



## OFFICE OF CIVIL RIGHTS AND ADJUDICATION

WASHINGTON, D.C. 20460

December 22, 2025

Edward F. Poolos, Director  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Post Office Box 301463  
Montgomery, AL 36111-2400  
via email: [director@adem.alabama.gov](mailto:director@adem.alabama.gov)

**Re: Dismissal of EPA Complaint No. 03R-23-R4: Insufficient Evidence**

Dear Director Poolos:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights and Adjudication (OCRA), External Civil Rights Division (ECRD) is closing EPA Complaint No. 03R-23-R4 filed by the Southern Poverty Law Center (SPLC), on behalf of the Center for Rural Enterprise and Environmental Justice (CREEJ) and the Natural Resources Defense Council (NRDC).<sup>1</sup>

The complaint alleges that the Alabama Department of Environmental Management (ADEM) discriminates against Black residents of Alabama, particularly residents of the Black Belt region of Alabama, on the basis of race, through its Clean Water State Revolving Fund (CWSRF) program in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.<sup>2</sup> Specifically, the complaint alleges ADEM implements policies and practices that prevent Black residents from accessing the State of Alabama CWSRF to improve onsite sanitation access. For the reasons set forth below, ECRD found insufficient evidence that ADEM violated Title VI or 40 C.F.R. Part 7.

### **ECRD Authority**

ECRD is responsible for enforcing federal civil rights laws that prohibit discrimination by applicants for and recipients of EPA financial assistance. ECRD accomplishes this in accordance with procedures established by 40 C.F.R. § 7.120.

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<sup>1</sup> The Office of External Civil Rights and Compliance is now the External Civil Rights Division.

<sup>2</sup> The complaint uses the term "Black Belt" to refer to the following 17 Alabama counties: Barbour, Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry, Pike, Russell, Sumter, and Wilcox.

On October 3, 2023, after a preliminary review of the complaint, ECRD accepted for investigation two claims:

1. Whether ADEM's implementation of the Clean Water State Revolving Fund (CWSRF) program, including its public engagement and outreach practices, excludes from participation, denies benefits to, or subjects to discrimination, residents in the Black Belt region of Alabama, on the basis of race in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 42 USC § 2000d et seq., and EPA's nondiscrimination regulation, 40 C.F.R. Part 7;<sup>3</sup> and
2. Whether ADEM has and is implementing grievance procedures that provide prompt and fair resolution of discrimination complaints which allege violations of federal non-discrimination laws, consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.<sup>4</sup>

With respect to Claim 1, ECRD has investigated the matter and finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulations. With respect to Claim 2, ECRD has determined that ADEM is compliant with and does have grievance procedures that assure the prompt and fair resolution of complaints alleging a violation of 40 C.F.R. Parts 5 and 7. Therefore, ECRD is closing EPA Complaint No. 03R-23-R4.

## **Background**

Alabama's Black Belt has been recognized for its highly fertile Blackland prairie soil; however, its lack of permeability poses challenges for conventional septic system drain fields.<sup>5</sup> The impermeability of this soil leads to a lack of affordable wastewater access, poor drainage, surface water contamination, *etc. Id.*

As a result of the soil challenges and rural nature of much of the Black Belt, residents within these communities are less likely to have access to a centralized sewer system. Although onsite sewage treatment such as a septic system is an option, the unique soil conditions often contribute to broken and failed sanitation systems. The Black Belt region has high rates of poverty, among the highest in the state, which causes many residents to be unable to afford the cost of installing and maintaining a functional onsite sanitation system.<sup>6</sup>

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<sup>3</sup> See 40 C.F.R. § 7.30.

<sup>4</sup> See 40 C.F.R. § 7.90; §§ 5.135 (b) and 5.140.

<sup>5</sup> Maxcy-Brown, J., Wilson, T., Chai, R., McCaskill IV, H., Bakchan, A., Christian, L., & White, K. D. (2024). The Past, Present, and Future of Wastewater Management in Alabama's Black Belt. *Journal of Sustainable Water in the Built Environment*, 10(4), 04024007.

<sup>6</sup> See Stephen G. Katsinas, Garrett A. Till, Joscelyn Peterson, Noel E. Keeney, Nathaniel J. Bray, Moses O. Ogunnarin, & Henry N. Vlachovsky, The University of Alabama. (2013). Issue Brief No. 62 Bridging Persistent Poverty Gap in Alabama's Black Belt (2025); Jessica Cook Wedgworth & Joe Brown, Limited Access to Safe Drinking Water and Sanitation in Alabama's Black Belt: A Cross-Sectional Case Study. 5. <https://www.researchgate.net/profile/Joe->

ADEM partially regulates wastewater treatment in Alabama, including onsite sanitation systems that process more than 15,000 gallons per day (gpd) in sewage.<sup>7</sup> The Alabama Department of Public Health (ADPH), or local health departments with authority delegated from ADPH, are responsible for regulating onsite sanitation systems that process less than 15,000 gpd in sewage (e.g., individual or community septic systems).<sup>8</sup>

In 2018, Earthjustice, on behalf of CREEJ, filed a complaint with the United States Department of Justice (DOJ) and the United States Department of Health and Human Services (HHS) alleging that ADPH's policies and practices diminish the access to adequate sanitation by Black residents of Lowndes County and that as a result, Black residents of Lowndes County disproportionately suffer the negative legal and health effects of inadequate sanitation.<sup>9</sup> In November of 2021, DOJ and HHS initiated an investigation into the policies and practices of ADPH regarding onsite wastewater disposal and infectious disease programs in Lowndes County.<sup>10</sup>

In May of 2023, DOJ and HHS entered into an Interim Resolution Agreement with ADPH that suspended the investigation while ADPH took steps to improve onsite wastewater infrastructure in Lowndes County, among other steps.<sup>11</sup> During the investigation, DOJ and HHS found that conventional onsite wastewater systems in Lowndes County often fail due to the impermeable Black Belt soil, resulting in many predominantly low-income Black residents of Lowndes County relying on "straightpiping" to carry human waste away from their homes.<sup>12</sup>

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[15/publication/257781005\\_Limited\\_Access\\_to\\_Safe\\_Drinking\\_Water\\_and\\_Sanitation\\_in\\_Alabama%27s\\_Black\\_Belt\\_A\\_Cross-Sectional\\_Case\\_Study/links/54763ff00cf29afed6142001/Limited-Access-to-Safe-Drinking-Water-and-Sanitation-in-Alabamas-Black-Belt-A-Cross-Sectional-Case-Study.pdf](https://www.adph.state.al.us/publications/257781005_Limited_Access_to_Safe_Drinking_Water_and_Sanitation_in_Alabama%27s_Black_Belt_A_Cross-Sectional_Case_Study/links/54763ff00cf29afed6142001/Limited-Access-to-Safe-Drinking-Water-and-Sanitation-in-Alabamas-Black-Belt-A-Cross-Sectional-Case-Study.pdf).

<sup>7</sup> See Ala. Admin. Code § 420-3-1-04(70)(c) (explaining that wastewater collection or treatment systems with a design flow of more than 15,000 gpd must "comply with the design and permit requirements established by ADEM").

<sup>8</sup> See Ala. Admin. Code § 420-3-2-04(70)(a) (explaining that wastewater collection or treatment systems with a design flow of 15,000 gpd or less must "comply with design and permit requirements established by ADPH").

<sup>9</sup> Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 200d, 45 C.F.R. Part 80, (Sept. 28, 2018), [https://earthjustice.org/wp-content/uploads/acre20title20vi20complaint20with20exhibits\\_09-28-2018.pdf](https://earthjustice.org/wp-content/uploads/acre20title20vi20complaint20with20exhibits_09-28-2018.pdf).

<sup>10</sup> Interim Resolution Agreement Between the United States Department of Justice and United States Department of Health and Human Services and the Alabama Department of Public Health, Department of Justice Number 171-3-14 Department of Health and Human Services Office for Civil Rights Transaction Number 22-451932 (May 3, 2023), pg. 1-3, <https://www.hhs.gov/sites/default/files/adph-doj-hhs-agreement.pdf>.

