

Waiting for Environmental Justice in Lowndes County, Alabama

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GUEST EXPERTS

On September 28, 2018, residents of the predominantly Black and low-income community of Lowndes County, Alabama and the Alabama Center for Rural Enterprise (now the Center for Rural Enterprise and Environmental Justice) filed a civil rights complaint with the U.S. Department of Health and Human Services (HHS) regarding the inequitable access to basic sanitation in Lowndes County. In Lowndes County, many residents' septic tanks have failed, leading to raw sewage pooling in lawns and ditches, and contaminating local waters. Today, this complaint is still pending, sewage continues to contaminate homes, and Lowndes County residents are still waiting for justice.

Earthjustice, on behalf of the Alabama Center for Rural Enterprise and several residents, filed the 2018 complaint under Title VI of the Civil Rights Act of 1964.¹ Title VI prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin. The complaint alleges that the Alabama Department of Public Health (ADPH) and Lowndes County Health Department (LCHD), as recipients of federal funds, violated Title VI by discriminating against the Black community of Lowndes County when they failed to address the county's sanitation crisis and affirmatively misled the public about the associated public health risks.

Background

For decades, Lowndes County has suffered from inadequate sanitation conditions caused by a lack of access to functional septic tanks. More than 80% of the county's residents have no access to a municipal sewer system, and accordingly must use some type of septic system to dispose of household wastewater. Conventional septic systems are most common, but they are incompatible with impermeable soils, like those found in Lowndes County and in other parts of the Black Belt² of Alabama. Specially engineered septic tanks that function better in these soils can cost tens of thousands of dollars. Many families in Lowndes County cannot afford to install this type of septic tank. As a result, the ADPH estimated in 2011 that 40-90% of residences in

the county have no septic system or an inadequate one, and 50% of homes with septic systems are failing, although the exact figures are unknown.

Many Lowndes County families with conventional septic systems have problems with raw sewage backing up in their yards or in their homes, and families that have abandoned their failing systems or cannot afford to install systems have historically resorted to homemade solutions such as "straight pipes." Straight pipes are generally metal or PVC pipes that lead from a home's plumbing to an outdoor area. The pipes can be buried or visible, and they can discharge all or only some of a home's sewage. Lowndes County is not the only county in Alabama with a lot of straight pipes. A survey of 289 homes in neighboring Wilcox County, Alabama revealed that 93% of residences had some form of unpermitted sewage system, 60% with a visible straight pipe and 34% with a hidden straight pipe or other form of unknown, unpermitted system.

Disproportionate Access to Functional Sanitation

Access to functional, affordable septic systems is disproportionately lacking for Black residents in Lowndes County and other counties in the Black Belt. The analysis conducted for our Title VI complaint demonstrates that as the proportion of white residents increases in a Black Belt county, so does the number of new septic tank permits or septic tank repair permits issued per every thousand residents. Conversely, as the proportion of Black residents increases, the number of permits issued per every thousand residents decreases.

Human Health Impacts

The discharges of raw sewage in Lowndes County pose numerous health risks for residents. For example, these discharges include many different kinds of pathogens, including enteric viruses, giardia cysts, and cryptosporidium oocysts. The risk of exposure to these pathogens comes not only from direct exposure to contaminated soils in yards, but also from exposure to contaminated groundwater or surface water. One study estimated that failing septic tanks

cause groundwater contamination that puts approximately 340,000 low-income rural Alabamans at risk of contracting a waterborne disease. The parasites, bacteria, and viruses in raw sewage can cause a variety of health problems ranging from infections, to diarrhea, to intestinal worms.

Alarming, the raw sewage stemming from failing septic tanks and straight pipes has led to a hookworm outbreak in Lowndes County. Although hookworm was previously believed to be mostly eradicated from this country decades ago, two studies have reported hookworm in Black Belt counties in modern times. A 1993 study from Wilcox County revealed that approximately one-third of all children under the age of ten at one clinic in the 1991-1992 fiscal year had parasitic worms such as hookworms—a health condition associated with poor sanitation conditions. Then, in a highly startling peer-reviewed study published in 2017, nineteen of fifty-five participants (34.5%) tested positive for low levels of hookworms in Lowndes County. Contrary to the study's findings, on April 9, 2018, ADPH announced on its website that the 2017 hookworm study did *not* find the presence of hookworm in Lowndes County.

Impacts to Water Quality

Untreated human sewage is also a significant water pollutant, regardless of whether it comes from sewer overflows in urban areas or failing septic tanks and straight pipes in rural areas. In spite of the population density difference between urban and rural areas, rural surface waters can become impaired due to pathogens associated with raw sewage, even without any large livestock sources of manure nearby. In the southeastern United States, many rural streams and rivers are specifically listed as “impaired” under the Clean Water Act (CWA) due to elevated fecal coliform levels, often due in large part to straight pipes and failing septic systems. In Alabama's most recent CWA impaired waters list, forty-two water bodies are listed as impaired due to pathogens, and several of those listings specifically include onsite wastewater systems as the source of impairment. These water impairments impede the public's ability to use and recreate in surface waters.

