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May 29, 2022

SUBMITTED VIA E-MAIL

**ADDENDUM—Re: Comments Submitted on Behalf of Florida Rising on Draft Air Construction Permit No. 0250348-014-AC, Regarding Authorization of Non-Emergency Diesel Engines for the Miami-Dade County Resources Recovery Facility**

Dear Mr. Lauder:

On May 27, 2022, Earthjustice, on behalf of Florida Rising, submitted comments regarding Draft Air Construction Permit No. 0250348-014-AC (“draft permit” or “draft air construction permit”) for the Miami-Dade County Resources Recovery Facility<sup>1</sup> (also referred to as the “Covanta Incinerator,” “facility,” or “source”). We now write to submit an addendum to those comments, with the following additional points in support of our request that the Department of Environmental Protection (“DEP”) deny the draft air construction permit and issue a stop work order immediately.

**I. ENVIRONMENTAL JUSTICE CONSIDERATIONS**

Three days ago, on May 26, 2022, the Environmental Protection Agency (“EPA”) released its environmental justice legal manual, “EPA Legal Tools to Advance Environmental Justice” (“environmental justice manual” or “manual”), an update to its 2014 guidance document.<sup>2</sup> The environmental justice manual is in furtherance of President Biden’s 2021 Executive Order on Tackling the Climate Crisis at Home and Abroad, which prioritizes environmental justice and assisting overburdened communities.<sup>3</sup>

**a. Civil Rights in Federal Assistance Programs**

The manual dedicates a chapter to civil rights in federal assistance programs. It makes clear that a recipient of EPA funding, such as DEP, has “an affirmative, ongoing obligation to

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<sup>1</sup> The Miami-Dade County Resources Recovery Facility is located at 6990 NW 97th Avenue, Doral, Florida, 33178.

<sup>2</sup> See Enclosure, “EPA Legal Tools to Advance Environmental Justice,” May 26, 2022 (“Environmental Justice Manual”).

<sup>3</sup> Pamela King, *EPA rolls out new EJ legal toolkit*, E&E News (May 26, 2022), <https://www.eenews.net/articles/epa-rolls-out-new-ej-legal-toolkit/>.

comply with federal civil rights laws.<sup>4</sup> This duty extends beyond just a negative duty to refrain from discriminating, to mean affirmatively ensuring nondiscrimination in the recipient’s programs and activities.<sup>5</sup> These laws are “independent obligations” on recipients, that apply “even where all applicable environmental requirements are met.”<sup>6</sup> Recipients are on notice of these requirements because they are included as a term and condition of receiving EPA financial assistance.<sup>7</sup>

Recipients of EPA assistance must “ensure that their actions and inactions do not have unjustified adverse disparate impacts, taking into account cumulative impacts[.]”<sup>8</sup> These civil rights laws also require “meaningful participation and equal access to [] decision-making processes.”<sup>9</sup> A recipient need not intentionally discriminate for disparate impacts or effects to be discriminatory in violation of EPA’s nondiscrimination regulations.<sup>10</sup>

Because all of DEP’s operations are covered under federal civil rights laws,<sup>11</sup> it therefore follows that DEP’s affirmative duty to uphold these laws is an inextricable and necessary part of any of its permitting actions, including the proposed action here. By violating the civil rights of those who would be impacted by the Covanta Incinerator, as discussed in Florida Rising’s May 27, 2022, comment letter, DEP has not even managed to refrain from discriminating, much less affirmatively comply with civil rights laws.

In a proposed permitting action, DEP must affirmatively comply with civil rights laws both procedurally, by ensuring meaningful public access and participation, and substantively, by ensuring an action would not adversely, disparately impact a protected class of persons. To substantively ensure compliance with civil rights laws, DEP must consider cumulative impacts. If DEP cannot affirmatively ensure compliance with civil rights laws in this proposed permitting action, it should deny Covanta’s application.

#### **b. Solid Waste Incinerators**

EPA devotes a significant portion of its environmental justice manual to Clean Air Act (“CAA”) programs. Whether these programs are implemented by states or tribes, the CAA

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<sup>4</sup> Environmental Justice Manual at 161 (emphasis added).

<sup>5</sup> *Id.* at 162.

