EARTHJUSTICE

Submitted via email

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Re: Supplement to Civil Rights Complaint against the Florida Department of Environmental Protection and Environmental Injustices in Doral and Statewide from Incinerator Permitting

Dear Director Dorka, Acting Deputy Director Hoang, and Deputy Chief Neal:

On March 31, 2022, [redacted] submitted a civil rights complaint ("complaint") to EPA's External Civil Rights Compliance Office ("ECRCO") against the Florida Department of Environmental Protection ("DEP") for violations of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and EPA's nondiscrimination regulations at 40 CFR Part 7.

[redacted] respectfully submits this supplement to its civil rights complaint to provide additional relevant factual and legal background, clarify the scope of the complaint, and update ECRCO on relevant developments since the filing of the complaint, as follows:

I. FACTUAL AND LEGAL BACKGROUND

A. The Relationship between Environmental Justice and Civil Rights

Environmental justice and civil rights are different yet overlapping concepts. As with civil rights, duties to protect environmental justice are enshrined in various federal laws and guidance.[1] Factors that go into determining whether people's environmental justice rights have been violated can be the same factors that go into determining whether people's civil rights have been violated in an environmental context. Failure to uphold environmental justice can result in civil rights violations, and conversely, failure to uphold civil rights can result in environmental justice violations.

EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."[2]

Moreover, though EPA does not define "environmental justice community," the way advocates and the public use the phrase aligns with EPA's definition of an "overburdened community:"

> **Overburdened Community -** Minority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors.[3]

EPA's definition of an overburdened community also considers social factors and cumulative impacts, whereby increased vulnerability can be "attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions[.]"[4]

The interrelation between environmental justice and civil rights is clear. The classes of people that civil rights laws and EPA's civil rights guidance protect align squarely with the classes of people environmental justice laws and guidance aim to protect; namely, people on the basis of color, national origin, or vulnerabilities because of age, disability, or sex.

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[1] *See* Complaint Exhibit B at 17-22 (Florida Rising's comment letter to DEP on the Doral incinerator's Title V air permit renewal, discussing environmental justice laws, guidance, and authority).
[2] EPA, Environmental Justice, https://www.epa.gov/environmentaljustice (last visited May 4, 2022) (emphasis added).
[3] EPA, EJ 2020 Glossary, https://www.epa.gov/environmentaljustice/ej-2020-glossary#:~:text=Overburdened%20Community%20%2D%20Minority%2C%20low%2D,disproportionate%20environmental%20harms%20and%20risks (last visited May 5, 2022) (emphasis added).
[4] *Id*.

Additionally, whether protected classes of people comprise an environmental justice community is highly relevant to a civil rights determination in the environmental context, as an agency such as DEP's failure to consider multiple and cumulative factors – such as environmental, health, economic, and/or social conditions – in its permitting actions could be the direct or contributing cause of discriminatory harms in the civil rights context.

The context and significance of environmental justice is central to a civil rights discrimination assessment by EPA, and this centrality warrants that environmental justice principles are factored into EPA's analysis and that environmental justice protections are part of any remedy EPA fashions in response to this civil rights complaint.

B. Doral is an Environmental Justice Community

In its complaint, [redacted] provided statistics and details regarding the demographic make-up of the residents who live in the areas surrounding the Doral incinerator.[5] More specifically, the community surrounding the Doral incinerator is an environmental justice community.

Within the three-mile radius surrounding the incinerator, 93% of the population are people of color, 28% are linguistically isolated, and 36% are low-income.[6] Also within this radius are public and federally subsidized housing units.[7]

The community is overburdened by environmental hazards. There is a landfill (the [redacted]) that is located three miles away that also emits odors and pollutants;[8] the incinerator is located directly between two busy highways: approximately three miles to the east and west are the Palmetto Expressway and the Florida Turnpike; and the area is in the flight path of flights to the Miami-Dade International Airport, which is approximately 5 miles away.

