FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

JENNIFER CARROLL
LT. GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

March 8, 2013

Mr. Rafael DeLeon, Esq.
Director, Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. DeLeon:

In response to your January 25, 2013 email, the Florida Department of Environmental Protection (DEP) has reviewed the draft policy papers regarding the U.S. Environmental Protection Agency's (EPA) enforcement of Title VI of the Civil Rights Act of 1964 and offers the following comments:

1. **Statutory authority**. Under the proposed guidance, in addition to health-based thresholds, EPA will consider "a number of factors, as appropriate," including those quoted above, to determine whether a permitting decision has resulted in an adverse disparate impact. DEP, however, may not have statutory authority to consider these factors during its permitting review.

2. **Binding arbitration**. Under the proposed guidance, EPA will offer complainants and recipients to engage in Alternative Dispute Resolution (ADR) in appropriate cases. It is unclear under the guidance who will choose the method of ADR. If binding arbitration is chosen, DEP may not have statutory authority to comply with a resulting resolution.

3. **Alternative Dispute Resolution**. Under the proposed guidance, EPA may offer complainants and recipients an opportunity to engage in ADR before EPA has initiated investigation of a complaint. This practice may allow DEP to come to a resolution early on in the process.

4. **Greater number of challenges**. Removing the rebuttable presumption may invite more Title VI challenges on the basis of adverse disparate impact.

If you have any questions or would like to discuss these comments further, please feel free to contact Ms. Hillary Powell, Senior Attorney with DEP's Office of General Counsel, at 850-245-2248.

Sincerely,

Jeff Littlejohn, P.E.
Deputy Secretary for Regulatory Programs

cc: Hillary Powell, Office of General Counsel, DEP