<sup>11</sup> See Interim Resolution Agreement Between the United States Department of Justice and United States Department of Health and Human Services and the Alabama Department of Public Health, Department of Justice Number 171-3-14 Department of Health and Human Services Office for Civil Rights Transaction Number 22-451932 (May 3, 2023), pg. 2-3, <https://www.hhs.gov/sites/default/files/adph-doj-hhs-agreement.pdf>. On April 11, 2025, DOJ terminated this agreement with ADPH. See US DOJ, Department of Justice Terminates Environmental Justice Settlement Agreement, Advancing President Trump's Mandate to End Illegal DEI and Environmental Justice Policies, [Office of Public Affairs | Department of Justice Terminates Environmental Justice Settlement Agreement, Advancing President Trump's Mandate to End Illegal DEI and Environmental Justice Policies | United States Department of Justice](https://www.justice.gov/opa/advancing-president-trumps-mandate-end-illegal-dei-and-environmental-justice-policies).

<sup>12</sup> See Interim Resolution Agreement Between the United States Department of Justice and United States Department of Health and Human Services and the Alabama Department of Public Health, Department of Justice

While the investigation was ongoing, SPLC, on behalf of CREEJ, and NRDC filed the current complaint with ECRD. The complaint alleges that money from the CWSRF program could be used to improve sanitation access for Alabama residents, specifically Black residents residing within the Black Belt region; however, ADEM imposes programmatic barriers that prevent CWSRF money from supporting onsite wastewater treatment needs of residents.<sup>13</sup> The identified barriers include the following:

- 1) Only public entities can apply for and receive CWSRF support, precluding support to individuals, homeowners' associations, community groups, and nonprofit organizations.
- 2) ADEM's project ranking system for CWSRF applications disqualifies people who rely on onsite systems based on the low allocation of points for onsite sanitation projects.
- 3) ADEM does not consider financial need in its project ranking system.
- 4) ADEM limits the amount of additional subsidization it offers, denying available funding to people with financial need.
- 5) ADEM conducts inadequate outreach to disadvantaged communities regarding the availability of State Revolving Fund money for onsite sanitation.
- 6) ADEM does not offer alternative financing options that could assist with onsite sanitation needs.<sup>14</sup>

The complaint alleges that inadequate sanitation causes raw sewage to back up into homes or pool outside, pollute groundwater, and overall, compromises the health of residents and the environment.<sup>15</sup>

## **The Investigation**

Given the complexities of sanitation in the Black Belt region of Alabama, including the soil and land resource conditions, delineation of responsibilities between ADEM and ADPH, and other factors, it is important to clarify that ECRD's investigation was not a comprehensive assessment of the causes of inadequate sanitation in the Black Belt region of Alabama. Rather, ECRD investigated whether ADEM's program complies with federal antidiscrimination laws.

As to Claim 1, ECRD investigated whether ADEM discriminated against the Black residents of the Black Belt region of Alabama, through the CWSRF program. On November 1, 2023, ADEM provided information about its CWSRF program, onsite sanitation systems in Alabama, the process ADEM was undertaking to adopt valid grievance procedures, and its analysis in support

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Number 171-3-14 Department of Health and Human Services Office for Civil Rights Transaction Number 22-451932 (May 3, 2023), pg. 1-2, <https://www.hhs.gov/sites/default/files/adph-doj-hhs-agreement.pdf>. "Straightpiping" involves using a series of pipes or ditches to carry untreated wastewater away from a residence.

<sup>13</sup> See EPA Complaint No. 03R-23-R4, March 6, 2023.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 5, 7, 21.

of its position that it did not discriminate against Black residents in the Black Belt region of Alabama.

ECRD also issued Requests for Information regarding ADEM's grievance procedures, CWSRF program, and other relevant matters, which ADEM provided on January 30, 2024, May 13, 2024, June 14, 2024, July 8, 2024, and July 30, 2024, respectively. Complainants also provided additional information, including a supplemental memorandum, dated July 26, 2024.

In September 2024, ECRD interviewed several witnesses that Complainants identified. Then, between January 10-14, 2025, ECRD conducted virtual interviews with ADEM staff who oversaw its CWSRF program.

On November 5-8, 2024, members of ECRD's investigation team traveled to Montgomery, AL and a few of the surrounding counties. During the site visit, members of ECRD's investigation team met with local government officials, residents, professionals working on the issue of onsite sanitation in the Black Belt counties, and officials from ADPH. ECRD reviewed the information provided by ADEM, Complainants, witnesses, local government officials, and other sources.

Finally, ECRD consulted with other offices within EPA. Specifically, it met with experts from EPA's Office of Water to discuss ADEM's CWSRF program in comparison to the federal requirements for a state's CWSRF program.

### **Claim 1: ADEM did not discriminate in implementing its CWSRF program.**

#### **Legal Standard**

Title VI and 40 C.F.R. Part 7 prohibit recipients of EPA financial assistance from discriminating on the basis of race, color, or national origin in their programs and activities. Specifically, the statutory language of Title VI states: "No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. 2000(d). *See also* 40 C.F.R. § 7.30. EPA's nondiscrimination regulation, at 40 C.F.R. § 7.35(a)(2), states: "a recipient shall not on the basis of race, color, or national origin provide a person any service, aid, or other benefit that is different, or is provided differently from that provided to others under the program or activity."

In investigating claims of intentional discrimination under Title VI, EPA must determine whether a recipient acted, at least in part, because of the actual or perceived race, color, or national

origin of the individuals allegedly subjected to discrimination.<sup>16</sup> Intentional discrimination requires a showing that a “challenged action was motivated by an intent to discriminate.”<sup>17</sup>

Evidence of “bad faith, ill will or any evil motive on the part of the [recipient]” is not necessary.<sup>18</sup> However, the evidence must generally show that the recipient was not just aware of the complainant’s protected status, but that the recipient acted, at least in part, because of the complainant’s protected status.<sup>19</sup> EPA will evaluate the “totality of the relevant facts” to determine whether discrimination has occurred.<sup>20</sup> Evidence of discriminatory motive may be direct or circumstantial.

Under the analysis set forth in *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) the factors probative of intent include: 1) statistics demonstrating a clear pattern of disproportionality; 2) the historical background of the decision; 3) the specific sequence of events leading up to the challenged decision; 4) departures from normal procedures; and 5) relevant legislative or administrative history.<sup>21</sup> No single factor is dispositive – “[t]he inquiry is practical.”<sup>22</sup> Mere statistics, without more, rarely are sufficient to make a *prima facie* case of discrimination.<sup>23</sup>

## Factual Analysis

Although ADEM and ADPH share responsibility for the regulation of onsite sanitation, ADEM is responsible for the operation and management of the CWSRF via Alabama’s Water Pollution Control Revolving Loan Fund, which includes funding for water quality projects.<sup>24</sup> The CWSRF’s goal is to finance projects that improve water quality and wastewater infrastructure.<sup>25</sup>

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<sup>16</sup> *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011), citing *Pers. Adm’r of Mass. V. Feeney*, 442 U.S. 256, 279 (1979).

<sup>17</sup> *Elston v. Talladega Cty. Bd. Of Educ.*, 997 F.2d 1394, 1406 (11<sup>th</sup> Cir. 1993).

<sup>18</sup> *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11<sup>th</sup> Cir. 1984).

<sup>19</sup> *Lower Merion Sch. Dist.*, 665 F.3d at 548.

<sup>20</sup> See *Washington v. Davis*, 426 U.S. 229, 242 (1976).

<sup>21</sup> These factors are non-exhaustive, and not all must be shown to establish a violation. See *Ave. 6E Invs. LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016); *Mhany Mgmt. v. Cty. Of Nassau*, 819 F.3d 581, 606 (2d Cir. 2016); see also *U.S. v. Yonkers Bd. Of Educ.*, 837 F.2d 1181, 1227 (2nd Cir. 1987) (stating foreseeability of a segregative effect, or “[a]dherence to a particular policy or practice, ‘with full knowledge of the predictable effects of such adherence upon racial imbalance,’ is a factor that may be taken into account in determining whether acts were undertaken with segregative intent”) (citation omitted); *U.S. v. Cherry*, F.3d 338, 343 (5th Cir. 1995).

<sup>22</sup> *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 n.24 (1979); *United States v. Birmingham*, 727 F.2d 560, 565 (6th Cir. 1984).

