

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R25-18
BOARD CONSIDERATION OF	)	(Rulemaking – Procedural)
ENVIRONMENTAL JUSTICE IN	)	
BOARD PROCEEDINGS	)	

NOTICE OF FILING

TO: Don A. Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren Street
Suite 630
Chicago, Illinois 60605

See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S PUBLIC COMMENT, a copy of which is herewith served upon you along with this notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Andrew Armstrong
Andrew Armstrong
Chief Legal Counsel
Division of Legal Counsel

DATED: October 31, 2025

2520 W. Iles Ave.
P. O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
andrew.armstrong@illinois.gov

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PUBLIC COMMENTS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by one of its attorneys, and hereby submits its comments concerning the Illinois Pollution Control Board’s (“Board”) September 18, 2025 order in the above-captioned docket.

I. The Illinois Environmental Protection Act and Other Laws Provide Ample Authority for the Board to Consider Environmental Justice Issues Within its Proceedings.

In response to the “General Questions” raised on page 2 of the Board’s September 16, 2025 order, it may be helpful first to define more specifically what Environmental Justice encompasses. In its 2024 Enhanced Public Participation Plan (available at <https://epa.illinois.gov/topics/environmental-justice/ejppp.html>), Illinois EPA has set forth the following definition of Environmental Justice:

[T]he principle that all people should be protected from environmental pollution and have the right to a clean and healthy environment. EJ is the protection of the health of the people of Illinois and its environment, and equity in the administration of the Illinois EPA's activities and programs, including facilitating greater opportunities by the public for meaningful involvement and engagement in Agency decision-making with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies, including efforts to promote public participation.

At its core, Environmental Justice reflects the reality that pollution is not distributed uniformly across the United States, or the State of Illinois, more specifically. Put simply,

pollution is more prevalent in some geographic areas than others; many communities have experienced this phenomenon sharply, over a period of many years. All too often, such areas are readily identifiable by the demographic characteristics of the populations living within them.

The Illinois Attorney General's Office presented a compelling case study of one such area in its July 11, 2024 *amicus* brief in *Alliance of the Southeast v. United States Army Corps of Engineers*, No. 23-1524 (N.D. Ill.), attached hereto as Exhibit A. The brief summarizes a "long history of environmental harm" in Southeast Chicago, tracing the interrelated growth of heavy industry alongside of residential populations of marginalized, "largely immigrant," communities, cemented through discriminatory mortgage lending practices. Ex. A at 9-10. The brief connects three interrelated phenomena: (i) vulnerable residential populations lacking economic resources; (ii) high levels of pollution across all environmental media; and (iii) high levels of chronic illness. As the brief concluded, "every level of government [federal, state, and municipal] has recognized Southeast Chicago as an environmental justice community." *Id.* at 13.

Environmental Justice means trying to square this reality with the obligations of Illinois and federal law. Beginning with Illinois law, Article XI of the Illinois Constitution establishes that "**each person**" in Illinois, no matter their status, "has the right to a healthful environment." ILL. CONST., art. XI, sec. 2. Moreover, Article XI, section 1 of the Illinois Constitution provides the following public policy:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

The General Assembly has implemented Article XI of the Illinois Constitution most prominently through the Illinois Environmental Protection Act (“Act”), multiple sections of which bear on the Board’s consideration of environmental justice issues. For example, Sections 9 and 12 of the Act prohibit acts that cause or tend to cause air pollution and water pollution, “either alone or in combination with . . . other sources,” implicitly recognizing the cumulative impact caused by multiple sources of pollution. 415 ILCS 5/9(a) and 12(a) (2024).

The Act further instructs the Board to consider the “character” of the communities impacted by pollution when it enters orders and promulgates rules. Section 33 of the Act provides that the Board shall, “[i]n making its orders and determinations,” consider multiple factors, including “the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people.” 415 ILCS 5/33(c)(i) (2024). *See also* 415 ILCS 5/27(a) (2024) (directing the Board to take into account, among other factors, “the character of the area involved” when promulgating regulations under the Act); 415 ILCS 5/42(h)(1) (2024) (authorizing the Board to consider the “gravity” of violations when determining an appropriate civil penalty).

