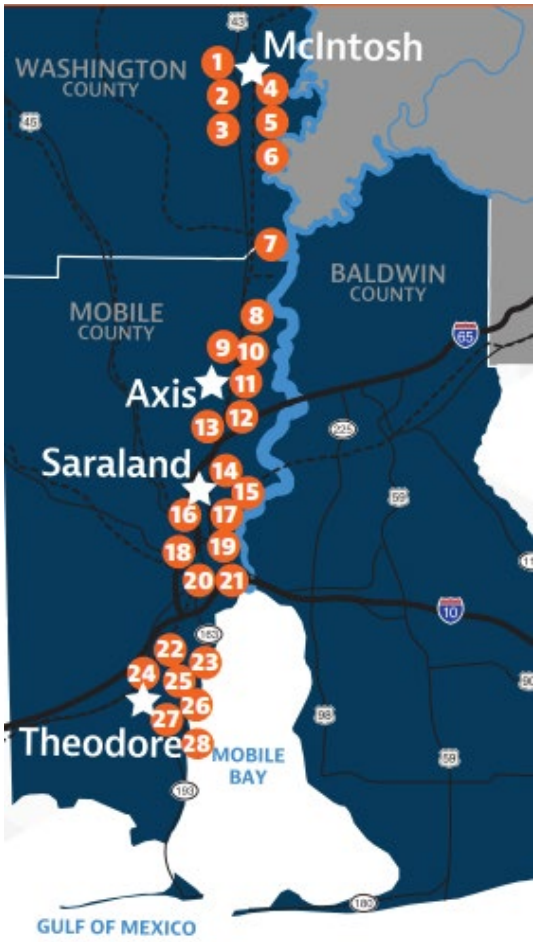
While not relevant to an inquiry under Title VI, which is only concerned with the discrimination on the basis of race, color or national origin, it is also important to note that the overall demographic index of the communities around these five sources, which considers both the low-income and minority make-up of a community.[59] As noted on the EJScreen summary above, these communities are among the most racially and economically disadvantaged in the state. All are in the top 15% of disadvantaged communities, with the communities around the three sources closest to Africatown being in the 89th to 93rd percentile.

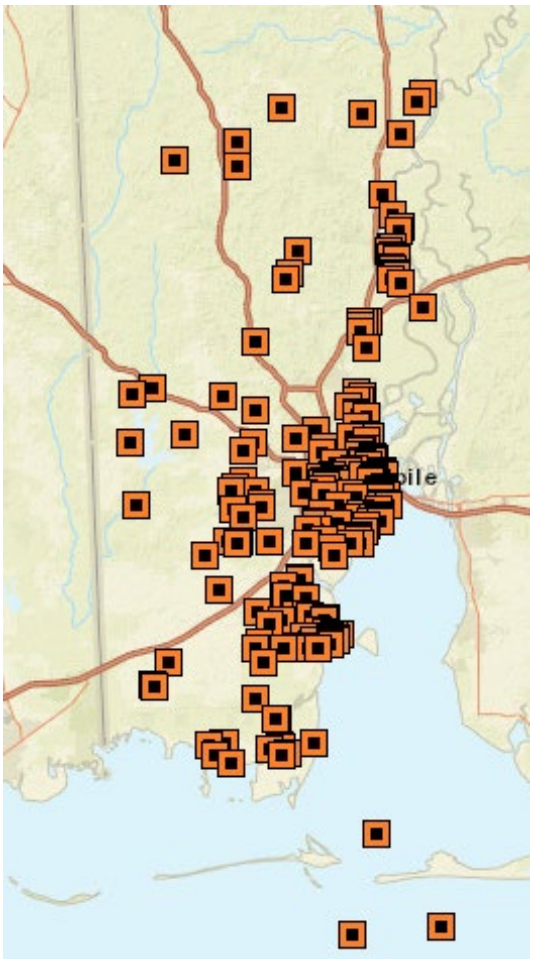
[54] Attach. A at 239-248 (ADEM's Final Statement of Basis).
[55] Attach. A at 381-383 (ADEM's Draft Statement of Basis).
[56] Attach. A at 661-670 (ADEM's Revised Statement of Basis).
[57] Attach. A at 904-913 (ADEM's Revised Statement of Basis).
[58] Attach. D at 126 (EJScreen Report at 3 Miles around UOP Facility). ADEM did not provide any EJ information with either the draft or final UOP Permit.
[59] See EJScreen Map Descriptions, a*vailable at* https://www.epa.gov/ejscreen/ejscreen-map-descriptions.

4. The Health and Pollution Burdens Affecting the Impacted Communities and Adverse Impacts

These five sources are located within the Alabama Gulf Coast Chemical Corridor – a sixty-mile stretch of land in Washington and Mobile Counties that is home to at least 28 industrial chemical facilities, as represented in the map to the left below.[60] And these chemical plants are just a fraction of the more than 300 permitted sources of air pollution in Mobile county, as identified through a Facility Registry Service (FRS) query, as shown in the map to the right below:[61]

Figures 4 & 5: Industrial Chemical Facilities in Alabama's Gulf Coast Chemical Corridor and Air Emission Sources in the Mobile Area





[60] Chemicals: Catalyst for Growth, *available at* https://mobilechamber.com/wp-content/uploads/2019/06/2019_MAST_Brochure_MARCH28_in-order.pdf

[61] Attach. D at 137, using a query of major source, minor sources, and synthetic minor sources in Mobile County in the FRS database, *available at* https://www.epa.gov/frs/frs-query.

In a 2019 EPA study, Alabama ranked fifth out of all the states in most toxic substances released into the air, and Mobile County had the highest amount of reported toxic releases of all the counties in the state.[62] Furthermore, the Impacted Communities that surround these sources are also impacted by the criteria pollutants emitted by them. Although the NAAQS set threshold ambient concentration limits for the criteria pollutants, permitting of sources that emit air pollutants play a key role in protecting public health, because air pollution from these sources can harm and potentially even kill members of the public.[63]

It is well-established that poor communities and communities of color are disproportionately affected by air pollution; Black Americans in particular face a 54 percent higher health burden compared with the overall population of the United States.[64] Not surprisingly, EPA's EJScreen Reports for these communities show that the cumulative health effects of the numerous sources emitting air pollution within a close proximity of the Impacted Community lead them to exhibit health

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[62] *See Alabama Ranks 5th for Industrial Toxic Releases in Air and Water*, (Mar. 24, 2019), https://www.al.com/news/2019/03/alabama-ranks-5th-for-industrial-toxic-releases-in-air-and-water.html.