<sup>23</sup> *Arlington Heights*, 429 U.S. at 266, 267–68 (impact alone not determinative; Court must look to other evidence).

<sup>24</sup> See generally Ala. Code § 22-34-3 (establishing the Water Pollution Control Revolving Loan Fund, to be “maintained in perpetuity and operated by [ADEM]” in which “grants from the federal government or its agencies allotted to the state for capitalization of the revolving loan fund . . . shall be deposited”).

<sup>25</sup> See United States Environmental Protection Agency, Financing Decentralized Wastewater Treatment Systems, <https://www.epa.gov/system/files/documents/2022-02/financing-dwts.pdf>, p. 7. (last updated January 2022).

ADEM's Administrative Code outlines the CWSRF programs, to include the CWSRF and its eligible projects, project priority lists, criteria for ranking, funding reserves, and allowable project costs.<sup>26</sup> These functions are consistent with the responsibilities for every state's programs.<sup>27</sup> Section 335-11-1-03 of the Alabama Administrative Code lists projects that are eligible for funding under the CWSRF, including the "construction repair or replacement of decentralized wastewater systems that treat municipal wastewater or domestic sewage."<sup>28</sup>

In Alabama, anyone "owning or occupying property within the state" is responsible for installing and maintaining sanitation systems on that property that conform to the rules and regulations set by ADPH.<sup>29</sup> However, only public bodies, defined as "each county, state agency, incorporated city or town, or their instrumentality . . . having jurisdiction . . . over the disposal of sewage," are eligible to receive funding through the CWSRF.<sup>30</sup>

ADEM does not directly fund individual onsite septic systems.<sup>31</sup> ADEM's public body funding restriction is consistent with those of at least 30 other states, which make loans only to public entities, such as municipalities, counties, state agencies, districts, or other political subdivisions.<sup>32</sup>

ADEM stated that it reaches unserved households through public bodies by "funding the extension of collection systems and funding upgrades to systems to maintain service to households that utilize a wastewater disposal method other than a public wastewater collection system."<sup>33</sup> ADEM also represented that they utilize "available resources to efficiently fund cost-effective, long-term, sustainable service to unserved households through public wastewater systems."<sup>34</sup> In general, while alternative funding mechanisms (such as pass-through loans and sponsorships) are an option for states to assist nonpublic entities, there is no requirement that Alabama structure its CWSRF program to provide such assistance.<sup>35</sup>

ADEM agreed with Complainants' allegation that "[m]any households in the Black Belt have failing onsite septic systems."<sup>36</sup> Additionally, according to the 2022 Clean Watersheds Needs Survey Report to Congress published in April of 2024, Alabama reported the need for \$1.4

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<sup>26</sup> Ala. Admin. Code § 335-11-1.

<sup>27</sup> See United States Environmental Protection Agency, Financing Decentralized Wastewater Treatment Systems, <https://www.epa.gov/system/files/documents/2022-02/financing-dwts.pdf>, p. 9. (last updated January 2022).

<sup>28</sup> Ala. Admin. Code § 335-11-1-03(d).

<sup>29</sup> Ala. Code § 22-26-2; Ala. Admin. Code §§ 420-3-1-02, .04(101), .05.

<sup>30</sup> Ala. Code § 22-34-1(9); Ala. Admin. Code §§ 335-11-1-01(s).

<sup>31</sup> ADEM Response to the Complaint, Nov. 1, 2023, p. 1.

<sup>32</sup> See United States Environmental Protection Agency, Financing Decentralized Wastewater Treatment Systems, <https://www.epa.gov/system/files/documents/2022-02/financing-dwts.pdf>, pp. 10, 32. (last updated January 2022).

<sup>33</sup> ADEM Response to the Complaint, Nov. 1, 2023, p. 1.

<sup>34</sup> *Id.*

<sup>35</sup> See United States Environmental Protection Agency, Financing Decentralized Wastewater Treatment Systems, <https://www.epa.gov/system/files/documents/2022-02/financing-dwts.pdf>, p. 7. (last updated January 2022).

<sup>36</sup> ADEM Response to the Complaint, Nov. 1, 2023, p. 1.

billion in decentralized wastewater treatment systems.<sup>37</sup> In reporting this need, Alabama used information from the Black Belt Region Wastewater Funding Needs report, which highlighted the need for decentralized wastewater treatment in the Black Belt region of Alabama.<sup>38</sup>

Before ADEM can distribute CWSRF funding to a project, the project must apply for CWSRF funding. First, public bodies must submit a preapplication to ADEM for consideration for CWSRF funding. For projects that score enough points within ADEM’s priority ranking system to fall above the funding line, ADEM invites these projects to submit full applications. Upon review of the full applications, ADEM then distributes CWSRF funding to projects according to the priority list.<sup>39</sup>

## Legal Analysis

The complaint alleges ADEM’s policies disproportionately prevent Black Alabama residents from accessing support from the CWSRF for onsite sanitation, particularly in the Black Belt region, which has a higher population of Black residents than the rest of Alabama.<sup>40</sup> ECRD’s investigation revealed that at all times relevant, ADEM maintained the same criteria for applicants seeking to access CWSRF funds, provided the same technical outreach throughout the state for the CWSRF program, and applied the same criteria for all projects when evaluating how to distribute SRF funding. ECRD’s analysis leads it to conclude that ADEM did not intentionally discriminate on the basis of race in implementing its CWSRF program.

In 2008, the population within Black Belt counties was about 42% White and 55% Black; outside Alabama’s Black Belt counties it was about 74% White and 22% Black.<sup>41</sup> By 2023, the Black Belt population saw the White population decrease to about 37% and the Black population increase to 56%; outside the Black Belt, Alabama’s White population had decreased to 69% and its Black population remained roughly the same at 22%.<sup>42</sup> It is important to consider that although the population in the Black Belt counties is predominantly Black, it is still about 37% White.

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<sup>37</sup> United States Environmental Protection Agency, 2022 Clean Watersheds Needs Survey Report to Congress (April 2024), p. 27, <https://www.epa.gov/system/files/documents/2024-05/2022-cwns-report-to-congress.pdf>. The report defines the need for decentralized wastewater treatment as “capital costs associated with the rehabilitation, replacement, or new installation of on-site (individual) or clustered (community) systems.” United States Environmental Protection Agency, 2022 Clean Watersheds Needs Survey Report to Congress (April 2024), p. 26, <https://www.epa.gov/system/files/documents/2024-05/2022-cwns-report-to-congress.pdf>.

<sup>38</sup> United States Environmental Protection Agency, 2022 Clean Watersheds Needs Survey Report to Congress (April 2024), p. 27, <https://www.epa.gov/system/files/documents/2024-05/2022-cwns-report-to-congress.pdf>.

<sup>39</sup> ADEM, Clean Water State Revolving Fund Program, <https://adem.alabama.gov/water/guidance-srf-applicants> (last visited, Dec. 8, 2025).

<sup>40</sup> Complaint, at pp. 1, 21.

<sup>41</sup> United States Census Bureau, B02001 Race 2010 American Community Survey 5-Year Estimates, [https://data.census.gov/table/ACSDT5Y2010.B02001?q=B02001:+Race&g=040XX00US01\\$0500000](https://data.census.gov/table/ACSDT5Y2010.B02001?q=B02001:+Race&g=040XX00US01$0500000) (last visited Dec. 4, 2025). For demographics data between 2008 and 2010, ECRD used the American Community Survey 5-year estimates from 2010 because data was not present for 2008 and 2009.

<sup>42</sup> United States Census Bureau, B02001 Race 2023 American Community Survey 5-Year Estimates, [https://data.census.gov/table/ACSDT5Y2023.B02001?q=B02001:+Race&g=040XX00US01\\$0500000](https://data.census.gov/table/ACSDT5Y2023.B02001?q=B02001:+Race&g=040XX00US01$0500000) (last visited Dec. 4, 2025).

Similarly, the population outside of the Black Belt is predominantly White, but it is still about 22% Black.

