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May 13, 2021

Illinois Pollution Control Board  
Attn: Bradley Halloran, Hearing Officer  
100 W. Randolph Suite 11-500  
Chicago, Illinois 60601

**Re: Public Comment in Case # PCB 2021-007, General III, LLC, v. Illinois Environmental Protection Agency Permit Appeal**

To Whom It May Concern:

We write to comment on the fundamentally incorrect and overly narrow interpretation of Illinois IEPA's ("IEPA") authority to impose permit conditions under the Illinois Environmental Protection Act propounded both by General III, LLC ("GIII") in its appeal of several conditions included in the final construction permit issued by IEPA for an industrial scrap metal shredding facility (the "Appeal") and by IEPA in the agency's unduly restrictive view of its authority to impose permit conditions necessary to protect the public and the environment from pollution and environmental harms. We also comment on GIII's appeal of several provisions of the construction permit, including the one-year timeframe for obtaining an operating permit for the facility, a provision that provides needed protection for the nearby residential community from facility operations that do not satisfy emissions limitations anticipated by the construction permit.

These comments are submitted on behalf of the Southeast Side Coalition to Ban Petcoke ("SSCBP"), the Southeast Environmental Task Force ("SETF"), People for Community Recovery ("PCR"), the Natural Resources Defense Council ("NRDC"), and the Southeast Side residents they represent. SSCBP is a community-based organization dedicated to the health, safety and welfare of the people who live, work and recreate in the Southeast Side Calumet region. SETF's mission is to ensure a healthy and safe environment for Southeast Side residents, to preserve regional ecological resources and to achieve a sustainable economy that enhances local communities. Located on the South Side of Chicago, PCR's mission is to enhance the quality of life of residents of communities affected by environmental pollution. PCR educates and advocates for policy and programs in an effort to coordinate with local residents on issues including health and the environment. NRDC is a group of roughly 3 million members and activists working to ensure the rights of all people to clean air, clean

water, and healthy communities, including approximately 17,000 members and activists in Chicago, several of whom reside on the Southeast Side near the proposed location of the GIII metal shredding facility.

The permit under appeal enables the relocation of the General Iron industrial recycling business from Lincoln Park to Chicago's Southeast Side. The Southeast Side of Chicago is an already overburdened environmental justice community, whose residents suffer from exposures to a multitude of environmental contaminants, including emissions of heavy metals and soils contaminated with the residue of the industrial history of the neighborhood. Residents experience higher than City averages of health issues such as COPD and neighborhood children are at increased risk for asthma.<sup>1</sup> Existing industrial facilities on the Southeast Side can also be significant sources of harmful particulate matter, especially inhalable fine particulate matter, which can contain toxic heavy metals, as well as volatile organic compounds, which can also contain a host of volatile toxic air contaminants.<sup>2</sup> Because of the history of General Iron and RMG environmental violations and citations (*see below*), the existing environmental burdens Southeast Side residents face, and the increase in pollution from the proposed operation, the community has strongly objected to the relocation of General Iron's operations to the Southeast Side.

General Iron's Lincoln Park operation was the subject of numerous complaints, government citations and notices of violations, and multiple enforcement actions, including by U.S. EPA dating back to at least 2006.<sup>3</sup> The Lincoln Park operation also had a long and extensive history of

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<sup>1</sup> *See e.g.*, R 004929 (citing Jones, Kohar. "Asthma And Injustice On Chicago's Southeast Side." Health Affairs, 1 May 2016, [www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.0117](http://www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.0117)).

<sup>2</sup> *See* R 005082. A U.S. EPA air monitor located at George Washington High School, very nearby the permitted site, records the highest levels of PM 10 in Illinois. *See* R 004974.

