February 12, 2010
Honorable Helena Wooden-Aguilar
Acting Assistant Director
External Compliance and Complaint Program
Office of Civil Rights
Environmental Protection Agency *via fax to 202-233-0630*
Washington, D.C. 20460

RE: Amendment to January 19, 2009 Environmental Justice Complaint Against Florida Department of Environmental Protection and City of St. Augustine, Florida, EPA OCR Case No. 01R-09-R4

Dear Ms. Aguilar:

We write you on the 201st anniversary of Abraham Lincoln's birth to amend our timely January 19, 2009 OCR complaint to include the latest overt acts of discrimination and environmental racism -- FDEP's incompetent, ineffectual, racist, reactionary response to COSA's dumping 611,294 gallons of sewage in our San Sebastian River. This massive sewage spill has rendered our Lincolnville community the "Pollution Peninsula." The City of St. Augustine continues to treat our African-American community as a dumping ground, and the State of Florida continues to let City Manager WILLIAM B. HARRISS get away with an environmental crime spree.

FDEP refuses to enforce environmental laws equally, with large fines elsewhere but no meaningful fine (and no criminal prosecution) of City of St. Augustine managers responsible for life-threatening sewage spills.

The 611,294 gallon sewage spill would have been prevented if FDEP and COSA had heeded our September 5, 2008 and later reports to the National Response Center.

Please see the February 4, 2010 ukase from FDEP in our Petition for Review, *inter alia* denying that we had "standing." Order Dismissing Petition With Leave to Amend.

FDEP is guilty of refusing to rule on our Motion for Recusal. This further violates our civil and constitutional rights.

As we pointed out in a document filed on January 7, 2010, the FDEP is in no position to determine whether any of us had "standing" to challenge its environmental racism in not enforcing the December 2008 Consent Order re: COSA sewage pollution when it was violated by massive spill in May 2009.

It was a prohibited conflict of interest and unethical for FDEP to rule on its "own quarrel." As William Blackstone wrote, 1 W. Blackstone, Commentaries on the Laws of England 91, "[i]t is unreasonable that any man should determine his own quarrel,." *citing* Dr.

Bonham's Case, 8 Rep. 114a (C.P. 1610); *see also* City of London v. Wood, 12 Mod. 669, 687 (1701)(Lord Holt)(invalidating fine for refusal to serve as sheriff recovered by the city in its own court of Mayor and Aldermen). *See also* Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986)(overruling case where Chief Justice of Alabama Supreme Court sat in judgment of case that would set precedent for his own pending case); Ward v. Village of Monroeville, 409 U.S. 57 (1972); Gibson v. Berryhill, 411 U.S. 564 (1973); Withrow v. Larkin, 421 U.S. 35 (1975); Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583 (D.C. Cir. 1970); American Cyanamid Co. v. FTC, 363 F.2d 757 (6th Cir. 1966); SCA Services, Inc. v. Morgan, 557 F.2d 110 (7th Cir. 1977).

For FDEP to rule on standing in this action was unethical and a conflict of interest. It is freighted with animus toward the rights of citizens to raise EJ concerns before FDEP, which has in the past said that the Administrative Law Judges of the Department of Administrative Hearings were powerless to rule on our EJ concerns.

FDEP is in no position to rule on standing and its recusal was respectfully and urgently requested by Petitioners. F.S.120.665. It is a clear conflict of interest and, at best, unseemly, for FDEP to rule on standing before one can hail it into court before an Administrative Law Judge of the Florida Department of Administrative Appeals. See United States v. Mississippi Valley Generating Co., 364 U.S. 520, 548 (1961)(citing Matthew 6:24 -- "no man can serve two masters" -- holding that preventing conflicts of interest is aimed "not only at dishonor but at conduct that tempts dishonor.")

As James Madison wrote in The Federalist No. 10: "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time." *See also* In re Murchison, 349 U.S. 133, 136 (1955) (Black, J.) ("[O]ur system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome."); TWA v. Civil Aeronautics Board, 102 U.S.App.D.C. 391, 392, 254 F.2d 90, 91 (1958). Spencer v. Lapsley, 20 How. 264, 266 (1858); Publius Syrus, Moral Sayings 51 (D. Lyman transl. 1856) ("No one should be judge in his own cause."); Blaise Pascal, Thoughts, Letters and Opuscules 182 (Wight transl. 1859) ("It is not permitted to the most equitable of men to be a judge in his own cause.").

FDEP negotiated in secret and inexplicably agreed to a Consent Decree that does not remedy the violations of FDEP's December 2008 Consent Order. Since FDEP's own actions are at issues, FDEP was in no position to determine Petitioners' standing or to rule upon FDEP's "own quarrel." Blackstone, *supra*. This is the sort of conflict of interest that courts have been protecting us against since at least 1610. This is the sort of

conflict of interest that is an unseemly daily occurrence at FDEP, which may as well stand for "Don't Expect Protection," as the late environmental activist David THundershield Queen said. See *Dr. Bonham's case*, *supra*; *Tumey v. Ohio*, 273 U.S. 510, 522-24 (1927) (Taft, C J). It is well-settled that a government official is disqualified from ruling on a case in these circumstances "if he either signs a pleading or brief" or "if he actively participated in any case even though he did not sign a pleading or brief." *Laird v. Tatum*, 409 U.S. 824, 828 (1972) (Rehnquist, J.).

Since FDEP's counsel negotiated a putative settlement agreement that did not remedy violations of the December 2008 Consent Order, then ruled on standing to challenge it in violation of our rights -- violating reasonable ethics expectations dating back to ancient Biblical and Roman times -- this action must be investigated by EPA OCR and EPA CID.

Please subpoena all documents on this case from FDEP and the City of St. Augustine today.

We look forward to your assigning your finest investigators and to a hearing before an EPA ALJ suspending Respondents from eligibility for government funds. See our January 19, 2009 complaint. Let justice be done.

Sincerely yours,

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

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(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

[redacted]

c: Respondents FDEP and City of St. Augustine

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

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