Additionally, diesel sanitation trucks constantly travel to and from the incinerator with waste, emitting pollutants such as black carbon, soot, nitrogen oxides, particulate matter, carbon monoxide, and volatile organic compounds.[9] Indeed, living near a waste site could mean chronic exposure to diesel fumes, classified as a carcinogen by the National Cancer Institute.[10]

That the area surrounding the Doral incinerator is an environmental justice community is documented in EPA's own EJScreen database, showing that community is in the 90th percentile nationally for 10 out of 12 of EPA's environmental justice indices, for:

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[5] Complaint at 8-9.
[6] Complaint Exhibit D.
[7] Complaint Exhibit E.
[8] *See* Complaint Exhibit C (the City of Doral's odor complaint log, in which many of the complaints are regarding the [redacted]).
[9] Ana Isabel Baptista & Adrienne Perovich, *U.S. Municipal Solid Waste Incinerators: An Industry in Decline*, Tishman Env't and Design Ctr., 44 (2019), https://static1.squarespace.com/static/5d14dab43967cc000179f3d2/t/5d5c4bea0d59ad00012d220e/156632984.
[10] *Id*. at 45.

- particulate matter 2.5,
- ozone,
- diesel particulate matter,
- air toxics cancer risk,
- air toxics respiratory hazard index,
- traffic proximity,
- Superfund proximity,
- Risk Management Plan (RMP) facility proximity,
- Hazardous waste proximity, and
- Underground storage tanks.[11]

It is undisputed that the Doral incinerator is in an overburdened, environmental justice community, strongly warranting that ECRCO accept this complaint and require DEP to assess environmental justice and cumulative impacts in its permitting decisions, to protect this and other communities statewide.

C. Florida Lacks a Meaningful Framework to Uphold Environmental Justice

There is no meaningful environmental justice legal or policy framework in the state of Florida, and there is nothing in state law or regulation that compels DEP to consider environmental justice in its permitting actions. Additionally, the only two environmental justice entities established by the state of Florida appear to be dormant.

Though Florida's solid waste management laws exist to "protect public health, safety, and welfare,"[12] the flaws (b)(6) Privacy, (b)(7)(C) Enf. Privacy raised in its comments on the draft air permit for the Doral incinerator – especially as to environmental justice, improper emissions limitations, failure to assure compliance with emissions limits, and odor controls – demonstrate the deficiencies in DEP's permitting actions when it comes to consideration of people's health and safety.[13]

The last time Florida considered environmental justice was in the 1990s, when the state Legislature established the Florida Environmental Equity and Justice Commission in 1994 to study environmental justice in the state.[14] In 1996, the Commission was part of a study into the locations and community demographics of hazardous sites in Florida.[15] Then, in 1998, the Legislature created the Center for Environmental Equity and Justice (CEEJ) at Florida Agricultural and Mechanical University (FAMU).[16]

Since the founding of the CEEJ in 1998, there have been no other legislative or Florida agency actions substantively addressing environmental justice and equity concerns. Currently,

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[11] Complaint Exhibit D.
[12] Fla. Stat. § 403.702 (2021).
[13] *See, generally,* Complaint Exhibit B.
[14] Fla. Stat. § 760.85 (2021); 1994 Fla. Sess. Law Serv. Ch. 94-219.
[15] Richard Gragg et al., *The Location and Community Demographics of Targeted Environmental Hazardous Sites in Florida*, 12 Fla. State Univ. J. Land Use & Envtl. Law: Vol. 1 (1996) (available at https://ir.law fsu.edu/cgi/viewcontent.cgi?article=1156&context=jluel).
[16] Fla. Stat. § 760.854 (2021); 1998 Fla. Sess. Law Serv. Ch. 98-304.

the undersigned is unaware of any activities by the state's Environmental Equity and Justice Commission, aside from the above-mentioned report. Additionally, from its website, CEEJ appears to be operating as an educational center within FAMU only,[17] but the undersigned is also unaware of any activities by CEEJ.

Moreover, the notice of a recent move to the position of DEP Secretary by a previous holder of the DEP environmental justice coordinator position may be the first notice given to the public that such a position within the agency even existed.[18] Earthjustice and [redacted] are uncertain if anyone has filled the environmental justice coordinator position or what that role entails. After Earthjustice contacted EPA Region IV about the issues with the public meeting on the Doral incinerator air permit renewal, EPA advised Earthjustice to contact DEP's Northeast District Assistant Director, who is apparently serving as an environmental justice liaison to EPA.

The growing movement and presence of climate alliances, energy justice coalitions, and social justice advocacy groups throughout Florida demonstrate public demand and desire for environmental justice and accountability by government officials.[19] Furthermore, the broad media interest in this civil rights complaint and Florida Rising's activities with regard to the Doral incinerator demonstrate an interest in environmental justice in this state.[20]

The specific claims raised in this complaint provide an opportunity for EPA to enforce civil rights laws and regulations while shaping a much-needed and long-overdue environmental justice landscape in the state of Florida.