<sup>3</sup> General Iron recently filed a settlement with US EPA in response to EPA's Notice and Finding of Violation. The Administrative Consent Order in that matter arose from an EPA issuance of a Notice and Finding of Violation (NOV/FOV) to General Iron, on July 18, 2018. In the Consent Order, EPA asserted—and General Iron did not dispute—that General Iron significantly underestimated its metal shredder's VOM emissions and, in fact, General Iron did not have any emission capture or control equipment to achieve an overall reduction of uncontrolled VOM emissions of at least eighty-one (81%)—as required by the Illinois SIP. Nor did it have the appropriate operating permit that corresponded with its VOM emissions. Additionally, by operating as a major stationary source without a Title V permit, General Iron violated Section 502 of the CAA, the regulations at 40 C.F.R. §§ 70.1(b) and 70.7(b), and the Illinois Environmental Protection Act at 415 ILCS § 5/39.5(6)(b). *See* R 004494; *In the Matter of General Iron Industries, Inc. Chicago, Illinois*, Docket No. EPA-5-19-113(a)-IL-08; *see also* U.S. EPA Notice and Finding of Violation by General Iron LLC (Jul. 18, 2018) [https://www.epa.gov/sites/production/files/2018-07/documents/general\\_iron\\_industries\\_inc.\\_nov-fov.pdf](https://www.epa.gov/sites/production/files/2018-07/documents/general_iron_industries_inc._nov-fov.pdf).

environmental citations by the City of the Chicago.<sup>4</sup> Residents of Lincoln Park complained repeatedly over more than a decade of emissions and noxious odors emanating from General Iron and contaminating their neighborhood.<sup>5</sup> During the period GIII's construction permit application was still under review by IEPA, the Lincoln Park operation experienced explosions within the shredder that resulted in a shutdown order by the City of Chicago and subsequent fines.<sup>6</sup> The explosions in May 2020 and many of the complaints and citations occurred under the ownership and management of the Lincoln Park site by RMG, the parent and expected operator of GIII and RMG has operated facilities at the South Burley Ave. location without required permits.

In the face of the extensive history of environmental violations in both Lincoln Park and at other RMG operated facilities and strenuous pleas for protection by the overburdened Southeast Side

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<sup>4</sup> General Iron's lengthy and well-documented history of Chicago environmental citations and violations include: 32 pending NOV's at the time the Appeal was filed from CDPH against General Iron on uncontrolled shredder emissions, visible emissions beyond the fence line, other fugitive dust issues, and ASR dispersal into the community; CDPH and potentially other agency actions related to two explosions that took place at the General Iron facility on May 18, 2020 that led to an IEPA order of a months-long shut-down of the facility; multiple enforcement actions against General Iron by U.S.EPA; and even more numerous Chicago Department of Public Health inspection reports and community complaints, which detail a range of failings on both air and other environmental matters. *See* R 004942; *see also* R 004987 – R 004991.

<sup>5</sup> *See* R 005018 (citing Ex. 27, CDPH Complaints for 1909 N Clifton: Complaint ID 600794213 (Mar. 9, 2020); ID 600793596 (Mar. 6, 2020); ID 600792608 (Mar. 4, 2020); ID 600792219 (Mar. 3, 2020) (“Loud crushing noise awakened at 2:45 AM and continue until 4 AM very disturbing also horrible gassy odors that make us choke and cause a headache”); ID 600789502 (Feb. 24, 2020) (“They are crushing cars at 4 AM creating loud noise and waking up the neighbors” and “emitting a toxic gas odors that overwhelms in my house”); ID 600760890 (Dec. 2, 2019); ID 600747372 (Nov. 4, 2019); ID 600738064 (Oct. 21, 2019); ID 600665670 (June 26, 2019); *see also* Ex. 23 CDPH Inspection Reports for 1909 N Clifton: Inspection ID 11154818 (Mar. 26, 2020); ID 11154697 (Mar. 26, 2020); ID 11154566 (Mar. 26, 2020); ID 11152408 (Mar. 26, 2020); ID 11154864 (Mar. 26, 2020); ID 11001377 (Feb. 26, 2020); 10461347 (Nov. 15, 2019); 7134833 (Oct. 11, 2018); 1204508 (Jan. 25, 2018); 3247181 (June 20, 2017); ID 3180215 (June 12, 2017); ID 7743 (Oct. 16, 2013).

<sup>6</sup> General Iron recently settled numerous Notices of Violations with the Chicago Department of Public Health. The settlement of these violations, including the violations related to two explosions, occurred after the permit under appeal was issued. *See* Michael Hawthorne, *General Iron Scrap Shredder pays \$18,000 fine for explosion, noxious air pollution on North Side*, Chicago Tribune (Nov. 2, 2020) <https://www.chicagotribune.com/news/environment/ct-general-iron-pollution-fines-20201103-fhke6s4t6bbtnczrywphptskna-story.html>. Although because of timing the settlement is not in the Record, the multiple citations for recent environmental violations are in the Record. *See* R 004564 – R 004583; *see also* R 004972 – R 005051.

community, IEPA interpreted its authority under the Illinois Environmental Protection Act unduly narrowly and issued the construction permit now being appealed.<sup>7</sup>

In its appeal, GIII objects to several of the permit conditions, arguing that IEPA lacked the authority to require those permit conditions.<sup>8</sup> As explained below, that argument is wrong.