[63] *See, e.g.*, *Conservation Law Found. v. Pub. Serv. Co. of New Hampshire,* No. 11-CV-353-JL, at 3 (D.N.H. Sept. 27, 2012) (In Clean Air Act enforcement action against coal-fired power plant, in dismissing claims regarding NOx emissions increases, court finds that "NOx and SO2 emissions have significant adverse effects on public health. These emissions also contribute to the formation of secondary particulate matter that may cause decreased lung function, worsened respiratory infections, heart attacks, and the risk of early death."); *North Carolina v. EPA,* 531 F.3d 896, 903 (D.C.Cir.2008) ("NOx emissions contribute to the formation of fine particulate matter, also known as PM2.5, as well as ground-level ozone, a primary component of smog."); *Catawba Cnty. v. EPA,* 571 F.3d 20, 26 (D.C.Cir.2009) ("Elevated levels of fine particulate matter have been linked to "adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma."); *Ass'n of Irritated Residents v. EPA,* 686 F.3d 668, 671 n. 1 (9th Cir.2012) ("And 'even at very low levels,' inhalation of ozone 'can cause serious health problems by damaging lung tissue and sensitizing lungs to other irritants.'"); *North Carolina v. TVA*, 593 F.Supp.2d 812, 822 (W.D.N.C. 2009) *rev'd on other grounds*, 615 F.3d 291 (4th Cir. 2010) (In tort case against coal-fired power plants "Court finds that, at a minimum, there is an increased risk of incidences of premature mortality in the general public associated with PM2.5 exposure, even for levels at or below the NAAQS standard of 15 [u]g/m 3."); *Ohio Power Co. v. EPA*, 729 F.2d 1096, 1098 (6th Cir. 1984) (in challenge to Clean Air Act regulation of power plants 25 years ago, court holds "there is now no longer any doubt that high levels of pollution sustained for periods of days can kill. Those aged 45 and over with chronic diseases, particularly of the lungs or heart, seem to be predominantly affected. In addition to these acute episodes, pollutants can attain daily levels which have been shown to have serious consequences to city dwellers."); *Sierra Club v. TVA*, 592 F.Supp.2d 1357, 1371 (N.D. Al. 2009) (In Clean Air Act enforcement action against coal-fired power plant, court holds "there is no level of primary particulate matter concentration at which it can be determined that no adverse health effects occur."); *Catawba County v. EPA*, 571 F.3d 20, 26 (D.C. Cir. 2009) ("A 'significant association' links elevated levels of $PM_{2.5}$ with adverse human health consequences such as premature death, lung and cardiovascular disease, and asthma.").

[64] *EPA Scientists Find Black Communities Disproportionately Hit by Pollution*, THE HILL (Feb. 23, 2018), https://thehill.com/policy/energy-environment/375289-epa-scientists-find-emissions-greater-impact-low-income- communities#.

impact data amongst the highest in the state. Based on the EJScreen information provided below, residents of Africatown experience the highest air toxics cancer risk in the Alabama (99th percentile) and the United States (95-100th percentile), as well as extreme high levels of air respiratory hazards.[65]

Moreover, because the I-10/AL-90 Hazardous Cargo Bypass bisects the residential neighborhood at grade, vehicle pollution from semi-trucks hauling hazardous materials and petroleum products to the industrial plants and more than nine petroleum and chemical terminal facilities located in and adjacent to the Impacted Community remain an additional exposure risk.[66] Furthermore, the plethora and increasing number of new heavy duty truck storage, parking, drayage, and port logistics warehouses and facilities means air pollution in the Impacted Community continues to worsen from the increased pollution from trucks and fugitive road emissions as goods are transported to-and-from the warehouses associated with the Port of Mobile. Five Class 1 railroads run through Mobile, with four railways and operations near the Impacted Communities. Moreover, at least one source in the Impacted Community has failed to obtain any air quality permits, despite the likelihood of its frequent releasing of hazardous air pollutants, which have plagued adjacent neighbors for years. Finally, the Impacted Community experiences ongoing and unaddressed violations of various environmental federal statutes, including sources that routinely fail to control harmful dust and hazardous air pollutants that escape the facility property boundaries, adversely impacting the health of the Impacted Community. Together these air contaminants create a cumulative burden on the community that magnifies the adverse impacts of the air contaminants identified above.

[65] *See* Attach. D at 111, EJScreen Report for Africatown.
[66] Union of Concerned Scientists, *Cars, Trucks, Buses and Air Pollution* (Updated July 19, 2018), https://www.ucsusa.org/resources/cars-trucks-buses-and-air-pollution#:~:text=Cars%2C%20trucks%20and%20buses%20produce,vehicle%20operation%20and%20fuel%20production.&text=Primary%20pollution%20is%20emitted%20directly,between%20pollutants%20in%20the%20atmosphere (last visited May 5, 2023).

Table 2: EJScreen Report Excerpt

Africatown

Selected Variables	Value	State Avg.	%ile in State	USA Avg.	%ile in USA
Pollution and Sources					
Particulate Matter 2.5 ($\mu g/m^3$)	9.01	8.92	57	8.67	62
Ozone (ppb)	37.6	39	36	42.5	19
Diesel Particulate Matter* ($\mu g/m^3$)	0.436	0.223	90	0.294	80-90th
Air Toxics Cancer Risk* (lifetime risk per million)	40	35	99	28	95-100th
Air Toxics Respiratory HI*	0.55	0.47	95	0.36	95-100th
Traffic Proximity (daily traffic count/distance to road)	2100	290	97	760	91
Lead Paint (% Pre-1960 Housing)	0.65	0.17	94	0.27	82
Superfund Proximity (site count/km distance)	0.048	0.051	68	0.13	42
RMP Facility Proximity (facility count/km distance)	2.7	0.46	97	0.77	94
Hazardous Waste Proximity (facility count/km distance)	3.5	0.9	96	2.2	81
Underground Storage Tanks (count/km^2)	0.64	1.9	49	3.9	42
Wastewater Discharge (toxicity-weighted concentration/m distance)	1.5	0.36	97	12	94

And similar detrimental health impacts are seen in the communities directly surrounding these five sources.

Table 3: EJScreen Environmental Indicators for the Five Sources

Facility	Diesel Particulate Matter Alabama and U.S. Percentiles		Air toxics cancer risk Alabama and U.S. Percentiles		Air toxics respiratory hazards Alabama and U.S. Percentiles	
AL Bulk Terminal[67]	99th	95-100th	45th	90-95th	69th	95-100th
AL Shipyard[68]	99th	90-95th	74th	80-90th	92nd	95-100th
Kimberly-Clark[69]	81st	60-70th	99th	95-100th	93rd	95-100th
Plains Marketing[70]	97th	90-95th	88th	90-95th	93rd	95-100th
UOP[71]	93rd	80-90th	68th	80-90th	90th	95-100th

[67] Attach. A at 239-248 (ADEM's Final Statement of Basis).
[68] Attach. A at 381-383 (ADEM's Draft Statement of Basis).
[69] Attach. A at 661-670 (ADEM's Revised Statement of Basis).
[70] Attach. A at 904-913 (ADEM's Revised Statement of Basis).
[71] Attach. D at 126 (EJScreen Report at 3 Miles around UOP Facility). ADEM did not provide any EJ information with either the draft or final UOP Permit.

The health impacts are exacerbated by the fact that the economically and racially disadvantaged status of the Impacted Communities surrounding these sources, as well as in Mobile and Africatown generally, predispose them to being excluded from environmental permitting decisions. People with low incomes and minorities, such as those in the Impacted Communities, are less likely to have access to computers and the internet.[72] These limitations make it challenging, if not impossible, for community members to stay on top of air permitting of sources near them that are only publicized through email and internet. Thus, every action that ADEM takes that is detrimental to the Impacted Communities' meaningful access to these permitting processes makes it difficult for them to hold the sources of pollution in their community accountable for the impacts of that pollution. Indeed, despite accepting federal funds and being advised by Complainants of their Title VI obligations, recipient ADEM has failed to ensure that the five permits were issued in a way that limits these adverse impacts to the Impacted Communities.