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[17] FAMU, Center for Environmental Equity and Justice, http://sustainability famu.edu/academic/research/18-program/center/72-ceej (last visited May 5, 2022).

[18] FL DEP, Office of the Secretary, https://floridadep.gov/sec (last visited May 5, 2022).

[19] [redacted] umbrella organization that includes 115 different nonprofit organizations whose mission is to build people-centered solutions for living with sea level rise, demand action from elected leaders, unify the voices of Miami residents and local organizations, build power, and to achieve climate justice. [redacted]

[20] Alex Harris, *Who wants a new $1 billion trash incinerator? Not Doral, where the old one stinks*, Miami Herald (Apr. 28, 2022), https://www miamiherald.com/news/local/environment/article260640767 html; Alex Harris, *¿Qué municipio quiere un nuevo incinerador de basura?*, El Nuevo Herald (Apr. 27, 2022), https://es-us noticias.yahoo.com/municipio-incinerador-basura-153326533.html; Telemundo 51, *Continúa debate sobre incinerador de basura en Doral*, NBC Universal Media, LLC. (Apr. 13, 2022), https://www.telemundo51.com/noticias/local/continua-debate-sobre-incinerador-de-basura-en-doral/2287681/; Telemundo 51, *Querella legal por incinerador de basura en Doral*, NBC Universal Media, LLC. (Apr. 5, 2022), https://www.telemundo51.com/noticias/local/querella-legal-por-incinerador-de-basura-en-doral/2285217/; Sean Reilly, *Fla. trash-to-energy plants spark civil rights complaint*, E&E News (Apr. 5, 2022), https://subscriber.politicopro.com/article/eenews/2022/04/05/fla-trash-to-energy-plants-spark-civil-rights-complaint-00022815; Ian Hodgson, *Burning trash 'poisoning communities' in Florida, complaint says*, Tampa Bay Times (Apr. 1, 2022), https://www.tampabay.com/news/environment/2022/04/01/burning-trash-poisoning-communities-in-florida-complaint-says/; Jenny Staletovich, *Environmental justice advocates say Florida violated neighbors' civil rights in permitting Doral incinerator*, WLRN (Mar. 31, 2022), https://www.wlrn.org/news/2022-03-31/environmental-justice-advocates-say-florida-violated-neighbors-civil-rights-in-permitting-doral-incinerator.

II. JURISDICTION AND SCOPE OF CIVIL RIGHTS COMPLAINT

ECRCO considers four factors in determining whether it has jurisdiction to accept a civil rights complaint:

i. Whether it is in writing;
ii. Whether it alleges a discriminatory act(s) that, if true, may violate EPA's nondiscrimination regulation… such as an act or policy that results in discriminatory impact on a person or class of persons on the basis of race, color, national origin (including limited English proficiency), disability, sex, or age…;
iii. Whether it identifies an applicant for, or a recipient of, EPA financial assistance as the entity that committed the alleged discriminatory act; and
iv. Whether it was received by ECRCO within 180 calendar days of the alleged discriminatory act.[21]

(b)(6) Privacy, (b)(7)(C) Enf. Privacy has met and established all four factors.

As to factor (i), (b)(6) Privacy, (b)(7)(C) Enf. Privacy submitted its complaint in writing via legal counsel at Earthjustice.

As to factor (ii), clarified further below, (b)(6) Privacy, (b)(7)(C) Enf. Privacy claims are that 1) DEP has maintained discriminatory policies and practices that violate the civil rights of residents near the Doral incinerator and residents near Florida's other incinerators, and that 2) DEP has engaged in discriminatory acts that violate the civil rights of residents near the Doral incinerator.