In applying Section 33 of the Act, the Board could look to a recent federal appellate decision, *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68 (4th Cir. 2020), which interpreted very similar language in Virginia state law. The Fourth Circuit concluded that an environmental agency’s consideration of the “character” of “injury” or “interference” to public health from a proposed new natural gas compressor station required, among other things, a consideration of “the potential for disproportionate impacts to minority and low income communities.” 947 F.3d at 87. The court stressed that

“environmental justice is not merely a box to be checked,” but rather a required consideration under Virginia state environmental law, which, very similarly to Section 33(c)(1) of the Act, mandates consideration of the “character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused.” *Id.* at 92; Va. Code Ann. §10.1-1307(E)(1). In *Friends of Buckingham*, an adequate consideration of Environmental Justice (in the Fourth Circuit’s view) included consideration of potentially disproportionate impacts on a largely African American community with a greater prevalence of asthma and other health issues. 947 F.3d at 88.

As in the above cases, Environmental Justice concerns have frequently (though certainly not exclusively) arisen in communities of color. Federal and State civil rights laws prohibit Illinois EPA and other recipients of public funding from discrimination on the basis of race, color, national origin, and sex, among other classes, including activities that have the effect of subjecting the individuals they serve to such discrimination. See, e.g., 40 C.F.R. § 7.35 (implementing Title VI of the Federal Civil Rights Act, 42 U.S.C. § 2000d *et seq.*). As to State law, the Illinois Civil Rights Act of 2003 is directly applicable to the Board, providing that:

- (a) No unit of State, county, or local government in Illinois shall:
 - (1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or
 - (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.

740 ILCS 23/5(a) (2024).

Based on previous alleged violations of federal and State civil rights laws, the Agency has entered into three settlement agreements with the United States Environmental Protection Agency (“USEPA”), in 2005, 2013, and 2024, which the Agency continues to implement.¹ Collectively, these agreements reflect Agency actions over the past two decades to, among other things, establish its own Environmental Justice Policy and Public Participation Plan, and to incorporate environmental justice considerations into permitting. The most recent Informal Resolution Agreement is attached hereto as Exhibit B.

II. Questions Directed to Illinois EPA

The Agency responds as follows to the questions directed to it:

5. The issue of environmental justice screening methodologies was raised in the R20-19 rulemaking and an IEPA witness testified at hearing as to the tools the agency uses. At that time, IEPA was using the EJ Start GIS screening tool, which relied on census block group or areas within one mile of a census block group with income below poverty and/or minority population greater than twice the statewide average to identify areas of environmental justice concern. Has IEPA updated its EJ Start tool since 2020 to include consideration of pollution burden on communities? If so, please describe how it has been updated. Has IEPA considered expanding the buffer zone used in EJ Start?

RESPONSE: Illinois EPA continues to use the EJ Start GIS screening tool, available at <https://experience.arcgis.com/experience/aa364c77db684dfa92afa5094b69f6ff>, as described in the R20-19 rulemaking, for purposes of identifying areas of environmental justice concern. Illinois EPA has not considered expanding the buffer zone of one mile.

6. If EJ Start has not been updated, please comment on whether the Illinois Power Agency’s (IPA’s) screening tool, Illinois Solar for All, which uses both environmental and demographic indicators, could be used in conjunction with EJ Start to identify areas of environmental justice concern.

¹ The settlement agreements and related documents are available at <https://epa.illinois.gov/topics/environmental-justice/grievances.html>.

RESPONSE: The Illinois Power Agency's screening tool, Illinois Solar for All, could be used by the Board in conjunction with EJ Start to identify areas of Environmental Justice concern. Illinois EPA is actively considering updating EJ Start to include environmental indicators in addition to demographic indicators. As to the Illinois Solar for All map, specifically, Illinois EPA's experience is that the EJ Start map typically is as geographically inclusive as—or in some areas more inclusive than—the Illinois Solar for All map. Illinois EPA also notes that the Illinois Solar for All map includes self-designated areas, aside from those identified through environmental and demographic indicators. Illinois EPA does not support the concept of self-designation for purposes of screening for areas of Environmental Justice concern, in the context of implementing the Act.

7. What is the current availability of USEPA's EJ Screen program and its data? Is the program available to the public to use? Does the availability of EJ Screen have any implication on the use of IPA's Illinois Solar for All?

RESPONSE: USEPA reportedly removed EJ Screen and related pages from its website on February 5, 2025. Environmental Data and Governance Initiative, *EPA Removes EJScreen from Its Website* (Feb. 12, 2025), available at <https://envirodatagov.org/epa-removes-ejscreen-from-its-website/>. Illinois EPA currently is unable to access EJ Screen on USEPA's website.