IEPA has clear authority under the Illinois Environmental Protection Act (the “Act”) to impose the permit conditions.

A further issue of particular concern to the affected communities is *IEPA’s own overly narrow view of its authority under the Act*. IEPA has taken the position that the Agency cannot impose more restrictive permit conditions based on an applicant’s prior history of non-compliance unless instances of non-compliance have been formally adjudicated. That position is not supported by Illinois law and, in this instance and potentially others, resulted in the Agency’s failure to impose sufficiently stringent permit requirements to fully protect the Southeast Side environmental justice community. Further, in addition to the specific language in the Act discussed here, such an

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<sup>7</sup> As issued, the permit is woefully insufficient to fully protect the Southeast Side environmental justice community from the threats that the huge GIII industrial recycling facility poses. *See* R 004564 – R 004583; *see also* R 004972 – R 00505. As a consequence, SETF and SSCBP filed Title VI civil rights grievances with both IEPA and US EPA. USEPA has accepted the Title VI grievance for investigation and is currently engaged in informal resolution settlement discussions with IEPA. *See* M. Evans, “Feds Suspend Investigation Into Approval of Southeast Side Metal Scrapper’s Permit,” Block Club (March 2, 2021), [https://blockclubchicago.org/2021/03/01/feds-suspend-investigation-into-states-approval-of-southside-recycling-permit/?mc\\_cid=32315fee04&mc\\_eid=d1ea4e504c](https://blockclubchicago.org/2021/03/01/feds-suspend-investigation-into-states-approval-of-southside-recycling-permit/?mc_cid=32315fee04&mc_eid=d1ea4e504c). These groups also filed a discrimination complaint with the U.S. Department of Housing and Urban Development alleging violations of Title VI and Title VIII of the Civil Rights Act of 1964, which HUD is currently investigating. *See* B. Chase, “Feds investigating city after civil right complaint filed by environmental groups,” Chicago Sun Times (Oct. 20, 2020), <https://chicago.suntimes.com/city-hall/2020/10/20/21524989/general-iron-chicago-civil-rights-complaint-environmental-racism-hud-federal-fair-housing>. Further weakening the permit provisions as called for by GIII’s appeal would be a step in the wrong direction and away from the urgently needed protection of Southeast Side residents.

<sup>8</sup> Appeal, Paragraph 4 (“The final permit included significant changes to the draft permit in response to public input in order to enhance the permit. These changes exceed the applicable regulatory requirements for a minor source facility, such as the GIII Facility.”); Appeal, Paragraph 11 (“The Agency is overstepping its authority by allowing the Agency to disapprove of the amended FPOP. There is no applicable regulatory requirement that GIII have a fugitive particulate operating program.”); Appeal, Paragraph 19 (“The GIII Facility will be a minor source of emissions. There is no regulatory basis for requiring the testing described in Conditions 16(a)(i) and (ii) to be conducted once every five (5) years.”); Paragraph 23 (“The GIII Facility will be a minor source of emissions. Periodic testing beyond the initial testing is neither technically necessary nor the norm for Agency minor source construction permits.”); Paragraph 23 (“The Agency’s requirement in Condition 16(a)(iv) to conduct subsequent testing based on whether the VOM capture efficiency meets the criteria of a PTE goes beyond the regulatory requirements and is unreasonable.”).

interpretation of IEPA's authority is critical towards ensuring IEPA's compliance with civil rights laws in its permitting and other actions.

We urge the Board to reject both the appeal and to correct IEPA's interpretation of the Agency's authority under the Act to impose permit conditions intended to protect communities from environmental harms.