Discrimination can be shown by an affirmative act or policy or a failure to take an action or adopt a policy.[22] Additionally, though (b)(6) Privacy, (b)(7)(C) Enf. Privacy hopes to provide details of impacts to residents near Florida's other incinerators (aside from the one in Doral), (b)(6) Privacy, (b)(7)(C) Enf. Privacy is not required to identify individuals discriminated against when the claim of discrimination is the maintenance of a discriminatory policy.[23]

As to factor (iii), (b)(6) Privacy, (b)(7)(C) Enf. Privacy complaint is against a state agency, DEP, that receives financial assistance from EPA.[24]

As to factor (iv), ECRCO received (b)(6) Privacy, (b)(7)(C) Enf. Privacy complaint on March 31, 2022.[25] As further clarified below, DEP's discriminatory policies were in effect within 180 days of ECRCO

[21] EPA External Case Resolution Manual, Civil Rights Compliance Manual, at 5 (2021), https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf ("ECRCO Manual"); 40 CFR § 7.120(b).
[22] EPA, External Civil Rights Compliance Toolkit, at 8 (Jan. 18, 2017), https://www.epa.gov/sites/default/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf ("ECRCO Toolkit")
[23] ECRCO Manual, *supra* note 20, at 10.
[24] *See* Complaint at 5; Complaint Exhibit A.
[25] Exhibit 1, ECRCO's acknowledgement letter to (b)(6) Privacy, (b)(7)(C) Enf. Priva.

receiving [redacted] complaint, and DEP's discriminatory acts occurred within 180 days of ECRCO receiving [redacted] complaint.

A. Discriminatory Policies and Practices against Residents near the Doral Incinerator and Residents near Florida's Other Incinerators

[redacted] alleges, demonstrated by the facts and arguments in its complaint, discriminatory policies and practices by DEP that disparately impact residents near the Doral incinerator as well as near Florida's other incinerators, as follows:

1. Failure to allow for meaningful access by LEP persons to its programs and activities, thus discriminating against residents near the Doral incinerator and Florida's other incinerators on the basis of national origin.

2. Failure to allow for meaningful public involvement in its programs and activities, such as public meetings on permit actions, thus discriminating against residents near the Doral incinerator and Florida's other incinerators on the basis of age, disability, and national origin.

3. Failure to assess environmental justice, civil rights, social factors, and cumulative impacts in its permitting of incinerators statewide, thus discriminating against residents near the Doral incinerator and Florida's other incinerators on the basis of race, national origin, age, and sex.

Among other facts in the complaint, that these discriminatory policies and practices existed and were in effect in the 180-day jurisdictional period prior to March 31, 2022, are demonstrated by:

- DEP's below-stated discriminatory acts;

- DEP's plans to hold a virtual-only Teams meeting on February 24, 2022, which did not include provision of a certified Spanish-language interpreter or point-by-point language interpretation;

- DEP's accommodation policy that only references accommodation pursuant to the Americans with Disabilities Act, but does not account for accommodation in *virtual-only* activities or accommodation of LEP persons (regardless of setting);

- DEP's inconsistent use of in-person, virtual-only, and hybrid public meetings;

- DEP's statements that civil rights Executive Orders and guidance do not apply to the Air Division's Title V program because that particular program does not receive federal funding; and

- DEP's statements to Earthjustice that Earthjustice was trying to "bootstrap" their environmental justice arguments to other DEP programs that receive federal funding.

B. Discriminatory Acts against Residents near the Doral Incinerator

(b)(6) Privacy, (b)(7)(C) Enf. Privacy alleges, demonstrated by the facts and arguments in its complaint, discriminatory acts by DEP that disparately impact residents near the Doral incinerator, as follows:

1. On November 2, 2021, DEP signed and transmitted to Covanta Energy a Title V air permit renewal package that included a draft permit that failed to consider or assess environmental justice, civil rights, social factors, and/or cumulative impacts, thus discriminating against residents near the Doral incinerator on the basis of national origin, race, age, and sex.[26]

2. On November 2, 2021, DEP signed and transmitted to Covanta Energy a Title V air permit renewal package that included a Notice of Intent to issue a draft permit and a copy of the draft permit for the Doral incinerator that was in English only, thus discriminating against residents near the Doral incinerator on the basis of national origin.[27]

3. On November 19, 2021, DEP accepted as sufficient proof of publication Covanta Energy's publication in English only of the Notice of Intent to issue the Title V air permit for the Doral incinerator,[28] thus discriminating against residents near the Doral incinerator on the basis of national origin.*

4. On November 19, 2021, DEP accepted as sufficient proof of publication Covanta Energy's publication in the Daily Business Review only of the Notice of Intent to issue the Title V air permit,[29] thus discriminating against residents near the Doral incinerator on the basis of national origin, age, and disability.

5. On January 24, 2022, DEP published in English only the Notice of its public meeting regarding the Title V air permit renewal,[30] thus discriminating against residents near the Doral incinerator on the basis of national origin.