It is clear that the Impacted Community in Africatown and the communities directly surrounding these sources are disproportionately impacted by air pollutants as compared to higher income, non-minority residents living elsewhere in Alabama and the United States. To protect these communities, ADEM should be doing ***more***, not ***less*** in terms of community involvement and disparate impact analysis. Unfortunately, less is exactly what ADEM has been doing in communities such as Africatown, as demonstrated in its pattern and practice of transmitting to EPA and then finalizing multiple permits at one time, limiting the ability of the Impacted Community to meaningfully engage in the permitting review and appeal process – in clear contravention of the letter and spirit of Title VI. EPA must step in and take swift action to address the disparate impacts of ADEM's permitting of these sources.

B. The Sources and Operating Permit Histories

The following are short descriptions of each of the five sources that received a Permit at issue in this Complaint, as described in the revised Statement of Basis ("SOB") for each Permit provided in the Public Files on the EPA Region 4's Alabama Proposed Title V Permit Database ("Region 4 AL Permit Database").[73]

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[72] See https://aspe.hhs.gov/reports/low-income-internet-access and https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/.

[73] *Available at* https://www.epa.gov/caa-permitting/alabama-proposed-title-v-permits. While the draft SOBs available during public comment on these Permits contained similar general descriptions of what these facilities do, the operational and permitting history summarized above for each facility was added to the Revised SOBs in response to Petitioners' public comments. *See, e.g.*, bolded text in the Plains Marketing, AL Bulk Terminal, and Kimberly-Clark Revised SOBs, Attach. A at 889, 225, and 653, respectively, and UOP Updated SOB, Attach. A at 1001.

1. **AL Bulk Terminal**

   AL Bulk Terminal is a "bulk liquid storage and transfer terminal for petroleum, organic, and inorganic products…[that] receives, stores, and distributes these products via barge, ship, and tank truck." It was "originally constructed/began operations in 1958." The initial Title V permit was issued on October 18, 2000, and this is the fourth renewal.[74]

2. **Alabama Shipyard**

   Alabama Shipyard is a shipyard in Mobile with emissions from various surface coating, priming, and blasting lines (as well as emergency generators). The original Title V permit was issued on April 23, 2002, and this is the fourth renewal.[75]

3. **Kimberly-Clark**

   Kimberly-Clark is a "tissue, towel, and napkin mill" what produces products "made from market pulp, recycled paper, and from other Kimberly-Clark mill's parent rolls." It was "originally constructed/began operations in 1983." The initial Title V permit was issued on January 1, 2004, and this is the third renewal.[76]

4. **Plains Marketing LP**

   Plains Marketing LP "operates a petroleum bulk storage and transfer terminal" that can receive crude oil, petroleum liquids, and ethanol via ships, barges, tank trucks, or pipeline. "The material is stored in one of the existing storage tanks and is loaded out by ships, barges, tank trucks, or pipeline." The facility "was originally constructed/began operations in 1951." The initial Title V permit was issued on November 17, 2000, and this is the fourth renewal.[77]

5. **UOP**

   UOP is "a chemical production plant that produces synthetic materials to be used as adsorbents and/or catalyst in various manufacturing applications." It

[74] Attach. A at 225, AL Bulk Terminal Revised SOB.
[75] Attach. A at 484, Alabama Shipyard Revised SOB. (The SOB does not provide any information on when the various emission producing activities at the Shipyard began.)
[76] Attach. A at 653, Kimberly-Clark Revised SOB.
[77] Attach. A at 889, Plains Marketing Revised SOB.

"was originally constructed/began operations in 1965." The initial Title V permit was issued on August 15, 2003, and "this is the second renewal."[78]

ADEM issued draft permits with accompanying public comment periods for these five Permits at various points during an 18-month period from October 2020 and May 2022.[79] Complainants submitted comments, either alone or with other community groups within Alabama and other organizations supporting those groups, during the public comment period on drafts of each of these Permits as follows:

- Plains Marketing: 10/30/20 Comments (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted]
- AL Bulk Terminal: 10/28/21 Comment (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted]
- Kimberly-Clark: 4/23/21 Comments (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted]
- Alabama Shipyard: 5/9/22 Comments (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted]
- UOP: 10/24/20 Comments (b)(6) Privacy, (b)(7)(C) Enf. Privacy

Even though ADEM had issued draft versions of these five Permits for public notice and comment over an 18-month period, the Department delivered the proposed versions of all five Permits, along with their responses to the public comments for each, to EPA for its required CAA Title V review during a one-week

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[78] Attach. A at 1001, UOP Revised SOB.
[79] The term "draft" refers to permits ADEM made available for public comment, "proposed" for permits submitted to EPA for review under CAA § 505following public comment, and "final" for signed and effective permits ADEM issued at the conclusion of the EPA's 45-day review period.
[80] Attach. A at 774 and 790.
[81] Attach. A at 99.
[82] Attach. A at 592.
[83] Attach. A at 384.
[84] Attach. A at 1075. Because ADEM issued the UOP Permit at issue in this Complaint as a "Minor Modification" to the Title V renewal permit ADEM previously issued on February 2, 2021, see n. 2, *supra,* ADEM did not conduct any public comment period for the "Minor Modification" of that Permit it finalized in November 2023. *See* Attach B. at 2 (blank box denoting the public comment period dates for the UOP Permit).

period in September 2022.[85, 86] Since EPA did not issue an objection to any of these five Permits pursuant to CAA § 505(b)(1) during its 45-day review period, ADEM was authorized to issue the final Permits, which it did on November 4, 2022 (AL Bulk Terminal, Plains Marketing), November 8, 2022 (UOP), and November 9, 2022 (Alabama Shipyard, Kimberly-Clark).[87]

In addition, because EPA had not objected to these Permits, any parties wishing to petition the EPA Administrator to object to these permits to address any noncompliance with the Clean Air Act was required to do by early January 2023, under the deadlines set forth in CAA § 505(b)(2).[88] Complainants were among four Petitioners that filed a Title V Petition with EPA on January 9, 2023, alleging various ways in which ADEM's Permits did not comply with the applicable requirements of the Act.[89]

It should also be noted that prior to filing this Complaint, in order to resolve these issues outside the Title VI process (and the Clean Air Act's Title V petition process), Complainant [redacted][90] requested that ADEM withdraw the Permits submitted to EPA in mid-September 2022, which included the five Permits at issue

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[85] *See* Clean Air Act § 505(b), 42 U.S.C. § 7661d(b).

[86] Based on information provided on the Region 4 AL Permit Database, it appears that ADEM transmitted the Plains Marketing and AL Bulk Terminal permits to EPA on September 15, 2022, and the Kimberly-Clark, Alabama Shipyard, and UOP permits to EPA one-week later on September 22, 2022. See Attach B. at 2, Screenshot from Region 4 Proposed Title V Permit Database (noting that EPA's 45-Day Review period ended for the first four permits on October 30, 2022, and for the second four permits on November 6, 2022).