<sup>6</sup> *Id.* at 8, 161 (emphasis added).

<sup>7</sup> *Id.* at 161.

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 164, 166.

<sup>11</sup> 42 U.S.C. § 2000d-4a(1)(A) (for recipients of federal financial assistance, defining a “program or activity” covered by Title VI of the Civil Rights Act to mean “all of the operations” of the agency); 42 U.S.C. § 6107 (same definition in the Age Discrimination Act); 29 U.S.C. § 794(b)(1)(A) (same definition in Section 504 of the Rehabilitation Act); 40 CFR § 7.25 (EPA’s nondiscrimination regulations, which define program or activity and program to mean “all of the operations of [the] entity... any part of which is extended Federal financial assistance”); Environmental Justice Manual at 162 (duty to comply with civil rights laws applies to “every aspect” of the recipient’s programs and activities).

provides various authority to uphold environmental justice.<sup>12</sup> The manual's CAA chapter also focuses directly on solid waste incinerators, discussing CAA requirements to minimize, "to the maximum extent practicable," potential risks to public health or the environment in siting new incinerators.<sup>13</sup> The draft permit here involves the permitting of "new" emissions units; DEP should likewise require that risks to public health or the environment are mitigated to the maximum extent possible as a condition of this permit.

## II. VOLATILE ORGANIC COMPOUNDS EMISSIONS

The permit applicant's emission estimate for volatile organic compounds ("VOCs") from the three engines are flawed and must be redone. Moreover, DEP failed to include emission limits for VOCs in the draft permit. VOCs are one of the regulated pollutants that must be included in the permit application and regulated by DEP at this source. The permit applicant's methods for estimating VOCs emissions from all three engines are unacceptable, for the reasons stated below. Furthermore, DEP fails to set emission limitations and require monitoring, recordkeeping, and reporting for VOCs.

For example, for EU 015, the permit applicant indicated the VOC emissions were estimated to be 5.88 tons/year.<sup>14</sup> This figure was based on an EPA-42 emission factor. EPA has made clear that use of the AP-42 factors on a source-specific manner "is not recommended by EPA."<sup>15</sup> This is "[b]ecause emission factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor and the other half will have emission rates less than the factor."<sup>16</sup> Moreover, EPA gave the emission factor the applicant relied on to derive the emission estimate of 5.88 tons/year a "D" rating, which, as seen in the below figure from EPA's AP-42 Manual, has an extremely high uncertainty.<sup>17</sup>

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<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 12 (citing 42 U.S.C. § 129(a)(3)).

<sup>14</sup> Permit Application at 29.

<sup>15</sup> EPA, AP-42: Compilation of Emission Factors, Introduction to AP-42, Volume 1, Fifth Edition (Jan. 1995), at 2, <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors> ("EPA AP-42").

<sup>16</sup> EPA AP-42 at 2.

<sup>17</sup> EPA AP-42 at 4.