Statistical evidence is one factor in ascertaining discriminatory intent by evaluating whether the impact of the official action bears more heavily on members of one race than another. To evaluate the allegation within the complaint that ADEM does not and has not used CWSRF funding to fund projects involving decentralized wastewater treatment, ECRD reviewed each of ADEM's Intended Use Plans (IUPs) between 2008 and 2023.<sup>43</sup>

Of the 230 projects funded during that time period, ECRD identified a total of seven sewer line extension projects (*i.e.*, installing new sewer lines to reach residences previously on septic tanks or decentralized systems); however, none of these projects were located within Black Belt Counties or received project priority points for decentralized wastewater treatment. ECRD did not find any evidence to indicate that counties in the Black Belt applied for CWSRF funding to support these types of projects. ECRD also identified 40 funded projects with project descriptions that may have involved decentralized wastewater treatment (*e.g.*, lagoons, septic systems, decentralized).<sup>44</sup> After reviewing the pre-applications for the 40 funded projects, ECRD identified 6 projects that claimed 10 points within ADEM's CWSRF priority ranking system for projects that were intended to upgrade or replace a failing/inadequate decentralized wastewater treatment system.<sup>45</sup>

ECRD analyzed the population of the communities served by the projects that received priority points intended to upgrade or replace a failing/inadequate decentralized wastewater treatment system. Figure 1 summarizes ADEM's funding year, the name of the decentralized wastewater treatment system project that was awarded priority points and subsequent funding, and the population served.

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<sup>43</sup> ADEM provided information in a July 30, 2024 letter to ECRD to find the IUPs for the CWSRF between 2008 and 2023 on ADEM's eFile system (available at <https://app.adem.alabama.gov/eFile/>). After finding the IUPs with the "document/category type" listed as "IUP," ECRD used the project fundable lists in each of the IUPs to obtain data for the projects funded with the CWSRF for each year. However, for the years, 2010 and 2013, ECRD could not find the project fundable list in the corresponding IUPs. ECRD was able to find the project fundable lists for 2010 and 2013 by searching for the IUPs with the "document/category type" listed as "CWSRF."

<sup>44</sup> The review was not exhaustive; there may be more projects that received funding through the CWSRF between 2008 and 2023 that were awarded points for a decentralized wastewater treatment project. Also, there appear to be some projects that involved decentralized wastewater treatment that did not claim points for decentralized wastewater treatment in ADEM's CWSRF priority ranking system. Finally, for projects that submitted preapplications for CWSRF funding prior to 2011, the preapplications did not list priority ranking points.

<sup>45</sup> As part of each state CWSRF program's responsibility to operate and manage its program, each state must use a project ranking system. See <https://www.epa.gov/system/files/documents/2022-02/financing-dwts.pdf>. In Alabama, the Criteria for Ranking is outlined in ADEM Administrative Code Section 335-11-1-05. ADEM's ranking system has seven categories of ranking criteria, which collectively add up to 335 points, with an opportunity for 90 and 50 bonus points. The proposed projects with the greatest number of points are often awarded CWSRF support. See ADEM, Form 340: Clean Water State Revolving Fund Preapplication, available at <https://adem.alabama.gov/sites/default/files/legacyfiles/DeptForms/Form340.pdf>. Applicants can claim 10 points within the ranking criteria for ADEM's CWSRF project propriety list if their project, "will upgrade or replace existing failing or inadequate decentralized wastewater treatment systems, or construct septic treatment facilities that are crucial to the proper operation of decentralized wastewater treatment systems." *Id.* at 2.

Using Census Data, the demographic composition of those six communities was compared with the demographic composition of the state of Alabama, which in 2011 was 70% White and 26% Black<sup>46</sup> and by 2023, 65% White and 26% Black,<sup>47</sup> to consider whether one race may have benefitted more from CWSRF funding for decentralized wastewater treatment.<sup>48</sup> Five out of the six projects served communities with higher percentages of the population that were White and lower percentages of the population that were Black compared to the population of the entire state at the time that the projects were listed on ADEM's IUPs. None of the six projects took place in the Black Belt. Again, ECRD did not find any evidence to indicate that counties in the Black Belt applied for CWSRF funding to support these types of projects.

Figure 1

Project	Population Served	White %	Black %
<b>Locust Fork Wastewater Collection System (2011)<sup>49</sup></b>	Town of Locust Fork	98% <sup>50</sup>	2%
<b>Moody Sewer Connection to Argo System (2012)<sup>51</sup></b>	Town of Argo	97% <sup>52</sup>	3%
<b>Douglas On-Site Sewage System (2012)<sup>53</sup></b>	Town of Douglas	97% <sup>54</sup>	0%

<sup>46</sup> See United States Census Bureau, B02001 Race 2011 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2011.B02001?q=b02001&g=040XX00US01> (last visited Dec. 5, 2025).

<sup>47</sup> See United States Census Bureau, B02001 Race 2023 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2023.B02001?q=b02001&g=040XX00US01> (last visited Dec. 5, 2025).

<sup>48</sup> See United States Census Bureau, B02001 Race 2011 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2011.B03002?q=b03002&g=040XX00US01> (last visited Dec. 4, 2025).

<sup>49</sup> See ADEM, CWSRF FY2011 Intended Use Plan (IUP) Final, p. 10, <https://lf.adem.alabama.gov/WebLink/DocView.aspx?id=27877418&dbid=0&cr=1>.

<sup>50</sup> See United States Census Bureau, B02001 Race 2011 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2012.B02001?q=B02001:+Race&g=160XX00US0102320> (last visited Dec. 4, 2025).

<sup>51</sup> See ADEM, CS010100-99 CWSRF FY2012 Intended Use Plan (IUP) Final, p. 10, <https://lf.adem.alabama.gov/WebLink/DocView.aspx?id=27877418&dbid=0&cr=1>.

<sup>52</sup> See United States Census Bureau, B02001 Race 2012 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2012.B02001?q=b02001&g=160XX00US0102320> (last visited Dec. 5, 2025).

<sup>53</sup> See ADEM, CS010100-99 CWSRF FY2012 Intended Use Plan (IUP) Final, p. 10, <https://lf.adem.alabama.gov/WebLink/DocView.aspx?id=27877418&dbid=0&cr=1>.

<sup>54</sup> See United States Census Bureau, B02001 Race 2012 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2012.B02001?q=B02001:+Race&g=160XX00US0121328> (last visited Dec. 4, 2025).

<b>St. Elmo-Irvington Sewer Improvements at County Farm Road WWTP (2014)<sup>55</sup></b>	St. Elmo and Irvington (unincorporated communities) <sup>56</sup>	75% <sup>57</sup>	11%
<b>Mobile Various Sanitary Sewer Rehabilitation and WWTF Improvements (2019)<sup>58</sup></b>	Mobile County <sup>59</sup>	59% <sup>60</sup>	36%
<b>Provide Sanitary Sewers to Southern Part of Ashland and Expand/Upgrade WWTP (2023)<sup>61</sup></b>	Town of Ashland	74% <sup>62</sup>	18%

Based on ECRD's analysis of ADEM's distribution of funding for decentralized wastewater treatment system projects between 2008 through 2023, it is confirmed that ADEM does not frequently fund projects involving decentralized wastewater treatment, to include septic tanks, throughout the state. In fact, ADEM specifically stated in its November 1, 2023 response that it does not directly fund onsite septic systems, which is justified by federal CWSRF regulations.<sup>63</sup>

Septic tanks are a type of decentralized wastewater treatment, meaning wastewater treatment systems in Alabama involving septic tanks are very unlikely to receive funding through the CWSRF. This analysis does reveal that out of the few decentralized wastewater projects ECRD found that received CWSRF funding, the majority were located in communities with higher percentages of the population that were White compared to the state and that none of the

<sup>55</sup> See ADEM, CS010100-99 CWSRF FY2014 Intended Use Plan (IUP) Final, <https://lf.adem.alabama.gov/DocView.aspx?id=27869727&dbid=0>.

<sup>56</sup> ECRD analyzed the population of Census Tract 67.02 in Mobile County as the population served by this project. Census Tract 67.02 was chosen because of the map included in the preliminary engineering report for the project that showed the population served by the project. See ADEM, CS010858-01 11624 PER 12-26-13 HLT, p. 8, <https://lf.adem.alabama.gov/DocView.aspx?id=27724931&dbid=0&cr=1>.

<sup>57</sup> See United States Census Bureau, B02001 Race 2014 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2014.B02001?q=B02001:+Race&g=1400000US01097006702> (last visited Dec. 4, 2025).