6. On January 24, 2022, DEP published the Notice of its public meeting regarding the Title V air permit renewal in the Daily Business Review only,[31] thus discriminating against residents near the Doral incinerator on the basis of national origin, age, and disability.

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[26] *See* Complaint Exhibits R and T.
[27] *Id*.
[28] *See* Exhibit 2, Covanta Energy's affidavit of publication.
[29] *Id*.
[30] *See* Complaint Exhibit U.
[31] *Id*.

7. On January 24, 2022, DEP published a Notice of its public meeting regarding the Title V air permit renewal that did not contain any provisions for language accommodation, thus discriminating against residents near the Doral incinerator on the basis of national origin.

8. On January 24, 2022, DEP published a Notice of its public meeting regarding the Title V air permit renewal that entailed a virtual-only public meeting via Microsoft Teams, thus discriminating against residents near the Doral incinerator on the basis of national origin, age, and disability.

* In the complaint at page 26, [redacted] alleged that DEP committed a discriminatory act on November 19, 2021 of "publishing in English only the Notice of Intent to issue a Title V air permit for the Doral Incinerator[.]" At claims 3 and 4, above, [redacted] is amending its original claim to reflect that the permit applicant (Covanta Energy) – not DEP – is responsible for publishing the Notice of Intent to issue the air permit and providing proof of publication to DEP.[32] Discriminatory acts attributable to DEP nevertheless exist regarding this November 19, 2021 publication, because DEP provided the public notice in English only that it required to be published and then accepted as sufficient Covanta Energy's proof of publication. Moreover, DEP's publication acts and practices are in accordance with its agency rules regarding publication of notice, which do not comply with EPA's LEP and public involvement guidance.[33]

As to claims 5 and 6, above, [redacted] would further clarify that the public meeting at issue regarding the Title V air permit renewal was a procedural part of the permit renewal notice-and-comment process and not a general request by [redacted] for a meeting with DEP. The process to which [redacted] availed itself when it requested (and was granted) a public meeting is contained in DEP's Notice of Intent to issue the air permit, as follows:

> **Comments:**… As part of his or her comments, any person may request that the Permitting Authority hold a public meeting on this permitting action. If the Permitting Authority determines there is significant interest for a public meeting, it will publish notice of the time, date, and location in the Florida Administrative Register (FAR). If a public meeting is requested within the 30-day comment period and conducted by the Permitting Authority, any oral and written comments received during the public meeting will also be considered by the Permitting Authority. If time received written comments or comments at a public meeting result in a significant change to the draft permit, the Permitting authority shall issue a revised draft permit and require, if applicable, another Public Notice.[34]

As to claims 4 and 6, [redacted] previously cited that the Daily Business Review ("DBR") is a publication in South Florida that caters to lawyers, legal professionals, and businesspeople, so they can have "the intelligence to run their firms and practices, win their

[32] *See* Complaint Exhibit T at 1, 2 (citing Fla. Admin. Code R. 62-110.106(5),(9), (11); 62-210.350 regarding notice publication requirements).
[33] *Compare id*. *with* 69 Fed. Reg. 35602 (2004); 71 Fed. Reg. 14207 (2006).
[34] Complaint Exhibit T at 3-4.

cases, close business deals and connect with colleagues and clients in the South Florida market."[35]

Additional information relevant to DBR being an inaccessible and discriminatory forum to publish public notices are that DBR's publication 1) is in English only, and 2) ALM, the parent company of DBR, caters almost exclusively to legal professionals. As to the second point, the fact that DBR is one of several legal-focused publications under the "Law.com" umbrella, accessed via Law.com, states as much.[36] Furthermore, other Law.com publications include CorporateCounsel, Legaltech news, the American Lawyer, the National Law Journal, Supreme Court Brief, the AmLaw Litigation Daily, and the Legal Intelligencer.[37] ALM's Law.com marketing therefore naturally centers around understanding and targeting legal professionals,[38] rather than being an accessible publication for all members of the South Florida community and the Doral community specifically.

ALM's Law.com products, including DBR, also heavily focus on online engagement. For example, DBR's two subscription options, which both cost $29.99 a month, are either for an online and print package, or online only.[39] Furthermore, ALM's Law.com marketing materials emphasize online engagement and access to its legal publications, with statistics for how many website visitors, mobile website visitors, monthly website page views, and monthly website registrations there are, touting that "[o]ur users are consuming more content than ever while working during the pandemic era."[40]

(b)(6) Privacy, (b)(7)(C) Enf. Privacy arguments in its complaint about DEP's policy and practice of holding virtual-only events and not accommodating LEP persons apply equally to DEP's discriminatory acts and practices of publishing public notices in the Daily Business Review and allowing permit applicants to do the same.

