



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights

Office of External Civil Rights Compliance

June 12, 2023

In Reply Refer to:

EPA Complaint No: 05RNO-22-R4

Shawn Hamilton, Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard M.S. 49
Tallahassee, FL 32399
Shawn.Hamilton@FloridaDEP.gov

RE: ACCEPTANCE OF ADMINISTRATIVE COMPLAINT

Dear Secretary Hamilton:

This letter is regarding U.S. Environmental Protection Agency (EPA) Complaint No. 05RNO-22-R4 that was filed with the Office of External Civil Rights Compliance (OECRC)¹ on March 31, 2022,² against the Florida Department of Environmental Protection (DEP), alleging that DEP discriminates against residents of color; persons with limited English proficiency; and other vulnerable populations surrounding Florida's 10 incinerators, on the basis of race, color, and national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* (Title VI), and EPA's nondiscrimination regulation at 40 C.F.R. Part 7.³

Specifically, the Complaint alleges that DEP's method of administering its solid waste incinerator air permitting program, including its issuance of Title V of the Clean Air Act permits for the Hillsborough Incinerator, Tampa, FL (Permit Renewal No. 0570261-022-AV); McKay Incinerator, Tampa, FL (Permit Renewal No. 0570127-008-AV); and the review of the renewal application of the Doral Incinerator in Doral, Florida (Permit Renewal No. 0250348-013-AV [proposed]), subjects Black and Latinx residents to health, environmental and quality of life harms, on the basis of race, color, and/or national origin. In addition, the complaint alleges DEP failed to provide persons with limited English proficiency in the predominantly Latinx community of Doral, the necessary language services to meaningfully access the Doral Incinerator permitting process during permit meetings and hearings and failed to provide persons with disabilities and elderly persons meaningful access to that process. Finally, the Complaint alleges that, in general,

¹ On September 24, 2022, EPA announced the establishment of the Office of Environmental Justice and External Civil Rights (OEJECR). The new Office includes the External Civil Rights Compliance Office, which was renamed the Office of External Civil Rights Compliance (OECRC). OECRC continues to enforce and ensure compliance with federal civil rights laws, which prohibit discrimination by applicants for and recipients of EPA financial assistance. OECRC accomplishes this in accordance with the procedures described in the Case Resolution Manual.

² OECRC subsequently received supplemental information on May 6, 2022 and March 10, 2023 that included additional facts and legal background in support of the Complainants' allegations.

³ The Complaint also raises concerns about the effects of pollution from solid waste incinerators on the health of pregnant women and the unborn, young children, the elderly, and people with disabilities. Although OECRC is not opening an investigation related to sex, age, or disability discrimination, OECRC's investigation will consider particular vulnerabilities and characteristics of the populations potentially affected by these permitting actions, including any associated specifically with pregnant women, young children, people who are aging, and people with disabilities.

DEP fails to ensure meaningful access to its programs and activities, including its public participation program, for persons with limited English proficiency, persons with disabilities, and elderly persons.

Pursuant to EPA's nondiscrimination regulation, EPA's OECRC conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, OECRC is accepting EPA Complaint No. 05RNO-22-R4 for investigation because the Complaint meets OECRC's four jurisdictional requirements. First, the Complaint is in writing. Second, it alleges discriminatory acts occurred in violation of EPA's nondiscrimination regulation. Third, the Complaint was filed within 180 days of the allegedly discriminatory acts. Finally, DEP is a recipient of EPA financial assistance.

Accordingly, OECRC will investigate the following issues:

1. Whether DEP's administration of its air permitting program for municipal solid waste incinerators, including the issuance of the Title V permits for the Hillsborough Incinerator, Tampa, FL (Permit Renewal No. 0570261-022-AV) and McKay Incinerator, Tampa, FL (Permit Renewal No. 0570127-008-AV),⁴ subjects persons to discrimination on the basis of race, color, and national origin,⁵ in violation of Title VI of the Civil Rights Acts of 1964, and EPA's implementing regulation at 40 C.F.R Part 7;
2. Whether DEP discriminated on the basis of national origin, disability, and age, in violation 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 implementing regulation at 40 C.F.R Part 7, by failing to provide meaningful access to the public participation process for the permit renewal related to the Doral Incinerator at issue in DEP's November 19, 2021, Notice of Intent to Issue; and
3. Whether DEP has in place and is appropriately implementing the procedural safeguards required under 40 C.F.R Parts 5 and 7 that all recipients of EPA financial assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to DEP's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and

⁴ OECRC understands that Permit No. 0250348-013-AV (proposed), for the Miami-Dade County Resources Recovery Facility in Doral, FL, has not been finalized at this time and that the terms and conditions of the permit may change. As the investigation proceeds, OECRC will seek updates from DEP and complainants on the status of the permitting process for the Doral Incinerator.

⁵ *See* 40 C.F.R. §§ 7.30 and 7.35.

whether DEP has a public participation policy and process that is consistent with Title VI and other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.⁶

The initiation of an investigation of the issues above is not a decision on the merits. OECRC is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the Complainants, and determine next steps utilizing OECRC's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and OECRC's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at

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

DEP may send a written submission to OECRC responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying you of the acceptance of EPA Complaint No. 05RNO-22-R4. *See* 40 C.F.R. § 7.120(d)(1) (ii-iii).

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact you and the Complainants within 10 days of the date of this letter to provide information about OECRC's complaint process, and to offer and discuss the alternative dispute resolution (ADR)⁷ and informal resolution agreement (IRA)⁸ processes as potential options for resolution of the issues which OECRC has accepted for investigation. If DEP (and the Complainants with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend the requirement to issue preliminary findings within 180 days. In the event that either of these potential resolution processes fails to result in an agreement, OECRC will notify you as well as the Complainants that OECRC has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁹

⁶ *See* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § § 7.30, 7.35. *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 FR 35602 (June 25, 2004) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 CFR 14207 (March 21, 2006) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients, at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at [Disability Nondiscrimination Plan Sample \(2020\)\(PDF\)](#).

⁷ EPA OECRC's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, OECRC Case Resolution Manual, Section 3.3, at 24 (2021) (available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

⁸ Informal Resolution occurs between OECRC and the recipient. *See* Case Resolution Manual, Section 3.1; https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf; p. 22.

⁹ *See* 40 C.F.R. § 7.115(c).

Please be advised that a copy of the Complaint is being released to you, consistent with 40 C.F.R. § 7.120(e). OECRC is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.¹⁰

The EPA's regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. See 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OECRC.

If you have questions about this letter, please feel free to contact me at (202) 809-3297, by email at hoang.anhthu@epa.gov, or Suong Vong, Case Manager, at (202) 564-0392, by email at vong.suong@epa.gov.

Sincerely,

Anhthu Hoang
Acting Director
Office of External Civil Rights Compliance
Office of Environmental Justice and External Civil Rights

Enclosure Provided: Via Email, Redacted Copy of Complaint

cc Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA

Jeaneanne Gettle
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 4

Leif Palmer
Regional Counsel

Jessica Kramer
Deputy Secretary for Regulatory Programs
Florida DEP
Jessica.Kramer@FloridaDEP.gov

¹⁰ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

Justin Wolfe
General Counsel, Office of General Counsel
Florida DEP
Justin.Wolfe@FloridaDEP.gov

Jeff Koerner
Director, Division of Air Resource Management
Florida DEP
Jeff.Koerner@FloridaDEP.gov