<sup>58</sup> See ADEM, 2019 CWSRF Intended Use Plan, p. 12, <https://lf.adem.alabama.gov/DocView.aspx?id=105450473&dbid=0&cr=1>;

<sup>59</sup> See ADEM, CS010281-18 8558 PER 02-28-19 HLT.pdf, pg. 1, <https://lf.adem.alabama.gov/DocView.aspx?id=28743646&dbid=0>.

<sup>60</sup> See United States Census Bureau, B02001 Race 2019 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2019.B02001?q=B02001:+Race&g=050XX00US01097> (last visited Dec. 4, 2025).

<sup>61</sup> See ADEM, 2023 CWSRF BIL Intended Use Plan, p. 12, <https://adem.alabama.gov/programs/water/srreports/2023CWSRFBILIUPFinal.pdf>.

<sup>62</sup> See United States Census Bureau, B02001 Race 2023 American Community Survey 5-Year Estimates, <https://data.census.gov/table/ACSDT5Y2023.B02001?q=B02001:+Race&g=160XX00US0102860> (last visited Dec. 4, 2025).

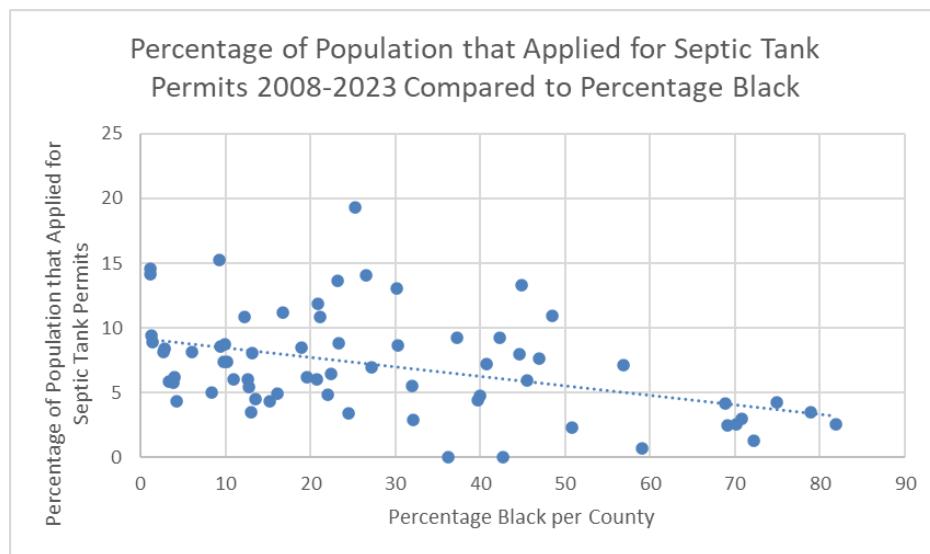
<sup>63</sup> ADEM Response to the Complaint, Nov. 1, 2023, p. 1.

projects were located in the Black Belt. Despite this disparity, this alone does not give rise to an inference of an intent to discriminate on ADEM's part.

Notwithstanding, to further explore the need for onsite sanitation systems in the Black Belt of Alabama, to include septic systems, ECRD sought to determine whether primarily Black populations in Alabama rely on septic tanks more than primarily White populations. ECRD compared the number of septic tank permit applications (to ADPH) with the percentage of the population that was Black in each county. To derive the percentage of the population that applied for septic tank permits in each county, ECRD multiplied the number of permit applications in each county by the average household size between 2008 and 2023.<sup>64</sup>

Figure 2 shows that within counties across Alabama, the number of septic tank permit applications decreased with an increasing percentage of the Black population in a county. While this analysis does not account for households with existing septic tank permits, households using straightpiping, or households that have a septic tank without a permit, it does demonstrate that as the percentage of a county's population that is Black increases, the percentage of the county's population that applied for septic tank permits between 2008 and 2023 decreased. If septic tank permit applications to ADPH are used as a proxy for reliance on decentralized wastewater treatment, this analysis suggests that the Black population in Alabama does not rely more heavily on decentralized wastewater treatment than the White population.

Figure 2

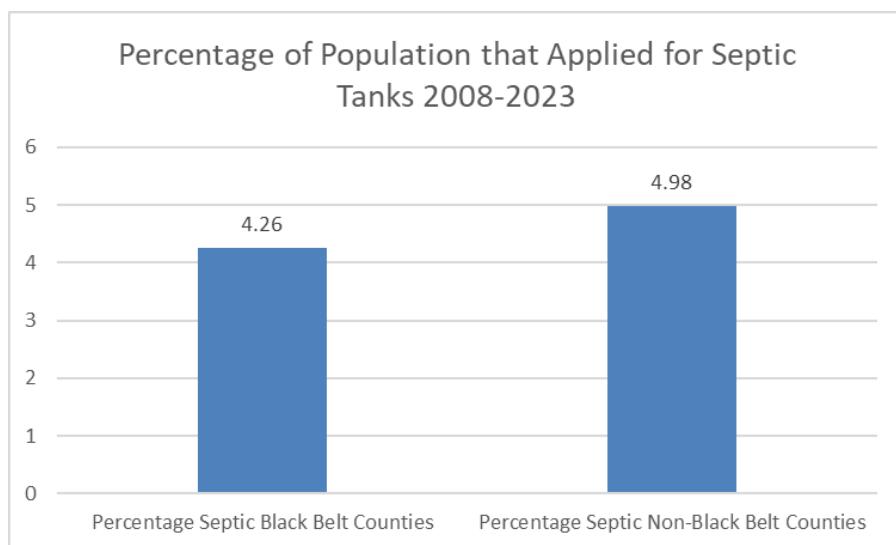


<sup>64</sup> For purposes of this analysis and the following analyses, ECRD used data from the 2022 U.S. Census Bureau American Community Survey whenever referring to a population characteristic such as average household size per county, percentage Black in a population or Black Belt population. See U.S. Census Bureau, American Community Survey, <https://www.census.gov/programs-surveys/acs.html>.

Based on available data, ECRD also compared the percentage of the population that applied for a septic tank permit within and outside of the Black Belt region. ECRD compared the number of septic tank permit applications ADPH received in and outside of the Black Belt counties from 2008 to 2023. The data from Figure 3 shows that the percentage of the population that applied was less in the Black Belt counties.

ECRD's analysis was based on publicly available information on the number of septic tank permit applications submitted to ADPH. The analysis demonstrates that the percentage of the population in the Black Belt that applied for septic tank permits between 2008 and 2023 was slightly lower than the percentage of the population outside of the Black Belt that applied for septic tank permits during the same time.<sup>65</sup> Again, if septic tank permit applications to ADPH are used as a proxy for reliance on decentralized wastewater treatment, this analysis suggests that residents of the Black Belt do not rely on decentralized wastewater treatment to a greater extent than those outside of the Black Belt. In sum, the results of ECRD's analyses of septic tank permit applications to ADPH do not support a finding of ADEM's intent to discriminate on the basis of race.

Figure 3



Using data from ADEM's IUPs and U.S. Census Data, ECRD also explored whether there was a difference between the amount of CWSRF funds distributed to Black Belt counties and non-Black Belt Counties between 2008 and 2023. The IUP data included both American Rescue Plan Act (ARPA) and Bipartisan Infrastructure Law (BIL) distributions.<sup>66</sup>

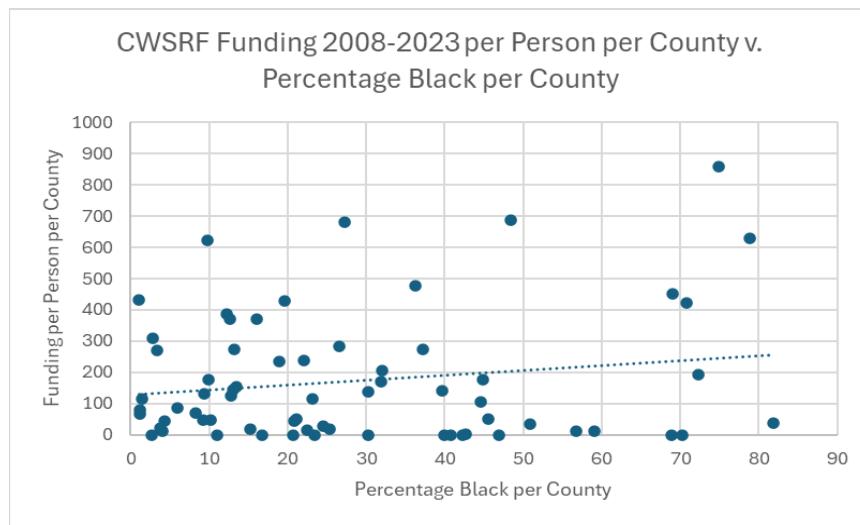
<sup>65</sup> This analysis also does not consider homes that have septic tanks where an application was not submitted or tracked by ADPH, or homes that may use straightpiping.