[87] See Attach. A at 255 (AL Bulk Terminal), 498 (Alabama Shipyard), 676 (Kimberly-Clark), 924 (Plains Marketing), and 1052 (UOP).

[88] The 60-day petition deadline for the first four permits ended on January 2, 2023, a Federal Holiday, so the deadline moves to January 3, 2023. (Confirmed via a December 22, 2022 email exchange with Cheryl Vetter, Group Leader, Operating Permits Group, EPA Headquarters.) Likewise, January 8, 2022 is a Sunday, moving the appropriate deadline to Monday, January 9, 2023.

[89] *In the Matter of Clean Air Act Final Title V Permits Issued to Plains Marketing LP, Alabama Bulk Terminal, Kimberly-Clark Corporation, Epic Alabama Maritime Assets, LLC – Alabama Shipyard LLC, and UOP LLC*, Issued by the Alabama Department of Environmental Management, *available at* https://www.epa.gov/title-v-operating-permits/title-v-petition-database. ("Title V Petition"). As noted on page 1 of that Petition, given the time and resource constraints Petitioner [redacted] faced in preparing objections for all five Permits, Petitioners submitted a petition on January 3, 2023, the relevant statutory deadline, to address objections to the Plains Marketing and AL Bulk Terminal Permits, and reserved discussion of objections for the Kimberly-Clark, Alabama Shipyard, and UOP Permits for a petition to be filed on Monday, January 9, 2022, the statutory filing deadline for filing objections to those Permits. Petitioners made only very limited changes in the January 9th Petition to add those specific arguments reserved in the Petition filed on January 3, 2023, but the January 9th Petition is the complete Title V Petition that contains all objections for all five Permits and is thus the Petition cited to in this Compliant.

[90] Complainant (b)(6) Privacy, (b)(7)(C) Enf. Privacy

here, and re-submit them to EPA in a phased manner in order to facilitate meaningful public participation in the permitting process by Petitioners, other organizations in Alabama, and their members.[91] [redacted] requested that ADEM respond to this request within 5 business days, given the pending petition deadlines, but ADEM neither acknowledged receipt of nor responded to [redacted]'s letter.

V. Legal Background

Recipients of federal funding are prohibited from taking actions that have a discriminatory impact on minority populations. Title VI of the Civil Rights Act of 1964 states:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving any Federal financial assistance.[92]

EPA's implementing regulations further prohibit recipients of EPA funding from discriminating. Specifically, EPA's Title VI regulations provide that an EPA funding recipient:

> …shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.[93]

EPA's regulations make clear that discrimination on the basis of race is a violation of Title VI whether such discrimination is the purpose of the decision or its effect.[94]

As a condition of receiving federal funding such as that described in Section III.B above, recipient agencies must comply with EPA's Title VI regulations, which are incorporated by reference into the grants. These regulations proscribe discrimination on the basis of race, color or national origin by any program or agency receiving financial assistance from the EPA.[95] In other words, Title VI creates for recipients a nondiscrimination obligation that is contractual in nature,

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[91] *See* Attach. B at 7, [redacted]
[92] 42 U.S.C. § 2000d.
[93] 40 C.F.R. § 7.35(b).
[94] *Id*.
[95] 40 C.F.R. § 7.30.

in exchange for Federal funding. Acceptance of EPA funding creates an obligation on the recipient to comply with the regulations for as long as that funding is provided.[96] As detailed above, ADEM, a state agency, is a recipient governed by these requirements.

In particular, a state agency accepting EPA funding may not issue permits that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.[97] Although compliance with national ambient air quality standards ("NAAQS") and other emissions limits are an important baseline in avoiding such effects, EPA no longer presumes on the basis of compliance with NAAQS that permitting decisions have not created adverse and disproportionate impacts on minority and low-income communities.[98] State agencies that still rely on this presumption in their permitting process are exposing communities in their jurisdiction to potential disparate impacts because, as stated by EPA, "presuming compliance with civil rights laws wherever there is compliance with environmental health-based thresholds may not give sufficient consideration to other factors that could also adversely impact human health."[99]

The EPA has explained that an important way for a recipient agency to avoid issuing discriminatory permits is to ensure that impacted communities are allowed substantial involvement in the agency's decision-making process, particularly throughout the permitting decision-making process.[100] In addition, each recipient of EPA funding must designate a Title VI compliance coordinator, shall "adopt grievance procedures that assure the prompt and fair resolution of complaints…"[101]

These requirements are fully applicable to permit renewals, as well as the issuance of new permits. The EPA has explained that its Title VI regulations do not require a different review of permit renewals, even if environmental laws mandate different treatment for new permits.[102] As the EPA explained, the renewal, like a new permit, would be available to form the basis of an investigation and it improves the ability to consider adverse disparate impacts.[103] Moreover, this approach "assist[s] recipients in achieving an equitable distribution of their efforts to meet Title VI's requirements."[104] EPA has also explained that "[v]iolations of Title VI or

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[96] U.S. Environmental Protection Agency, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14,207, 14,209 (Mar. 21, 2006) ("Final Recipient Guidance").
[97] Final Recipient Guidance at 14,209.
[98] Environmental Protection Agency, *Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental and Health-Based Thresholds*, at 4 (Jan. 24, 2013).
[99] *Id.*
[100] Final Recipient Guidance at 14,211.
[101] 40 C.F.R. §§ 7.85 - 7.95.
[102] 65 Fed. Reg. 39,650, 39,697 (June 27, 2000).
[103] *Id.*
[104] *Id.*

EPA's Title VI regulations can be based solely on...the procedural aspects of the permitting process," and that "complaints often center around allegations of discrimination that may have been prevented, mitigated, or resolved if certain public involvement practices had been implemented by recipient agencies."[105] Thus, a single action or inaction may give rise to both substantive and procedural violations of a recipient's Title VI obligations, by, for example, creating disparate impacts that could have been prevented, mitigated, or resolved through procedural safeguards.

VI. Violations

ADEM has violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and 40 C.F.R. Part 7 in the issuance of these five Title V permits by: (1) failing to comply with any of the EPA procedural safeguard regulations at 40 CFR Part 7 to prevent discrimination; and (2) failing to analyze the potential for disproportionate and disparate environmental and human health effects on nearby minority and low-income communities. ADEM's discriminatory acts plainly result in adverse and disproportionate impacts on minority and low-income communities. Additionally, less discriminatory alternatives to ADEM's current program and activities exist that would avoid the discrimination that results from ADEM's current unlawful permitting process.

A. Discriminatory Acts

ADEM's issuance of five permits in a one-week period constitutes discriminatory acts that lead to disparate impacts to minority and low-income communities. Similarly, ADEM's failure to conduct the disparate impacts analyses before issuing the five permit constitute discriminatory acts that lead to disparate impacts to minority and low-income communities.