Prior to the current administration, USEPA made available on its website the data underlying EJ Screen. Illinois EPA and other parties downloaded and preserved the data prior to its removal. See, e.g., Public Environmental Data Partners, *EJ Screen*, available at <https://screening-tools.com/epa-ejscreen>.

While Illinois EPA does not wish to speak for the Illinois Power Agency ("IPA"), IPA discusses its intended approach to updating the Solar for All map in Chapter 8.12 of its proposed 2026 Long-Term Renewable Resources Procurement Plan, at pages 344 to 352. See <https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/20251020-2026-long-term-renewable-resources-procurement-plan.pdf>. In short, IPA indicates in the proposed Plan that it intends to update and maintain the Illinois Solar for All map based on the most recent available EJ Screen data.

8. Please comment on whether the Board's procedural rules should be amended to specify environmental justice tools that must be used if consideration of environmental justice factors are required by any Board regulations.

RESPONSE: Illinois EPA defers to the Board on whether it should amend its procedural rules to specify specific tools that must be used if it considers environmental justice factors. As discussed above, there is already broad authority within the Act and other laws that authorizes the Board to consider issues typically characterized as environmental justice concerns in issuing its orders and promulgating rules. See, e.g., 415 ILCS 5/27(a), 33(c), and 42(h) (2024).

9. Section 103.504(b) of the Board's rules allows the Board to require civil penalty payments to be directed to the Environmental Protection Trust Fund "or other fund as specified by the Board." 35 Ill. Adm. Code 103.504. Does IEPA have any plans to create an environmental justice-specific fund or other mechanism to ensure affected communities receive a portion of collected civil penalties?

RESPONSE: Illinois EPA is actively considering options for State funds that could be purposed to receive funds obtained in enforcement actions and then used for the performance of supplemental environmental projects or environmentally beneficial projects in areas of Environmental Justice concern. As with any enforcement issue, Illinois EPA notes the central role of the Illinois Attorney General's Office in instituting and litigating enforcement actions under the Act. See, e.g., 415 ILCS 5/42(e) (2024).

10. When assessing the impact of a facility's operations in an area of environmental justice concern, how does IEPA account for the cumulative effect of emissions from other pollution sources in that same area?

RESPONSE: While it is difficult to answer this question in the abstract given the diversity of pollution sources that Illinois EPA regulates, Illinois EPA directs the Board to Section IV of the 2024 Informal Resolution Agreement, concerning certain air construction permit applications. See Ex. B at 10-12. Illinois EPA's analyses under the 2024 Informal Resolution Agreement are available at <https://epa.illinois.gov/topics/environmental-justice/informal-resolution-agreement-analyses.html>.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Andrew Armstrong
Andrew Armstrong
Chief Legal Counsel
Division of Legal Counsel

DATED: October 31, 2025

2520 W. Iles Ave.
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALLIANCE OF THE SOUTHEAST)
and FRIENDS OF THE PARKS,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES ARMY CORPS OF)
ENGINEERS et al.,)
)
Defendants.)

Civil Action No. 23-1524
Honorable Thomas M. Durkin

**BRIEF OF THE ATTORNEY GENERAL OF ILLINOIS
AS *AMICUS CURIAE***

KWAME RAOUL,
Attorney General
State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

Stephen J. Sylvester
Bureau Chief
Kathryn A. Pamenter
Senior Assistant Attorney General
Caitlin Kelly
Assistant Attorney General
Illinois Atty. General's Office, Env. Bureau
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Article XI of the Illinois Constitution of 1970 provides a right to a healthful environment:

- §1 The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.
- §2 Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

Ill. Const. 1970, art. XI, §§ 1 and 2. The Illinois Supreme Court has recognized this constitutional right in Illinois. *See, e.g., People v. NL Industries*, 152 Ill. 2d 82, 90-91 (1992).

The Illinois Supreme Court also has long recognized that the Attorney General, as the “... chief legal officer of this State, ... has the duty and authority to represent the interests of the People of the State to insure a healthful environment.” *Pioneer Processing, Inc. v. E.P.A.*, 102 Ill. 2d 119, 138 (1984); *see also Env’t. Prot. Agency v. Pollution Control Bd.*, 69 Ill. 2d 394, 398 (1977) (“... under both the 1870 and 1970 constitutions, [] the Attorney General is the chief legal officer of the State; that is, he or she is ‘the law officer of the people, as represented in the State government, and its only legal representative in the courts’”) (quoting *Fergus v. Russel*, 270 Ill. 304, 337 (1915)). Under this authority, the Illinois Attorney General has filed numerous enforcement actions against companies in Southeast Chicago for violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.*, and corresponding regulations dating back to the 1980s through the present. For example, between 2014 and 2019, the Illinois Attorney General litigated and resolved a case against the Beemsterboer Slag Company (“Beemsterboer”), located along the Calumet River just over two miles south of the current CDF¹ site and as close as 0.3 miles to residential