<sup>66</sup> In 2022, the Alabama Department of Finance provided funding from the America Rescue Plan Act to ADEM for ADEM to distribute to public water and sewer systems through ADEM's CWSRF and Drinking Water State Revolving Fund. Memorandum of Agreement Between the State of Alabama Department of Finance and the Alabama

ECRD conducted an analysis of the amount of CWSRF dollars awarded per person in each county for the years 2008 through 2023 compared to the racial composition of each county.<sup>67</sup>

Figure 4 shows that there is a slight increase in CWSRF funding dollars awarded per person across counties as the percentage of the population that is Black increases, though the data is highly variable. The increase in dollars awarded per person as the Black population increases is consistent with ADEM's representations. In its November 1, 2023 correspondence, ADEM stated that "residents of the Black Belt region benefit to an equal or greater extent compared to the rest of the state from ADEM's implementation of the Clean Water State Revolving Fund program."<sup>68</sup> In sum, this statistic does not support a finding of ADEM's intent to discriminate on the basis of race in the implementation of the CWSRF.

Figure 4



ECRD also compared the amount of CWSRF funding per person within the Black Belt counties to the CWSRF funding per person in non-Black Belt Counties. As demonstrated in Figure 5, data collected between 2008 and 2023 revealed that the CWSRF dollars awarded per person within Black Belt counties is about \$131 per person, while the amount of CWSRF dollars awarded per person in non-Black Belt counties is about \$171 per person.

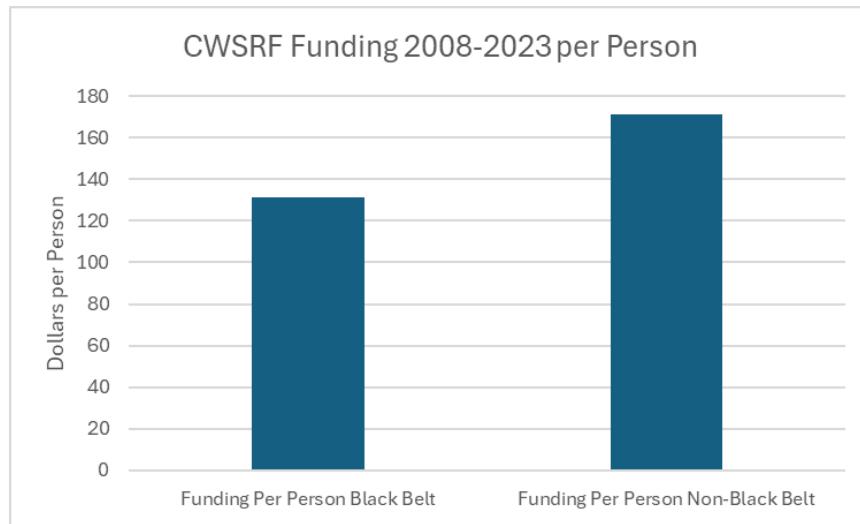
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Department of Environmental Management for the Distribution of Coronavirus State Fiscal Recovery Funds, 1-2, 9 (April 2022), <https://governor.alabama.gov/assets/2022/04/ADEM-ARPA-MOA.pdf>. The Bipartisan Infrastructure Law provided billions of dollars to states to distribute through their drinking water state revolving funds and clean water state revolving funds, including Alabama. Bipartisan Infrastructure Law SRF Funding Status, <https://www.epa.gov/water-infrastructure/bipartisan-infrastructure-law-srf-funding-status> (last visited Feb. 6, 2025). See, e.g., ADEM, CWSRF Bipartisan Infrastructure Legislation (BIL) Intended Use Plan, <https://adem.alabama.gov/programs/water/srfreports/2023CWSRFBILIUPFinal.pdf> (last visited Feb. 6, 2025).

<sup>67</sup> See ADEM, eFile, <https://app.adem.alabama.gov/eFile/> (last visited May 14, 2025).

<sup>68</sup> ADEM Response to Complaint, Nov. 1, 2023, p. 1.

Figure 5



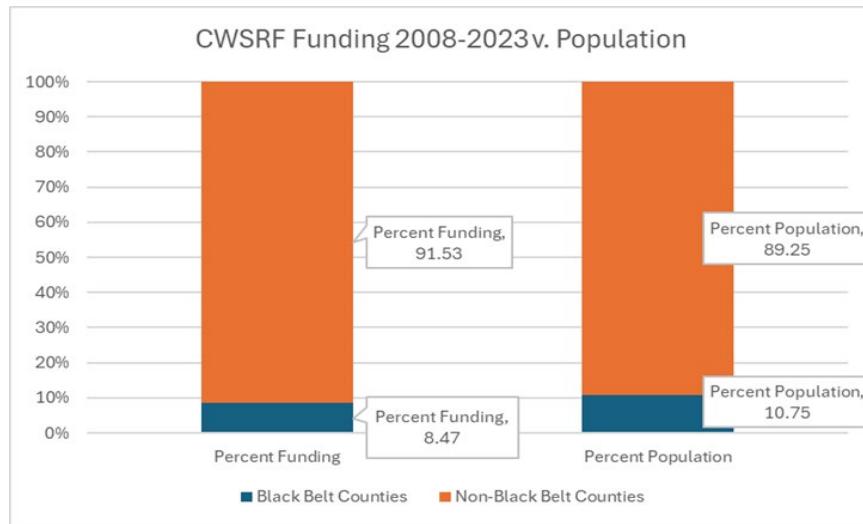
This analysis shows that between 2008 and 2023 ADEM distributed more money per capita to projects located outside of the Black Belt than inside the Black Belt. Specifically, the data reveals that ADEM distributed approximately \$40 (23%) less per person within Black Belt counties than in non-Black Belt counties. This imbalance does not account for factors such as eligible jurisdictions that do not apply for CWSRF.

Similarly, between 2008 and 2023, ADEM distributed a total of \$838,693,697 through the CWSRF, with \$71,010,735 awarded to counties in the Black Belt region.<sup>69</sup> The amount of funding awarded to the Black Belt counties through the CWSRF between 2008 and 2023 makes up about 8.47% of the total funding the CWSRF distributed, while the Black Belt population makes up about 10.75% of Alabama's population, as shown in Figure 6.<sup>70</sup> The percentage of CWSRF funding awarded to the Black Belt is smaller than the percentage of the population of Alabama living within the Black Belt. ECRD did not find any evidence to suggest that this difference in funding was the result of ADEM's intent to discriminate against the Black Belt because the population is predominantly Black.

<sup>69</sup> See ADEM, State Revolving Fund (SRF), <https://adem.alabama.gov/programs/water/srf.cnt> (last visited Feb. 6, 2025).

<sup>70</sup> See United States Census Bureau, B01003 Total Population 2022 American Community Survey 5-Year Estimates, [https://data.census.gov/table/ACSDT5Y2022.B01003?q=population&t=Population%20Total&g=040XX00US01\\_050XX00US01001,01003,01005,01007,01009,01011,01013,01015,01017,01019,01021,01023,01025,01027,01029,01031,01033,01035,01037,01039,01041,01043,01045,01047,01049,01051,01053,01055,01057,01059,01061,01063,01065,01067,01069,01071,01073,01075,01077,01079,01081,01083,01085,01087,01089,01091,01093,01095,01097,01099,01101,01103,01105,01107,01109,01111,01113,01115,01117,01119,01121,01123,01125,01127,01129,01131,01133](https://data.census.gov/table/ACSDT5Y2022.B01003?q=population&t=Population%20Total&g=040XX00US01_050XX00US01001,01003,01005,01007,01009,01011,01013,01015,01017,01019,01021,01023,01025,01027,01029,01031,01033,01035,01037,01039,01041,01043,01045,01047,01049,01051,01053,01055,01057,01059,01061,01063,01065,01067,01069,01071,01073,01075,01077,01079,01081,01083,01085,01087,01089,01091,01093,01095,01097,01099,01101,01103,01105,01107,01109,01111,01113,01115,01117,01119,01121,01123,01125,01127,01129,01131,01133) (last visited Feb. 28, 2025).