DEP's failure to act in accordance with EPA's public involvement guidance and its publication of the public meeting notice in English only in the Daily Business Review has had ongoing impacts affecting the informational and public participation rights of residents near the Doral incinerator:

(b)(6) Privacy, (b)(7)(C) Enf. Privacy has reported 1) general confusion and lack of information among some Doral residents as to nature of the public meeting, with some believing it is (b)(6) Privacy, (b)(7)(C) Enf. Privacy meeting on the incinerator, rather than DEP's public meeting as part of a notice-and-comment process for an air permit renewal; 2) general confusion and lack of information about why the public meeting was postponed (which was due to an error in the Teams link in DEP's published notice); and 3) lack of information about the status of the rescheduled public meeting.

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[35] Complaint at 16; ALM Global, Daily Business Review, From the Editor, https://www.alm.com/brands/daily-business-review/ (last visited March 27, 2022) (ALM is a media company that owns the Daily Business Review; see also https://www.law.com/dailybusinessreview).
[36] DBR's website URL is: https://www.law.com/dailybusinessreview/.
[37] Exhibit 4, ALM's Law.com Media Kit, at 6.
[38] *See, e.g., id*. at 7, 9.
[39] Exhibit 5, DBR subscription information.
[40] Exhibit 4 at 8, 19.

Moreover, [redacted] and some members of the public have been questioning and lack information from DEP regarding the status of the Doral incinerator's Title V air permit, now that the April 4, 2022, permit expiration date[41] has passed, while the permit renewal process remains in limbo with the yet to be rescheduled public meeting.

III. LESS DISCRIMINATORY ALTERNATIVES

In its complaint, [redacted] listed less discriminatory alternatives available to DEP.[42] Though not exhaustive, [redacted] would add the following less discriminatory alternatives to that list:

1. Expressly consider in permitting actions various environmental, health, economic, and social conditions of populations that could be impacted, conducting a full and fair assessment of the cumulative impacts of these multiple factors and exposure to multiple pollutants and sources of pollution.

2. Expressly consider in permitting actions the health impacts of chronic, low-level exposures to pollutants in permitting actions.

3. Implement a policy that any decision to renew a permit is conditioned on mitigating adverse impacts to communities.

4. Implement guidelines for when a permit application will be denied due to adverse impacts to communities.

5. Follow EPA's guidance document, "Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)," at 71 Fed. Reg. 14207-14217.

6. Create a Public Involvement Plan ("PIP") with environmental justice groups and communities to facilitate meaningful public participation in agency decision-making.[43]

7. Provide training to DEP staff on how to effectively communicate with and provide information to various populations and groups of Floridians.[44]

8. Require facilities to hold pre-application meetings with the public prior to submitting its application to DEP, so that facilities can be knowledgeable about and responsive to community concerns and share information with the public.[45]

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[41] Exhibit 3 at 3, Final Title V Air Operation Permit for the Doral Incinerator, effective April 4, 2017.
[42] Complaint at 33-35.
[43] 71 Fed. Reg. 14211.
[44] *Id*. at 14211-12.
[45] *Id*. at 14212.

9. Solicit community input in agency decision-making through several "stakeholder" meetings at various points in a decision-making process.[46]

10. Design and conduct trainings for the public on DEP's permitting processes and basic technical issues relevant to permitting decisions.[47]

11. Create information packets with fact sheets and useful information regarding applicable environmental regulations, key points in a decision-making process, and ways for the public to be involved that are disseminated widely to communities in all relevant languages.[48]

12. Provide technical assistance to the public, particularly under-resourced communities, to assist with participation in the agency's decision-making processes, and/or award grants to institutions such as local colleges or universities to provide technical assistance to community members.[49]

IV. RELIEF REQUESTED

In addition to the relief requested in the complaint, (b)(6) Privacy, (b)(7)(C) Enf. Privacy would specifically, at a minimum, request that EPA order DEP to:

1. Create a Public Involvement Plan in accordance with EPA's guidance document, "Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)," at 71 Fed. Reg. 14207-14217.

2. Expressly assess and consider in permitting actions a community's multiple sources of exposure to pollution and cumulative impacts from various environmental, health, economic, and social conditions.