1. ADEM's Issuance in a One-Week Period of Five Permits with Significant Comments from Minority and Low-Income Communities Results in Disparate Impacts to Those Communities

The pubic comments that Complainants submitted (sometimes with other organizations) made clear that they were submitting comments as part of their mission to advance healthy air and environmental justice issues for the communities in Africatown, Mobile, and throughout Alabama. Public comments for Kimberly-Clark noted that the commenting groups sought changes in the Permit to "better protect the health of residents – including those located in the environmental justice community adjacent to the Kimberly-Clark plant - and air

[105] Final Recipient Guidance at 14,210.

quality in Mobile County."[106] And a number of comments specifically mentioned the need to address the burden of these Permits on the residents of Africatown, noting that "Africatown residents remain disproportionately burdened by the toxic pollution" from these sources.[107] Complainants' comments on the Plains Marketing Permit were styled as a "request" from the minority and low-income populations in the community surrounding the facility, as well as groups advocating on their behalf, that "ADEM place special focus and resources" on addressing the impacts on these communities in issuing air permits and noted that the "people that live in the area surrounding the [facility] have been disproportionately impacted for decades" by its emissions.[108]

These Comments were clear that they were submitted on behalf of the Complainants' members, which include historically disadvantaged racial groups and communities of color, and thus they all raised issues regarding the civil rights and environmental justice ("EJ") impacts of each of these sources on the nearby communities. For example, the comments on the Kimberly-Clark permit noted that the community surrounding the facility contained a high percentage of minorities and people near the poverty line that would be disproportionately impacted by the emissions being permitted.[109] Likewise, the entire first section of Petitioners' March 4, 2021 Comments on the Plains Marketing permit was devoted to the potential impacts of the permit on disproportionately Impacted Communities surrounding that facility.[110] In addition, all five comments raised the application of Title VI to ADEM's permitting action, [111] with some even going so far as to allege that such permit issuance would violate the civil rights of Black residents living near these sources.[112]

Thus, ADEM knew that Complainants and the protected groups within the communities they represent were interested in ADEM's permitting actions for these sources. However, in spite of this knowledge, ADEM chose to transmit to EPA and then finalize all five of these Permits within a one-week period. By finalizing these permits in this grouped manner, it was difficult for these protected groups to assess each of those permits to determine whether (a) the final permits complied with all applicable requirements of the Act as required under CAA Title V and (b) ADEM had provided meaningful consideration of and responses to all the other significant issues raised in the comments, including their comments regarding racially disparate impacts and related EJ concerns. Such review is necessary to ensure that the final Permits complied with the Act and that ADEM's supporting analysis –

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[106] Attach. A at 592 (Kimberly-Clark); *see also id.* at 1075 (UOP) (similar comments).
[107] Attach. A at 100 (AL Bulk Terminal); *id.* at 385 (Alabama Shipyard) (a number of commenting groups noting their purpose of addressing environmental issues in Africatown).
[108] Attach. A at 790, 792 (Plains Marketing).
[109] Attach. A at 612 (Kimberly-Clark).
[110] Attach. A at 791 (Plains Marketing).
[111] Attach. A at 613 (Kimberly-Clark), 786-87 (Plains Marketing), and 1099 (UOP).
[112] Attach. A at 108 (AL Bulk Terminal) and 390 (AL Shipyard).

including responses to all significant public comments – is adequate, as required by EPA's Clean Air Act rules.[113] The communities surrounding these sources and Complainants' other members are interested in the outcome of ADEM's permitting decisions and should have been provided adequate time to determine whether ADEM had addressed their concerns. Indeed, the Complainants and the protected groups within the communities impacted by the sources covered by these Permits found it impossible to evaluate ADEM's analyses and documents, the volume of materials were simply overwhelming.

ADEM's decision to delivery of all these Permits within one-week lead to a disparate impact on the surrounding communities because it failed to provide these disadvantaged groups with adequate public participation in the permitting process. Specifically, this action limited the ability of these groups and the public at large to take the one remaining action provided by the Clean Air Act to address the pollution allowed by these Permits – filing a Title V petition to object with EPA. The Clean Air Act requires the EPA to consider the arguments raised in these petitions and if the Administrator determines the underlying permits are not in compliance with the air pollution and other requirements, to object and require the permitting authority, such as ADEM, to fix the problems.[114] Community groups have long relied on the Title V petition process to address deficiencies in permits.[115] While Complainants were able to file such a petition, they were unable to address all of the errors that ADEM had made in all of the permits issues in early November 2023 and instead had to focus on a more narrow petition – raising only three main objections to consistent problems in the five Permits issued in Mobile County.[116] Thus, the Complainants and the protected groups within the communities they represent were unable to raise all potential CAA-deficiencies in these five Permits to EPA.

It was clearly foreseeable to ADEM that the Impacted Communities would be barred from meaningful public participation in the Title V petition process to EPA when ADEM transmitted these five Permits to EPA during a one-week period and later finalized them in a similar time frame. Thus, ADEM had the ability to foresee the consequences of its action.

For this reason, ADEM's actions have a disproportionate impact on the Black and other disproportionately burdened residents of Africatown and Mobile, depriving them of meaningful access to participate ADEM's programs or activities, and thus amounts to discrimination on the basis of color in violation of Title VI.[117]

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[113] 42 U.S.C. § 7661c(a), 40 C.F.R. §§ 70.8(c)(3)(ii) and (a)(1).
[114] *See generally* Clean Air Act § 505(b)-(c), 42 U.S.C. § 7661d(b)-(c); *see supra* section I.A.
[115] *See generally* EPA's Title V Petition Database, *available at* https://www.epa.gov/title-v-operating-permits/title-v-petition-database (containing hundreds of such petitions dating back to at least 1996).
[116] *See* Attach. D at 5, Title V Petition at 4.
[117] *See e.g.*, EPA Office of Gen. Counsel, Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions, 6 (Aug. 2022), ("A recipient's compliance with the

The consequences of ADEM's actions are especially problematic for the Impacted Communities in Africatown and Mobile that are impacted by cumulative emissions from the operation of numerous sources, including the sources authorized by the five Permits at issue in this Complaint.

EPA recently issued Title V permitting guidance that reiterated the Title VI obligation of permitting authorities such as ADEM, and noted that where a permitting authority's "decision is likely to have an adverse and disparate effect on the basis of race, color, national origin (including LEP), disability, sex, or age, then the program should consider broadly the availability of less discriminatory alternatives."[118] In this case there was a very simple alternative action that ADEM could have taken – issuing these Permits in a staggered way over a longer period of time so that Complainants, their members, and other members of protected classes would have time to review them and decide whether additional action was needed to address the pollution they authorized.

We also note that this is not the first time ADEM has taken such prohibited actions in its permitting. On February 2, 2021, ADEM finalized four Title V permits on the same day, after having also transmitted them to EPA on the same day in December 2020, even though the public comment periods had occurred over a four month period (from July to October 2020) and each of the permits had significant public interest, including comments by one or more of the Complainants and the protected groups within the Impacted Communities they represent.[119] At that time,

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requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with civil rights laws") https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf ("EPA FAQ").

[118] Attach. B at 16, EJ in Air Permitting – Principles for Addressing Environmental Justice Concerns in Air Permitting (December 2022) at 4 (hereinafter, "EJ in Air Permitting").