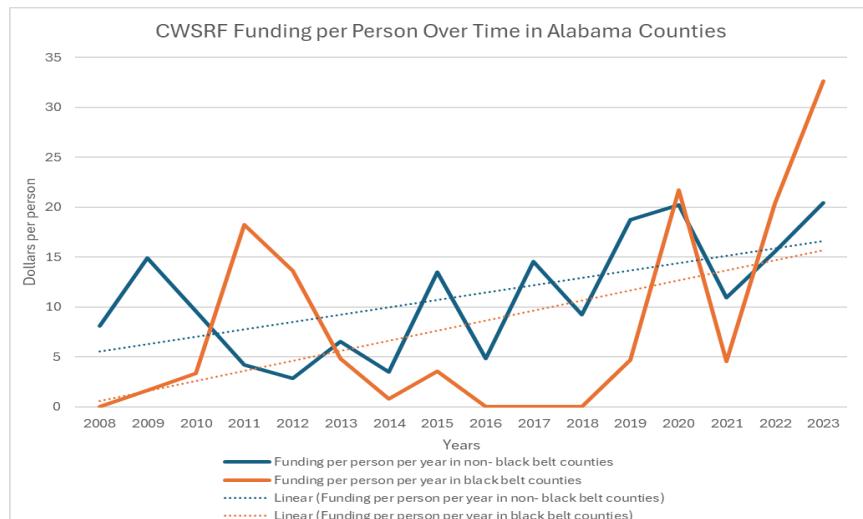
Figure 6



To determine whether there is a relationship between any changes in demographics in Alabama over time and a change in funding, ECRD compared CWSRF funding per person in Black Belt counties and non-Black Belt counties from 2008 to 2023. Figure 7 demonstrates that although the amount of funding per person per year in both Black Belt counties and non-Black Belt counties has increased, the linear difference in the amount of CWSRF funding awarded per person in Black Belt counties as compared to non-Black Belt counties has shrunk.

Moreover, although there is a large amount of variability in the funding data over time, in 2022 and 2023, the amount of funding per person in Black Belt counties is higher than in non-Black Belt counties. Given the Black population is higher in the Black Belt than outside of the Black Belt, this CWSRF funding statistic does not support Complainant's claim that ADEM intentionally discriminates against Black persons based on race.

Figure 7



ECRD's investigation found that there is statistical evidence of funding disparities with respect to CWSRF funds that favor non-Black Belt communities and others that favor the Black Belt communities. Although the record reflects that many households in the Black Belt have failing septic systems, ECRD did not find any evidence that ADEM denied CWSRF funding applications from the Black Belt, which could be used to support decentralized wastewater treatment. The Supreme Court has made clear that "impact alone is not determinative, and the Court must look to other evidence."<sup>71</sup> As discussed further below, ECRD finds insufficient evidence showing that these disparities are the result of ADEM's intent to discriminate.

ECRD examined additional information relating to whether there is a relationship between the history of racial discrimination in Alabama and ADEM's decisions about CWSRF funding in and outside of the Black Belt. "[T]he historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes."<sup>72</sup> ECRD found there was insufficient evidence to support a nexus between a history of discrimination in Alabama and ADEM's decisions regarding the distribution of CWSRF funding.

ECRD also reviewed whether funding decisions represented a departure from ADEM's normal procedures, as well as any relevant legislative or administrative history pertaining to ADEM's funding decisions that would suggest discriminatory intent.

ADEM's policies regarding the CWSRF program align with Alabama state law and federal law. According to interviews with ADEM staff, ADEM began using the original project ranking system in 1989 with the creation of the CWSRF program. The project ranking system was later modified with the passage of the American Recovery and Reinvestment Act in 2009 and the Bipartisan Infrastructure Law in 2022.<sup>73</sup> ECRD did not find any evidence suggesting that the creation of the original project ranking system nor the modifications in 2009 and 2022 were discriminatory.

ADEM staff also reported that they regularly meet to discuss feedback on the project ranking system and had not received any formal comments on the IUPs until the 2023 IUP. ADEM alleged it has been considering the comments in preparing its future project priority ranking system. The fact that no one raised concerns until 2023 and that ADEM has been working on the issues raised in 2023 further undermines the claim that ADEM intentionally discriminated.

Moreover, ECRD did not find any evidence of departures from ADEM's normal procedures in determinations to fund projects in or outside of the Black Belt. The Clean Water Act allows

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<sup>71</sup> *Arlington Heights*, 429 U.S. at 266.

<sup>72</sup> *Arlington Heights*, 429 U.S. at 267.

<sup>73</sup> See ADEM, CS010100-99 CWSRF FY2009 Intended Use Plan (IUP) 5-15-09 FINAL, p. 4-6, <https://lf.adem.alabama.gov/WebLink/DocView.aspx?id=27869716&dbid=0&cr=1>; ADEM, CWSRF BIL Intended Use Plan Fiscal Year 2022, <https://adem.alabama.gov/sites/default/files/legacyfiles/programs/water/srfreports/FY2022CWSRFBILIUP.pdf>.

states to operate their own CWSRF programs, including determining which projects are eligible for assistance.<sup>74</sup> Alabama Code Section 22-34-3 delegates this authority to ADEM.<sup>75</sup>

Further, Alabama state law enables ADEM “to provide state financial aid to public bodies for the prevention and control of water pollution.”<sup>76</sup> The evidence demonstrates that ADEM has only provided funding to public bodies and has not departed from this state law requirement. ECRD confirmed the application of this requirement during interviews with ADEM staff.

Additionally, as evidenced through ECRD’s investigation, although ADEM does not fund decentralized wastewater treatment projects (including onsite sanitation systems) often, ADEM has consistently followed their established procedures in funding projects according to the priority ranking system. To reiterate, despite ADEM’s consistency in using the same priority ranking system over time, ADEM responded to a comment received on the 2023 IUP and is initiating a change in the priority ranking system to include financial capability as a metric for developing the priority list for the CWSRF.<sup>77</sup>

Also, ECRD’s investigation did not reveal any evidence to support that ADEM’s outreach for the CWSRF program differs between Black communities and non-Black communities within and outside of the Black Belt. According to information provided by ADEM, ADEM provides notice to all permitted clean water systems about the availability of CWSRF funding in the form of postcard mailouts, standard form letters, e-mails, phone calls, and in-person meetings. During ECRD’s site visit to Alabama, ECRD staff met with several local government officials in the Black Belt who had been contacted by ADEM to solicit projects for the CWSRF.

Next, ECRD did not find any evidence that ADEM’s use of “purchasing outstanding debt obligations (bonds) from the borrower” to provide financial assistance through the CWSRF is a departure from normal procedures that would suggest discriminatory intent.<sup>78</sup> Non-public bodies are not able to obtain CWSRF assistance through this financing mechanism because they cannot issue bonds that ADEM would be able to purchase.

ADEM’s funding to public bodies only, as discussed above, is consistent with and not a departure from normal procedures; the requirement is set out in state law. Again, ECRD’s investigation found that ADEM maintained the same criteria for applicants seeking to access CWSRF funds, provided the same technical outreach throughout the state for the CWSRF program, and applied the same criteria for all projects when evaluating how to distribute

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<sup>74</sup> See 33 U.S.C. § 1383(c) (listing projects eligible for assistance under the CWSRF); see also US EPA, Clean Water State Revolving Fund, <https://www.epa.gov/cwsrf/about-clean-water-state-revolving-fundcwsrf> (last visited May 19, 2025).

<sup>75</sup> Ala. Code § 22-34-3.

<sup>76</sup> Ala. Code § 22-34-2.