3. Expressly consider in permitting actions health impacts from chronic, low-level exposure to pollutants.

4. Implement policies and guidelines for when a permitting action will be denied due to impacts on communities and when a permitting action will be granted but conditioned on mitigating environmental and health harms.

[46] *Id*. at 14212-13.
[47] *Id*.
[48] *Id*. at 14213.
[49] *Id*.

V. DEVELOPMENTS SINCE THE FILING OF THE COMPLAINT

A. Communication from DEP regarding Postponed Public Meeting

Since [redacted] filed its complaint on March 31, 2022, DEP sent a communication to Earthjustice, on April 7, 2022, that it was in the process of rescheduling and organizing the public meeting on the air permit for the Doral Incinerator, "to solicit input from the affected community in accordance with [DEP's] routine meeting structure and EPA's guidance for accommodation of Limited English Proficient constituents."[50] Because [redacted] filed a civil rights complaint against DEP, which included claims based on how DEP planned to conduct the public meeting, DEP advised it believed it would be best to address the issues with the public meeting through the civil rights complaint process.[51]

Because DEP stated that it believes it is best to address [redacted] issues with the public meeting through the civil rights complaint process, DEP has conveyed that it will not finalize the public meeting details or hold the public meeting until after EPA has accepted this complaint and can facilitate communications between DEP and [redacted] about the public meeting.

B. New Permitting Action involving the Doral Incinerator

Separately, on April 22, 2022, DEP signed a permit package for an air construction permit for the Doral Incinerator, which included a Notice of Intent to issue a draft permit in English only[52] authorizing the "installation of three non-emergency diesel engines for ferrous materials and aluminum recycling and tire shredding operations" at the incinerator.[53] This proposed permitting action would add three new emissions units to the facility.

DEP failed to consider or assess environmental justice, civil rights, social factors, and/or cumulative impacts in the draft permit.

On April 29, 2022, Covanta Energy then published the DEP-provided English only Notice of Intent to issue the air permit in the Daily Business Review.[54]

Covanta Energy submitted the application for this air permit on January 21, 2022; however, as of this date, it has not been uploaded to DEP's databases for the public to search for and access it. Earthjustice obtained a copy of the permit application file after specifically requesting it from DEP.

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[50] Exhibit 6, Email from DEP to Earthjustice dated April 7, 2022.
[51] *Id*.
[52] Exhibit 7, Written Notice of Intent to Issue Air Permit.
[53] Exhibit 8, Draft Permit.
[54] Exhibit 9, Published Notice of Intent to Issue Air Permit.

C. Permit Statuses of Florida's Other Incinerators

Earthjustice has also researched the status of the Clean Air Act Title V permits for Florida's other 9 incinerators, and those permits will be up for renewal in 2025 and 2026.[55] Separately, Pasco County applied earlier this year for a site certification for the Pasco County Resource Recovery Facility, to expand the incinerator.[56] The application contains a brief and conclusory discussion of environmental justice that determines that the "environmental, health, and occupational safety impacts would be minimal" and that "there would be no significant adverse health impacts on members of the public," by broadly relying on other environmental analyses within the application.[57]

Given the timelines and permitting activities for Florida's other incinerators, and the fact that the public's opportunity to participate in a public meeting now appears to depend on this civil rights process, it is critical for Doral residents and members of the public statewide that ECRCO accept this complaint, so that protected classes of people can have meaningful access to DEP's programs and activities and so ECRCO can ensure that DEP complies with civil rights laws in its DEP's permitting actions.

Should ECRCO accept this complaint, [redacted] looks forward to working with ECRCO to provide relevant information and input to assist in its investigation and in fashioning remedies to ensure DEP's operations are accessible, equitable, and promote environmental justice in accordance with civil rights laws and guidance.

Sincerely,

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[55] Exhibit 10, Spreadsheet listing Title V air permit expiration dates and renewal application due dates, compiled by Earthjustice by searching permits in DEP's Oculus database.
[56] AEM, Supplemental Application for Power Plant Site Certification, Pasco County Resource Recovery Facility Expansion, http://publicfiles.dep.state fl.us/Siting/Outgoing/Pasco_Cty_RRF/Unit_4/Application/Original_Feb20222/Pasco_RRF_PPSA_Vol1_FINAL_FEB2022.pdf (Feb. 4, 2022).
[57] *See id*. at 2-8 (.pdf page 42).

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