[119] Those included the 2021 UOP permit renewal and three permits for Alabama Power Company (APC) plants: APC Plant Barry (Permit No. 503-1001); APC Gaston Steam Electric Generating Plant (Permit No. 411-0005) and APC Greene County Steam Electric Generating Plant (Permit No. 405-0001). The ADEM Final Permits and Public Comments from one of more Complaints can be accessed at:
APC Plant Barry: Permit -https://mosaiceps.epa.gov/sites/default/files/FRU/A971001F_2_00.pdf; Public Comment - https://mosaiceps.epa.gov/sites/default/files/FRU/Gasp%20and%20Sierra%20Club%20FINAL%20Barry%20T5%202020%20Comments_0.pdf
APC Gaston Steam Electric Generating Plant: Permit - https://mosaiceps.epa.gov/sites/default/files/FRU/AB70005F_2_00.pdf; Public Comments - https://mosaiceps.epa.gov/sites/default/files/FRU/GASP%20Comments%20Gaston%20T5%20Renewal.pdf
APC Greene County Steam Electric Generating Plant: Permit - https://mosaiceps.epa.gov/sites/default/files/FRU/A630001F_1_00.pdf; Public Comments - https://mosaiceps.epa.gov/sites/default/files/FRU/GASP%20Comments%20Greene%20County%20T%20Renewal_0.pdf
UOP: Permit - https://mosaiceps.epa.gov/sites/default/files/FRU/A978010F_2_00.pdf; Public Comments -

due to similar resource constraints, the [redacted] Complainant filed Title V objection petitions on only two of those permits, both of which were successful and resulted in the EPA Administrator issuing orders objecting to numerous deficiencies in both permits.[120] This was the first instance where ADEM finalized multiple permits with adverse comments at one time.

Likewise, after conducting public comments for five permits over a fourteen month period (from March 2021 to May 2022) and receiving comments from the Complainants raising concerns about the pollution impacts on the Impacted Communities they represent, ADEM similarly delivered all five permits to EPA for review in one day in August 2022 and then finalized them on September 20 and 21, 2022.[121] Unfortunately, although Complainants identified problems with ADEM's process in finalizing those five permits and deficiencies in the permit terms (some of which very similar to the issues identified in the Title V petition for these five Permits), they were unable to file any CAA Title V objection petitions to those permits due to ADEM's failure to notify commenters of the availability of its response to comment documents, staffing transitions, and other resource constraints. This was the second instance where ADEM finalized multiple permits with adverse comments at one time.

In sum, between December 2020 and November 2022, ADEM has transmitted to EPA and then finalized the following three sets of Clean Air Act Title V Operating Permits in which Complainants and the historically disadvantaged

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https://mosaiceps.epa.gov/sites/default/files/FRU/UOP_Public%20Comments.pdf

[120] *See UOP Order;* and *In the Matter of Alabama Power Company, Barry Generating Plant*, Petition No. IV-2021-5 (June 14, 2022).

[121] Alabama Power Company – Theodore Cogeneration Plant (Permit No. 503-8073), Southern Power Company – EB Harris Generating Plant (Permit No. 201-0010), Southern Power Company – H. Allen Generating Plant (Permit No. 206-0036), Hog Bayou Energy Center (Permit No. 503-8066), and W&T Offshore, Inc. – Mary Ann Field Offshore Production Platform (Permit No. 503-0010). The ADEM Final Permits and Public Comments from one of more Complaints can be accessed at:
Theodore Cogeneration Plant: Permit
https://mosaiceps.epa.gov/sites/default/files/FRU/A978073F_03_00.pdf; Public Comment -
https://mosaiceps.epa.gov/sites/default/files/FRU/GASPCmmtLtrAPTheodore_03252021.pdf
Southern Power Company – H. Allen Generating Plant: Permit -
https://mosaiceps.epa.gov/sites/default/files/FRU/A810036F_3_00.pdf; Public Comment -
https://mosaiceps.epa.gov/sites/default/files/FRU/SPC%20Franklin%20Public%20Comments.pdf
Southern Power Company – EB Harris Generating Plant: Permit -
https://mosaiceps.epa.gov/sites/default/files/FRU/A010010F_3_00.pdf; Public Comment -
https://mosaiceps.epa.gov/sites/default/files/FRU/SPC%20Harris%20Public%20Comments.pdf
Hog Bayou Energy Center: Permit -
https://mosaiceps.epa.gov/sites/default/files/FRU/A978066F_03_00.pdf; Public Comment -
https://mosaiceps.epa.gov/sites/default/files/FRU/Hog%20Bayou%20Public%20Comments.pdf
W&T Offshore, Inc. – Mary Ann Field Offshore Production Platform Permit: Public
https://mosaiceps.epa.gov/sites/default/files/FRU/A970010F_4_00.pdf; Public Comments -
https://mosaiceps.epa.gov/sites/default/files/FRU/W&T%20Mary%20Ann%20Public%20Comments.pdf

community members they represent had submitted significant public comments, including ten in Mobile County:

- Four final permits in February 2, 2021 (two located in Mobile County)
- Five final permits on September 20 and 21, 2022 (three located in Mobile County)
- Eight final permits from November 4 to 9, 2022 (five located in Mobile County).

EPA must take action to ensure that ADEM's Title V permitting process of finalizing multiple permits with significant public interest does not continue to cause disparate impacts on the minority groups represented by Complainants (*i.e.,* submitting more than one permit to EPA within a short time period with significant comments from Complainants and other EJ communities). As shown above, ADEM's clear pattern and practice of submitting to EPA and then finalizing more than one permit within a short time period with significant comments from Complainants and other EJ communities, which impacts a large number of individuals in the Impacted Communities, is not the mere occurrence of isolated, accidental or sporadic acts.[122] EPA should grant this Complaint and provide the relief requested, including a direction that ADEM release any subsequent permit actions with significant public comments from racially disadvantaged communities and the organizations that represent them in a staggered manner that allows those communities time to adequately consider those permits and ADEM's associated actions.[123]

2. ADEM's Issuance of the Five Title V Operating Permits Authorizing Continued Pollution in Africatown and Mobile Results in Disparate Impacts to the Minority and Low-Income Communities

The five sources inflict significant health impacts on the minority and low-income communities living nearby to these sources. In issuing the Permits, ADEM entirely avoided its Title VI obligations to ensure that its air permitting program in general and the health impacts caused by the sources specifically do not have the effect of discriminating against minority and low-income communities as required by 40 C.F.R. §7.35(b). Accordingly, by issuing the Permits to these sources, ADEM has caused a disparate impact to the minority and low-income communities living nearby. In so doing, ADEM has committed discriminatory acts in violation of Title VI. As presented below, Complainants raised these issues in their comments on behalf of their members on each of the five sources in various ways.

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[122] *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

[123] Spacing any issuance of revised or modified permits approximately 6 weeks apart would provide sufficient time for Complainants and other members of the public to review ADEMs actions.