**I. IEPA Has Broad Authority to Impose Permit Conditions to Ensure Compliance with the Act and to Protect Nearby Communities.**

The goals of the Illinois Environmental Protection Act are clear: “[T]o restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.”<sup>9</sup> To effectuate those goals, the Act charges IEPA with issuing construction permits to protect against environmentally harmful emissions into the air.<sup>10</sup> Section 39 (a) of the Act establishes three independent authorities for IEPA to include permit conditions. These authorities are:

(1) “In making its determinations on permit applications under this Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment.”

(2) “In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance.”

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<sup>9</sup> 415 ILCS 5/2 (b). The Act broadly prohibits actions or activities that cause or will cause emissions of contaminants into the air – the principal concern at issue in this permit:

No person shall: (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act. 415 ILCS 5/9 (a).

<sup>10</sup> 415 ILCS 5/39. As specified by the Act, IEPA's authority to issue such permits is also pursuant to regulations issued by the Board. *See* 35 Ill. Adm. Code 201.143.

(3) “The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder.”

On their face, the challenged permit conditions fall within these authorities. As set out above, the General Iron operations have a long and extensive history of violations and citations, including adjudicated violations of the Act.

In contrast to these broad authorities set out in the Act, GIII seems to argue that in the absence of a specific regulation addressing an issue promulgated by the Board, IEPA cannot impose conditions related to that issue.<sup>11</sup> That argument strains credulity. First, the Act clearly states that IEPA may impose conditions necessary to “correct, detect, or prevent noncompliance” related to the applicant’s compliance history. As set out at length above, General Iron has a long history of noncompliance that clearly warrants additional conditions to protect the community. And, even without that egregious history, the Act authorizes IEPA to “impose such other conditions as may be necessary to accomplish the purposes of this Act.” As noted above, such conditions may be called for—as they are in this case—“to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.” This is consistent with—and called for by—the legislative findings embedded in the Act: “The terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of this Act.”<sup>12</sup>

The only clear limitation on IEPA’s authority to impose permit conditions necessary to protect the public health and welfare is that such conditions “are not inconsistent with the regulations promulgated by the Board hereunder.” Despite this unambiguous language in the Act, GIII seems to suggest that the Board must have affirmatively promulgated a specific regulation related to a specific type of permit condition in order for IEPA to impose that condition. The implementation of regulations in case-by-case permitting is IEPA’s charge, and here it acted well within that authority and role. It is absurd to suggest that the Board must have anticipated and promulgated a rule concerning potential permit conditions for every conceivable type of facility for every type of permit IEPA is charged with issuing before IEPA can take steps to protect the public.

GIII’s objections to the Emission Testing Conditions 16(a)(i) and (ii) are illustrative of the problem with its overly narrow reading of IEPA’s authority. The emission testing conditions require GIII to

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<sup>11</sup> See *supra* note 8.

<sup>12</sup> 415 ILCS 5/2 (c).

conduct various emissions tests once every five (5) years from the original test date to ensure continued compliance with the permit conditions and emissions limits. It is inconceivable that the Board would have divined the need for follow-up testing at an industrial scrap metal recycling facility to be located in close proximity to schools and a residential neighborhood when promulgating regulations for compliance with the Act's clean air provisions. But that testing is necessary to ensure compliance over time as equipment ages and to protect the community from harmful emissions.

In sum, IEPA has the authority to impose permit conditions in order to protect public health, welfare and the environment, and—particularly in light of the history of noncompliance of the company receiving the permit and the vulnerability of the exposed community—such conditions were appropriate and called for here.<sup>13</sup>

**II. IEPA Is Interpreting Its Authority Under Section 39(a) Too Narrowly and In A Way that Is Harmful to Public Health, Safety and the Environment.**

IEPA has also interpreted its authority under 39(a) too narrowly and the Board should now correct EPA's misunderstanding of its authority under the Illinois Environmental Protection Act. In its review of the GIII construction permit application, IEPA took the position that the agency could only take formally adjudicated occurrences of General Iron's history of non-compliance and violations into consideration when making a permit decision.<sup>14</sup> IEPA's position is not consistent with the plain language of 39(a). The "formally adjudicated" language appears only in 39(a)(1). While that language might be read to require formal adjudication - which is not defined by the statute - for a decision whether to grant or deny a permit, it clearly does not apply to 39(a)(2) and (3). IEPA improperly conflated the three separate parts of 39(a), thereby rendering the explicit provisions of 39(a)(2) and (3) meaningless and void.<sup>15</sup>

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<sup>13</sup> Indeed, in view of General Iron's history of citations and violations of local, state and federal law, IEPA abused its discretion in issuing the permit to GIII. Issuing the permit without including at least some conditions to protect the community would have been entirely unsupportable. *See also* Section 2 of the Act.