<sup>77</sup> See ADEM, ADEM Response AL Rivers Alliance FY23 IUP Comments, p. 9, <https://lf.adem.alabama.gov/WebRequest/DocView.aspx?id=105450703&dbid=0>.

<sup>78</sup> ADEM, CWSRF FY2023 Intended Use Plan (IUP) Final, pg. 7, <https://lf.adem.alabama.gov/WebRequest/DocView.aspx?id=105450480&dbid=0&cr=1>.

CWSRF funding. Furthermore, in 2023 ADEM committed to using part of their CWSRF funding “to develop a program to identify needs, develop projects, apply for funding, design and implement projects, and create training specifically for malfunctioning on-site treatment systems.”<sup>79</sup>

Thus, ECRD finds insufficient evidence to demonstrate that ADEM violated Title VI and EPA’s nondiscrimination regulations. ECRD finds it is appropriate to close Claim 1.<sup>80</sup>

### **Claim 2: ADEM has and is implementing grievance procedures.**

#### **Legal Standard**

EPA’s investigation was conducted under the authority of Title VI and EPA’s nondiscrimination regulation, 40 C.F.R. Part 7. Under 40 C.F.R. § 7.90, recipients with fifteen or more employees must adopt and publish grievance procedures that ensure the prompt and fair resolution of complaints.<sup>81</sup> EPA financial assistance applicants must certify compliance with these requirements.<sup>82</sup>

#### **Factual Analysis**

At the time of ECRD’s acceptance of this complaint for investigation, ADEM did not have published grievance procedures as required by EPA’s nondiscrimination regulation.

On January 5, 2024, ECRD submitted a Request for Information (RFI) regarding ADEM’s grievance procedures, which were not listed on its website nor publicly facing otherwise. On January 30, 2024, ADEM responded that the process was “underway to adopt the grievance procedures, along with the Title VI Complaint form.”<sup>83</sup>

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<sup>79</sup> ADEM, CWSRF FY2023 Intended Use Plan (IUP) Final, p. 11, <https://lf.adem.alabama.gov/WebLink/DocView.aspx?id=105450480&dbid=0&cr=1>. ADEM reserved 2% of its CWSRF grant, a total of \$167,760, for Small Systems Technical Assistance as allowed by SRF guidelines that will specifically be used to support on-site sanitation systems. *Id.* In ADEM’s 2023 IUP, ADEM added a new long-term goal for the CWSRF, which is to “build a program that will proactively identify, reach out to, and provide assistance to rural, small, and disadvantaged communities to identify needs, develop projects, apply for funding, design and implement projects, and create training specifically for malfunctioning on-site treatment systems.” *Id.* at 5.

<sup>80</sup> ECRD encourages ADEM to continue to set aside funding to support on site sanitation in Alabama.

<sup>81</sup> 40 C.F.R. § 7.90 (each recipient with 15 or more employees shall adopt grievance procedures that assure the prompt and fair resolution of complaints). See also 40 C.F.R. §5.135(b) (“Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.”)

<sup>82</sup> See EPA General Terms and Conditions, Effective October 1, 2025, at Section 42.

([https://www.epa.gov/system/files/documents/2025-10/fy\\_2026\\_epa\\_general\\_terms\\_and\\_conditions\\_effective\\_october\\_1\\_2025\\_or\\_later.pdf](https://www.epa.gov/system/files/documents/2025-10/fy_2026_epa_general_terms_and_conditions_effective_october_1_2025_or_later.pdf)); EPA Form 4700-4, “Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance” ([https://www.epa.gov/system/files/documents/2023-03/epa\\_form\\_4700\\_4\\_2023.pdf](https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf)).

<sup>83</sup> ADEM Response to EPA Complaint No. 03R-23-R4, Jan. 30, 2024, 1.

ADEM's correspondence further added that "the rulemaking to adopt the grievance procedures will be considered at the February 9, 2024, Alabama Environmental Management Commission (AEMC) meeting."<sup>84</sup> ADEM anticipated that the effective date for the rule to be adopted would be April 2024, and that the corresponding Title VI Complaint Form would be available on ADEM's website and at each ADEM office.

On or about April 19, 2024, ECRD emailed ADEM regarding the status of its rule to adopt grievance procedures. On May 13, 2024, ADEM responded by providing a copy of its Rule 335-1-5-.01 and ADEM Form 572, which intended to set out a procedure for filing a complaint.<sup>85</sup>

ADEM's grievance procedure, as identified in Rule 335-1-5-.01, states: "Members of the public alleging discrimination by the Department in violation of Title VI of the Civil Rights Act of 1964, may submit a complaint by completing ADEM Form 572 and submitting it to the Department's Nondiscrimination Coordinator for investigation."<sup>86</sup> Similarly, ADEM's nondiscrimination webpage stated, "The Department has designated responsibility for coordination of compliance efforts and receipt of inquiries concerning nondiscrimination requirements, including grievances and discrimination complaints, as implemented by 40 C.F.R. Parts 5 and 7."

On May 17 and June 22, 2024, ECRD contacted ADEM for, among other things, a copy of ADEM's grievance procedures.<sup>87</sup> ADEM directed ECRD to its website. On or around March 2025, ADEM amended its Nondiscrimination Statement and nondiscrimination website, to include more descriptive grievance procedures.<sup>88</sup> ADEM's Title VI Complaint Form 572 now addresses ADEM's assignment of an investigator, a fair and prompt review of evidence presented, and a 180-day timeline for notifying the complainant of the Department's findings.<sup>89</sup>

## **Legal Analysis**

Upon ECRD's review of ADEM's grievance procedure, ECRD concludes that ADEM has met the minimum regulatory requirements under 40 C.F.R. § 7.90. ADEM has established that it has grievance procedures. Under ADEM's procedures, an individual can submit a complaint to ADEM by completing ADEM Form 572 and submitting the completed form to the Department's Nondiscrimination Coordinator for investigation. In addition, the Form 572 refers to ADEM's

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<sup>84</sup> ADEM Response to Complaint, Jan. 30, 2024,

<sup>85</sup> Ala. Admin. Code § 335-1-5-.01.

<sup>86</sup> <https://admincode.legislature.state.al.us/administrative-code/335-1-5-.01>

<sup>87</sup> 40 C.F.R. § 7.90.

<sup>88</sup> <https://adem.alabama.gov/nondiscrimination-statement>

<sup>89</sup> <https://adem.alabama.gov/sites/default/files/legacyfiles/DeptForms/Form572.pdf>

prohibition against retaliation and intimidation pursuant to 40 C.F.R. Parts 5 and 7.<sup>90</sup> Thus, ECRD finds that ADEM has baseline grievance procedures as required by 40 C.F.R. § 7.90.

In light of the information provided and ADEM's actions, ECRD finds it is appropriate to close Claim 2.<sup>91</sup> ECRD reaffirms its availability to provide technical assistance to ADEM to continue to improve and strengthen its nondiscrimination program, to include its notice of nondiscrimination, and encourages ADEM to consider adopting best practices as identified in ECRD's policy guidance documents.

If you have any questions about this letter, please feel free to contact Case Manager V'Hesspa Glenn by email at [glen.vhesspa@epa.gov](mailto:glen.vhesspa@epa.gov) or Case Manager Nell Cormack by email at [cormack.nell@epa.gov](mailto:cormack.nell@epa.gov).

Sincerely,

A handwritten signature in black ink that reads "Juan Carlos Hunt".

JuanCarlos M. Hunt, Director  
U.S. EPA, Office of Civil Rights and Adjudication

cc:            Jeaneanne Gettle, Deputy Regional Administrator/Deputy Civil Rights Official  
                 Suzanne Rubini, Acting Regional Counsel  
                 U.S. EPA, Region 4

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<sup>90</sup> 40 C.F.R. § 7.100.

<sup>91</sup> That said, ECRD suggests ADEM consider updating the title of and language within Rule 335-1-5-.01. As written, the grievance procedures and title of the complaint form only refer to Title VI of the Civil Rights Act of 1964, which covers race, color, and national origin. A best practice would be to title the rule more broadly, such as "Nondiscrimination Complaint Submission," and include in the rule all statutes and bases covered under EPA's implementing regulations, which also include age, disability, and sex pursuant to Title IX of the Education Amendments of 1972, as amended, 20 U.S. §§ 1681 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*, and the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 *et seq.* (1972)).