First, Complainants directly raised ADEM's Title's VI responsibility in the AL Bulk Terminal and AL Shipyard comments as follows:

> Racial discrimination by a recipient of federal funds is prohibited by Title VI of the Civil Rights of 1964. Title VI of the Civil Rights Act of 1964 prohibits the use of federal funds by recipients that discriminate on the basis of race, color or national origin. As a recipient of federal funds for programs delegated to it by the EPA, ADEM has a legal duty to protect civil rights. However, with this proposed permit, ADEM takes a reprehensible step toward violating the civil rights of the Black residents.[124]

Complainants further indirectly identified ADEM's Title VI responsibilities by raising ADEM's Nondiscrimination Investigation Grievance Procedures[125] developed under Title VI in the comments submitted to ADEM on the Kimberly Clark,[126] Plains Marketing[127] and UOP permits.[128]

Second, the Complainants specifically identified that ADEM needed to "consider the disparate and cumulative impacts of its permitting decision on people living near" the sources, when commenting on Kimberly-Clark,[129] Plains Marketing,[130] and UOP.[131]

Third, the Complainants' comments also alleged racially disparate impacts on the communities. The comments on Al Bulk Terminal explained that the draft permit "would allow racially disparate pollution burdens on predominantly Black residents living near" this facility.[132] Furthermore, the comments on three Permits (Kimberly-Clark, Plains Marketing and UOP) all explained that:

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[124] Attach. A at 390, AL Shipyard (footnotes omitted); *see also* Attach. A at 108, AL Bulk Terminal (footnotes omitted).

[125] Attach. A at 1099, UOP Comments (n.113 (On June 5, 2018, Director of ADEM Lance Lefleur rescinded Memorandum 108, the "ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process. ADEM adopted an interim grievance procedure that was not made publicly available and did not meet all the requirements of Title VI of the Civil Rights Act and 40 CFR parts 5 and 7. ECRCO accepted a complaint in July 2018 and over the summer advised ADEM on its deficiencies. ECRO issued a Resolution and Closure Letter for the complaint in November 2018 after ADEM adopted the current "Nondiscrimination Grievance Investigation Procedure," still in effect today. *See* Dorka, Lilian S. External Civil Rights Compliance Office, Office of General Counsel *Re: Resolution and Closure of EPA Administrative Complaint No. 03R-18-R.).*

[126] Attach. A at 613, Kimberly-Clark.

[127] Attach. A at 786-87, Plains Marketing.

[128] Attach. A at 1099, UOP.

[129] Attach. A at 612, Kimberly-Clark.

[130] Attach. A at 785, Plains Marketing.

[131] Attach. A at 1097, UOP.

[132] Attach. A at 108, AL Bulk Terminal.

> Where residents who are minority populations have not had their health adequately protected by this permitting, a disparate impact exists that requires ADEM to consider the environmental justice impacts of the draft permit.[133]

Despite Complainants comments advising ADEM on the five draft Title V permits that ADEM had failed to consider the disparate impacts to the disproportionally minority and low-income communities in its decisions to issue the Title V permits in violation of Title VI – ADEM's ignored the comments. Indeed, in response to these Title VI public comments on all five permits ADEM summarizes Complainants detailed comments and fails to cite to the specific pages in the comments. Thus, the only way the public can determine whether ADEM fulfilled its obligation to respond to all significant comments – including those on Title VI – is to review each of the comment letters and ADEM's response to comments side by side to see if the RTC summaries capture each comment and responses address all issued raised within the comments. ADEM's response to the comments raising the issues of ADEM's Title VI obligations and disparate racial impacts of the emissions authorized by these Permits was the same for each permit, simply asserting that:

> The draft permit contains emission limits based on state and federal regulations that are protective of human health and the environment. And, the Department has a robust public engagement program (*See* http://www.adem.alabama.gov/MoreInfo/pubs/ADEMCommunityEngagement.pdf) that utilizes a number of tools, such as EPA's EJ Screen: Environmental Justice Screening and Mapping Tool, to ensure that local residents and stakeholders are provided a meaningful opportunity to participate in the permitting process.[134]

This short, *pro forma* response simply fails to address the Title VI concerns described in the comments. In addition to the above statements, for Alabama Shipyard permit, ADEM's response to comments document added the following:

> In addition, the draft permit was placed on the Department's website during the 30 day public notice process, and notice of the draft permit was mailed to those individuals who signed up to be notified on the Department's website. During the public notice period, a public hearing was not requested. An extension to the comment period was received and was granted by ADEM.
>
> It should also be noted that Mobile County is in compliance with all National Ambient Air Quality Standards (NAAQS).

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[133] Attach. A at 618, Kimberly-Clark; *see also* Attach. A at 788, Plains Marketing; *see also* Attach. A at 1101, UOP.

[134] *See* Attach. A at 249-250, AL Bulk Terminal; *see also* Attach. A at 292 (Alabama Shipyard) 675, Kimberly-Clark; *see also* Attach. A at 914, Plains Marketing; *see also* Attach A. at 1045 – 1046, UOP.

Finally, ADEM added statements regarding environmental justice in its response for Plains Marketing, and noted that it followed its environmental justice policy providing public notice and a public hearing.[135]

As discussed below, ADEM entirely failed to respond to any of the Complainants comments on Title VI. First, ADEM ignored its obligation to analyze whether its activities, such as issuing the Title V permits, have the effect of causing disparate impacts on minority and low-income communities that result in discrimination. Second, ADEM's conclusion that "draft permit contains emission limits based on state and federal regulations that are protective of human health…" is an abdication of its responsibilities as recipient of federal funding to prevent discrimination. In sum, ADEM's response to comments for all five permits ignored its legal responsibilities under Title VI.

Additionally, since 2013, the EPA no longer assumes that compliance with environmental health-based thresholds is adequate to show that no adverse or disparate impacts are present. Analyses that rely exclusively on compliance "may not give sufficient consideration to other factors that could also adversely impact human health."[136] A thorough analysis should evaluate other appropriate factors, "including the existence of hot spots, cumulative impacts, the presence of particularly sensitive populations that were not considered in the establishment of the health-based standard, misapplication of environmental standards, or the existence of site-specific data demonstrating an adverse impact despite compliance with the health-based threshold."[137] Because ADEM failed to take any considerations into account, none of these factors and considerations were addressed by ADEM in issuing these five Title V permits.

For example, ADEM response to comments on the Alabama Shipyard permit that indicated Mobile County is in compliance with all the NAAQS is misplaced because compliance with environmental health-based thresholds is not adequate to show that no adverse or disparate impacts are present. Furthermore, there are only two air quality monitors in Mobile County and in light of the high concentration of industry, high level of air emissions, lax permitting and enforcement by ADEM and EPA over the years, and other issues presented in this Complaint, there are serious issues regarding adverse and disparate impacts to the communities adjacent to these sources.

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[135] Attach. A at 914, Plains Marketing ("The Department has an environmental justice policy in place. The Department followed this policy with respect to the local outreach performed for this permit and held both a public notice and a public hearing concerning the permit and the facility.")
[136] 78 Fed. Reg. 24,739, 24,742 (April 26, 2013)
[137] *Id.*

In each of these five permits where ADEM refused to conduct a disparate impact analysis, public comment demonstrated that affected communities were exposed to cumulative impacts and contained sensitive populations, including the Impacted Communities. The presence of these factors in the Impacted Communities should have prompted ADEM to conduct some form of disparate impact analysis rather than ignore the comments, ignore its Title VI obligations and respond with the same "do nothing" boilerplate response. Failure to engage in any investigation after being notified by the Impacted Communities – on five different occasions – is an abdication of ADEM's nondiscrimination obligations under Title VI.