<sup>14</sup> *See* R 009722 (E-mail from Brad Frost, Manager, Community Relations, IEPA to Nancy Loeb, counsel for SSCBP) ("Under the Illinois EPA's enabling authority, we are required to issue a permit to an applicant upon proof that the proposed facility or equipment will not cause a violation of the Environmental Protection Act or the Pollution Control Board's Subtitle B air pollution regulations. See Section 39 (a). Under this standard, Agency review does not look to past practices or conduct at the source (or the same source at another location) but, rather, considers if the applicant's emission units or equipment that are being constructed or operated will comply with such requirements prospectively based on information contained within the application for permit.").

<sup>15</sup> IEPA's overly narrow interpretation and exercise of its authorities also violates the agency's obligation to ensure compliance with civil rights laws in its permitting and other actions. Both Title VI of the Civil Rights Act of 1964 and the Illinois Civil Rights Act of 2003 (740 ILCS 23/5) prohibit discrimination on the basis of "[R]ace, color, national

It seems likely, considering IEPA's misinterpretation of its authority under Section 39(a), that the agency will repeat this mistake in the future, to the detriment of public health and the environment. Accordingly, the Board should use this appeal to correct that serious and dangerous misunderstanding.

### **III. While Not Sufficient, The Appealed Permit Provisions are Necessary and Proper and Should Be Upheld.**

GIII objects to the minimal conditions IEPA included in the construction permit because IEPA purportedly exceeded its authority in requiring them.<sup>16</sup> As set out above, IEPA had clear authority to impose each of the permit requirements in order to protect the Southeast Side community from predictable environmental harms. While Commenters contend that these minimal conditions are not sufficient to protect the nearby community, there is ample record evidence to support their imposition.

### **IV. Conclusion**

The Illinois Environmental Protection Act was enacted with a strongly proclaimed goal of protecting the people of the State from environmental harms. Under the Act, IEPA was given the responsibility to ensure each person's right to a healthful environment. IEPA also has duties to uphold civil rights and equal protection of the law that require the agency to give special care to

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origin, or gender". Section (a)(2) also prohibits using methods and policies that have disparate, discriminatory impacts on any of these protected classes. In the context of a permit application review, Title VI and the Illinois Civil Rights Act must be interpreted to require IEPA to take into account the environmental justice effects of issuing the permit. Here, although Illinois EPA characterized this permit transaction as triggering its environmental justice obligations when it distributed a public notice announcing the submission of a permit application by General III, IEPA failed to conduct the necessary environmental justice assessment. IEPA's Project Summary, Draft Permit and public hearing comments are devoid of any evidence of any effort to address the environmental justice issues that are in the record. Indeed, in its Responsiveness Summary, Illinois EPA disclaimed any legal basis to evaluate the range of environmental justice issues raised, asserting it was limited to air modeling for a limited number of pollutants. Illinois EPA's refusal to assess many potential impacts on an environmental justice community is a failure to fulfill its most basic responsibilities pursuant to Title VI and the Illinois Civil Rights Act. Instead, IEPA repeatedly exercised its discretion in ways that will result in a significant, adverse and disproportionate harm on the surrounding environmental justice community. We urge the Board to take the opportunity of this appeal to remind Illinois EPA of its obligations to environmental justice communities under Title VI and the Illinois Civil Rights Act in all aspects of permit reviews where environmental justice issues are presented.

<sup>16</sup> See *supra* note 8.



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overly burdened communities to ensure equitable enjoyment of that right. And, the Act specifically authorizes IEPA to impose permit conditions necessary to accomplish those protections. GIII's arguments to the contrary are without merit and the Board should invoke this opportunity to make clear the broad parameters of the agency to take steps necessary to protect public health and welfare. As set forth above, IEPA has ample authority to proactively protect the Southeast Side and must do so to fulfill its many obligations under the Illinois Environmental Protection Act and other state and federal laws.

Further, IEPA is currently making permitting decisions based on an incorrect interpretation of Section 39(a) of the Act. The Board should correct IEPA's misinterpretation of the Law.

Respectfully submitted,

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