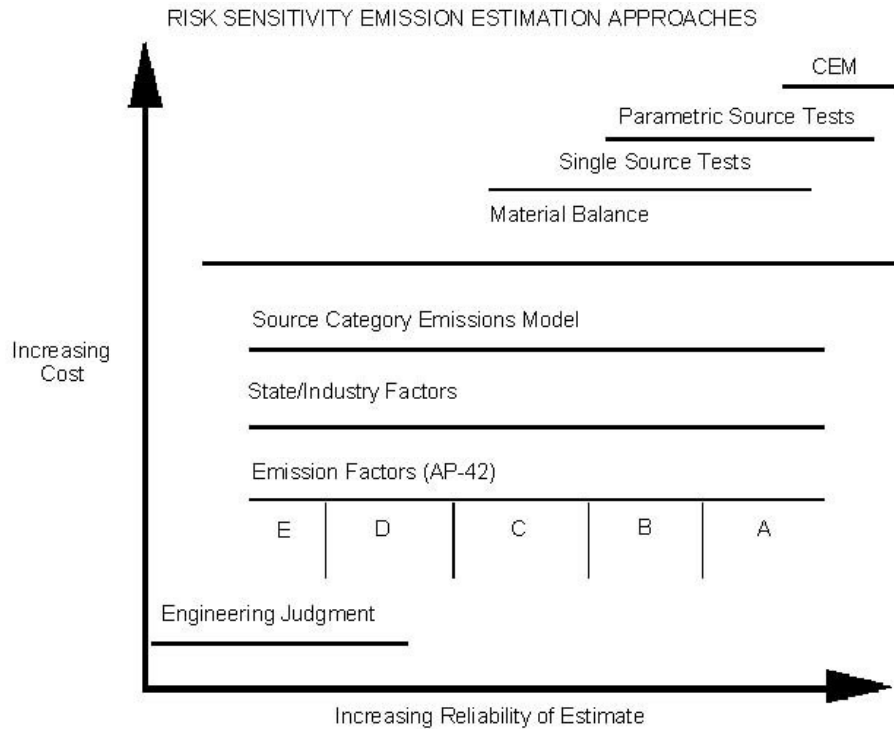


Figure 1. Approach to emission estimation.

Notably, the permit applicant used the same emission factor and inputs for EU 016, which resulted in 5.88 ton/year VOCs for the 173 HP Caterpillar C6.6 Acert Diesel Engine (RICE),<sup>18</sup> which is not a new Tier 4 engine, but rather a rebuilt Tier 3 engine.

For EU 017, the permit applicant indicated it planned to install a 540 HP Caterpillar C154F PowerPack (Tier 4) to power a Metso M&J 400M Tire Shredder.<sup>19</sup> The permit applicant used the same AP-42 emission factor for this engine, just different inputs, and estimated VOCs at 3.2 tons/year.

DEP must require that the permit applicant obtain more accurate test data from the manufacturer of the engines for the VOC emissions and re-notice the permit.

Due to impacts to the adjacent environmental justice community from the VOC emissions, DEP must also include VOC emission limits for these engines, along with monitoring, recordkeeping, and reporting requirements.

Furthermore, as discussed elsewhere in these comments, DEP's PSD applicability analysis is flawed because it focused solely on the emissions from the engines and failed to take into considered emission changes across the source. DEP's applicability analysis is further flawed because of its misplaced reliance on AP-42 emission factors to derive figures in Table 4 of its technical evaluation.

<sup>18</sup> Permit Application at 3.

<sup>19</sup> Permit Application at 3.

## CONCLUSION

Florida Rising has requested in its comments on this draft permit that DEP— independently, or in conjunction with EPA—issue a stop work order to Covanta for its metal shredding, tire shredding, and related operations.

Given the significant public interest in this incinerator,<sup>20</sup> and in keeping with EPA’s civil rights guidance to involve the public early and often in permitting processes,<sup>21</sup> Florida Rising further requests a public meeting on this draft permit, so that residents who would or could be impacted by the proposed permit’s activities have an opportunity to hear from DEP, have their questions answered, and provide additional comments.

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<sup>20</sup> Will Peischel, *Is It Time to Stop Burning Our Garbage?*, Bloomberg (May 23, 2022), [https://www.bloomberg.com/news/articles/2022-05-23/environmental-concerns-grow-over-incinerators-in-us?cmpid=BBD052322\\_CITYLAB&utm\\_medium=email&utm\\_source=newsletter&utm\\_term=20523&utm\\_campaign=citylabdaily](https://www.bloomberg.com/news/articles/2022-05-23/environmental-concerns-grow-over-incinerators-in-us?cmpid=BBD052322_CITYLAB&utm_medium=email&utm_source=newsletter&utm_term=20523&utm_campaign=citylabdaily); 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, *Querrela legal por incinerador de basura en Doral*, NBC Universal Media, LLC. (Apr. 5, 2022), <https://www.telemundo51.com/noticias/local/querrela-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>; Bruce Ritchie, *Group files civil rights complaint over Florida incinerator permitting*, Politico (Mar. 31, 2022), <https://subscriber.politicopro.com/article/2022/03/group-files-civil-rights-complaint-over-florida-incinerator-permitting-00022156?source=email>.

<sup>21</sup> 71 Fed. Reg. 14207 (March 21, 2006) (“Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)”).

Sincerely,

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Enclosure:

EPA Legal Tools to Advance Environmental Justice (May 26, 2022)

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