Moreover, the lack of evidence of engagement by ADEM's Title VI program, staff or management in Complainants' comments is a significant concern. Although EPA has previously found ADEM's Title VI program sufficient,[138] Complainants suggest EPA should revisit those findings, as ADEM's repeated approach of totally ignoring Title VI comments in these five permits shows an apparent disconnect between ADEM's Air Division and ADEM's Nondiscrimination Coordinator – a pattern and practice that must be corrected. ADEM also ignored Complainants' Title VI comments on the other title V permits, demonstrating that this pattern and practice extends beyond the five permits at issue in this Complaint. Indeed, ADEM response to comments conflates environmental justice (EJ) and Title VI and shows a misunderstanding of its Title VI legal obligations. Environmental justice and Title VI have separate and distinct legal requirements and obligations.

Additionally, ADEM's response indicates that it uses "EPA's EJ Screen: Environmental Justice Screening and Mapping Tool, to ensure that local residents and stakeholders are provided a meaningful opportunity to participate in the permitting process" – but that is all ADEM says. ADEM does not explain how providing EJScreen reports without any additional analysis ensures that surrounding communities have a meaningful opportunity to participate in the permitting process. Indeed, as discussed elsewhere in this Complaint, ADEM's pattern and practice is to merely attach a report from EPA's EJ Screen to the end of the Title V Statement of Basis document. ADEM provides no further analysis of the actual information provided in those reports. Likewise, ADEM provides no evidence that it engaged in the types of "robust public engagement" and outreach provided for in the document cited in its comment response. There is no evidence that ADEM arranged public meetings with the surrounding communities to discuss these Permits and any concerns the community had regarding their continued operation.[139] ADEM simply provides no explanation of how these tools were used in their permitting process to address the EJ and Title VI issues raised in the comments.

Until EPA requires ADEM to engage in substantive implementation and enforcement of its Title VI regulations, including the relief requested in this

[138] *See e.g.*, *supra* n.127.
[139] *See* Attach. B at 35.

Complaint, ADEM will likely continue to issue Title V permits with disparate impacts without conducting any analysis of whether its programs and activities result in discrimination. Clearly, in issuing these five Title V permits, ADEM did not consider whether its decision would have a disproportionate impact on minority and low-income communities adversely impacted by the sources in violation of 40 C.F.R. §7.35(b)'s prohibition against administering its federally-funded program in a manner that causes disparate impacts to protected persons. By virtue of this failure to even consider whether disparate impacts were caused in issuing the five Title V permits, ADEM has engaged in discriminatory acts in violation of Title VI and EPA's implementing regulations. As explained below, the adverse and disparate impacts caused to the Impacted Communities by ADEM's issuance of the Title V permits constitute discriminatory acts, which may have been prevented had ADEM complied with its Title VI obligations.

B. Less Discriminatory Alternatives

During the public notice and comment period for the five Permits, and on prior instances of permit issuances, ADEM has declined to accept recommendations from Complainants about its processes and analysis which, if adopted, would mitigate the identified adverse and disparate impacts on Complainants' members and other members of the Impacted Communities. The following less discriminatory alternatives were available, and continue to be available to ADEM:

1. ADEM has the option, and until February 2, 2021 had done so, of issuing its Title V permits when adverse comments are received in a staggered manner. ADEM must issue permits where it receives adverse comments in a staggered manner.

2. ADEM has the option, but refuses, to consider the cumulative impacts of the full implementation of its permitting program in the Impacted Communities and other minority, low-income communities. ADEM has the option, but refuses to conduct a disparate impact analysis regarding the issuance of its permits instead of relying on compliance with NAAQS, which does assess cumulative impacts, hotspots or sensitive populations. ADEM also has the option to conduct modeling, site additional monitors in Mobile for pollutants other than particulate (*i.e.*, VOCs and SO_2), and require fenceline monitoring, to examine the impact of permitting decisions such as for these five Permits, but has failed to do so here, and fails on a routine basis to do so when making similar permitting decisions.

3. ADEM has had the option and opportunity, but has not affirmatively engaged the Impacted Communities in a meaningful process by which ADEM receives and incorporates the Impacted Communities' input

regarding permitting decisions. Specifically, ADEM has failed to provide notice actually intended to advise residents nearby the sources regarding the permitting process and their rights to participate in the process. In addition, ADEM has failed to deliver information about the permitting process to the Impacted Communities, or to solicit comments in a way that meaningfully engages the Impacted Communities. Options that could address these shortfalls include convening a series of public meetings, held at community centers or schools, at which ADEM could deliver information about the individual permits, projects, and provide the public with an opportunity to ask questions and orally deliver comments and express concerns.

VII. Relief Requested

Complainants request that the EPA External Civil Rights Compliance Office accept this complaint and investigate whether ADEM has violated Title VI of the Civil Rights Act and its implementing regulations, through its issuance of the Title V permits to the following five sources in the one-week period and failing to address Title VI issues raised during the public comment periods on these permits:

- Plains Marketing LP, Permit No. 503-3013
- Alabama Bulk Terminal, Permit No. 503-3035
- Kimberly-Clark Corporation, Permit No. 503-2012
- Epic Alabama Maritime Assets, LLC – Alabama Shipyard LLC, Permit No. 503-6001
- UOP LLC, Permit No. 503-8010

To the extent that ADEM is in violation of Title VI, Complainants request that the agency be brought into compliance by requiring:

1. **ADEM's issuance of Clean Air Act Title V Permits – when adverse comments are received from the public – in a staggered manner.**

   EPA must take action to ensure that ADEM does not continue to take such actions causing disparate impacts (*i.e.*, issuing more than one permit within a short time period with significant comments from the Impacted Communities), especially as these actions exacerbate the other public participation issues raised in Petitioners' objections above. Complainants request that EPA direct ADEM to release any subsequent permit actions to EPA and the public in a staggered manner that allows Complainants and the Impacted Communities they represent the necessary time to adequately consider those revised Permits and ADEM's associated actions.

2. **ADEM's development of a cumulative impact analysis of the air pollution sources in Mobile County, including siting of additional air quality monitors for volatile organic compounds and sulfur dioxide.**

   Require that ADEM conduct cumulative impacts analysis of the more than 200 source with air emissions in Mobile County. ADEM's analysis should provide for public comment and involvement in the development of the protocol for the analysis as well as comment on the draft analysis. Additionally, EPA should require that ADEM site additional air quality monitors for volatile organic compounds (VOC) and sulfur dioxide (SO_2) in Africatown, Down the Bay, and Orange Grove communities, all predominately communities of color near the Port of Mobile.

3. **Enhanced public outreach by ADEM in the Impacted Communities for air quality permitting and improvements to the public notices used to announce the opportunity for public comment.**

   Require that ADEM proactively facilitate informational meetings and hearings for minority and low-income communities when environmental permitting and siting decisions are proposed that might impact these impacted communities, including expanded public information about proposed permits and sources. Furthermore, require that ADEM add to the public notice announcement for all permits an individual contact person, phone number and email address so that members of the Impacted Communities know who to reach out to for information and have a contact person to get their questions answered.

Finally, because the ADEM Air Division's response to comments on the Title VI indicates that it appears the Division does not understand its Title VI legal obligations and/or did not coordinate its responses with ADEM's Nondiscrimination Coordinator, we urge EPA to fashion additional remedies so that ADEM adequately responds to Title VI comments in the future (*e.g.*, civil rights training for Air Division staff and management, conditioning all future grants and awards from EPA to ADEM on adequate assurance that its actions will comply with Title VI, as detailed above).