ADPH's Actions

In addition to ADPH's many repeated failures to address the sanitation crisis in Lowndes County, the state agency has

affirmatively taken at least two actions that have exacerbated the sewage crisis there. First, ADPH's publication of the public notice on its website incorrectly stating that the 2017 hookworm study did not find evidence of hookworm in Lowndes County covered up this severe public health risk and allowed the parasite to spread unchecked and untreated. The 2017 hookworm study was a peer-reviewed study using the most up-to-date and sensitive methods to detect parasitic worms in stool samples, and it found the presence of hookworm in 34.5% of study participants. ADPH's rejection of the study's findings misled the public by incorrectly assuring residents there is no evidence of a hookworm outbreak in Lowndes County.

Second, ADPH previously, and discriminatorily, used the criminal justice system to attempt to force compliance with sanitation laws. Alabama state law makes it a criminal misdemeanor to “build, maintain or use an insanitary sewage collection,”³ meaning any system that is not a permitted septic tank. In addition to the potential for jail time, a violation of the insanitary conditions law is punishable by a fine of \$500. From 1999 to 2002, ADPH issued arrest warrants for at least ten Black Lowndes County residents for violating the insanitary sewage collection law. One woman even spent four days in jail for not having a septic tank. Because the high cost of specially engineered systems that function in Lowndes County soil is the primary barrier to onsite wastewater permits in this low-income county, the state's misdemeanor sewage law effectively criminalizes poverty. At a public hearing held in 2002, one resident spoke of the pain of being fingerprinted and “treated like a criminal” for his inability to afford a septic tank. Another resident said at the same public hearing in 2002 that her husband told authorities: “you can kill me, bury me, put me in jail, the situation gonna still be there when I get out.”

Title VI Complaint

In our complaint, we alleged that ADPH and LCHD discriminated against residents of Lowndes County on the basis of race by failing to clean up the raw sewage discharges throughout the county, failing to affirmatively take action to overcome the effects of their prior discriminatory behavior issuing arrest warrants for wastewater code violations, dismissing a credible outbreak of hookworm, and failing to maintain sufficient data regarding the lack of sanitation services.

The complaint requests that ADPH and LCHD be brought into compliance with Title VI by requiring them to:

- a) retract ADPH's public notice that there is no evidence of hookworm in Lowndes County;
- b) inform the residents of Lowndes County and neighboring counties about the nineteen confirmed cases of hookworm and educate the public about risks of infection and available treatment;
- c) request that the Centers for Disease Control and Prevention (CDC) or another appropriate federal agency investigate the extent of hookworm in Lowndes County, including in residences around wastewater treatment lagoons such as the Hayneville lagoon, and provide or facilitate access to medical treatment necessary to eradicate hookworm in all infected individuals in Lowndes County;
- d) request that the CDC or another appropriate federal agency conduct an independent survey of the extent of failing septic systems, straight pipes, and other forms of inadequate onsite wastewater systems without threat of fines or arrests;
- e) maintain racial and ethnic data showing the extent to which members of minority groups are beneficiaries of the onsite wastewater disposal systems program;
- f) adopt a policy of non-enforcement of the sanitation misdemeanor,⁴ and recommend to the Alabama legislature that they repeal this statute; and
- g) support any community or federal efforts to develop and implement a program that provides adequate and functional septic tanks to low-income homeowners who cannot afford adequate onsite wastewater disposal in Lowndes County, as well as other Black Belt counties containing soil that is incompatible with conventional septic systems.

Update

Unfortunately, almost three years after filing the Title VI complaint, HHS has not completed a prompt investigation, much less made a finding of discrimination or required that ADPH or LCHD take any measures to come into compliance with Title VI. As HHS drags its feet, the residents of Lowndes County continue to suffer from a lack of adequate sanitation options. Earthjustice and the Center for Rural Enterprise and Environmental Justice will

continue to urge HHS to fulfill its obligations to fully investigate this complaint and bring much needed relief for community members.

We will also continue fighting in the halls of Congress and in the public for the policy changes and funding needed to bring sanitation solutions to places like Lowndes County. Lowndes County is far from the only community of color that is burdened by failing sanitation systems and raw sewage sitting in neighborhood yards and ditches. These communities include places like Centreville, Illinois, Mount Vernon, New York, Allensworth, California, St. James Parish, Louisiana, and many more. We aim to shine a light on this hidden problem. In May of 2019, we held congressional briefings for the Senate and the House of Representatives highlighting the many faces of sanitation challenges in rural communities throughout the United States. More recently, in November of 2020, Catherine Flowers, the founder of the Center for Rural Enterprise and Environmental Justice, published a book entitled "Waste: One Woman's Fight Against America's Dirty Secret." The Center for Rural Enterprise and Environmental Justice is partnering with *The Guardian* to investigate inadequate sanitation around the country. We continue to tell these communities' stories in the hope that government officials will do their job and fight to end this environmental injustice in Lowndes County and all of the other "Lowndes Counties" throughout the country. 🦋

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The views and opinions expressed in this article belong to the authors and do not necessarily reflect the views and opinions of the Mississippi-Alabama Sea Grant Legal Program.

Endnotes

1. 42 U.S.C. § 2000d.
2. The term is based on the region's black topsoil, but sometimes also is used to refer to the presence of slave labor that worked the area in the 18th and 19th centuries.
3. Ala. Code § 22-26-1.
4. Ala. Code § 22-26-1.