¹ Capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms in the Motion of the Attorney General of Illinois for Leave to File Brief as *Amicus Curiae*.

neighborhoods, that operated a 22.5-acre bulk material handling and storage facility and allegedly handled, stored, and shipped petroleum coke (“petcoke”) and metallurgical coke without the proper permit.² Similarly, the Illinois Attorney General filed two enforcement actions against KCBX Terminals Co. (“KCBX”), which processed petcoke and coal in Southeast Chicago,³ that were resolved through consent orders requiring cleanup measures and civil penalty payments.⁴

In hearings on April 25, 2023, February 6, 2024, and May 3, 2024 in this case, the Court asked about the status of the permits for the CDF and the DMDF. *See* Tr. Proc. Held on 4/25/2023 at 9-10, ECF No. 17; Tr. Proc. Held on 02/06/2024 at 4-5, ECF No. 42; and Tr. Proc. Held on 05/03/2024 at 4, ECF No. 54. Through this brief, the Attorney General provides an update regarding such permitting to the best of his knowledge.⁵ In addition, the Attorney General has noted the parties’ arguments regarding the Corps’ intention to locate the DMDF in an area of environmental justice concern. *See* Pls. Comb. Mem. in Opp’n to Defs. Mot. for Summ. J. & Reply in Supp. of Pls. Mot. for Summ. J. at 14-15, ECF No. 47; Defs. Mem. in Opp’n to Pls. Mot. for Summ. J. & in Supp. of Defs. Mot. for Summ. J. at 22-24, ECF No. 44-1 (“ECF No. 44-1”). As such, the Attorney General provides information regarding the inappropriateness of locating the DMDF in the already overburdened Southeast Chicago community.

SUMMARY OF ARGUMENT

The Corps operates the CDF located at 3600 East 95th St., Chicago, Illinois, which is “an

² 1st. Am. Compl. for Inj. & Civ. Penalties, *People v. Beemsterboer, Inc.*, No. 2013CH26175, Cook Cty. Cir. Ct. (Mar. 27, 2014) ¶¶5, 7-8; Consent Order, *People v. Beemsterboer, Inc.*, No. 2013CH26175, Cook Cty. Cir. Ct. (Oct. 15, 2019).

³ Lisa Madigan, Attorney General, *Attorney General Madigan Files New LawsUIT Against KCBX for Pet Coke Pollution Violations*, Mar. 4, 2014, <https://www.lisamadigan.org/in-the-news/2018/3/13/attorney-general-madigan-files-new-lawsuit-against-kcbx-for-pet-coke-pollution-violations>.

⁴ *See* Consent Order, *People v. KCBX Terminals Co.*, No. 2013CH24788, Cook Cty. Cir. Ct. (Jan. 4, 2017); Consent Order, *People v. KCBX Terminals Co.*, No. 2014CH3723, Cook Cty. Cir. Ct. (Sept. 15, 2015).

⁵ The Attorney General does not file this brief on behalf of the Illinois EPA, and it does not reflect information or deliberations internal to the agency.

approximately 43-acre dredged material disposal facility ... used for the handling and disposal of dredged material from the Chicago Area Waterway System including the Calumet River and Harbor.”⁶ The dredged material at the CDF contains highly toxic materials, including mercury, arsenic, and polychlorinated biphenyls (PCBs).⁷ The Corps previously promised to return the lakefront property to the Chicago Park District upon the CDF reaching capacity or after ten years, whichever was later. *See* Chicago Area Confined Disposal Facility Right of Entry, at AR 003872, ECF No. 56-1; Supplemental Environmental Impact Statement for Chicago Area Confined Disposal Facility, Aug. 26, 1998, at AR 005508, ECF No. 56-2. After forty years, the CDF has reached capacity and has not been returned. *See* ECF No. 44-1 at 1. Notwithstanding this prior position, the Corps is now seeking to vertically expand the CDF in the form of the DMDF to hold an additional 530,000 cubic yards of toxic waste over the next 20 years. *See* U.S. Army Corps of Engineers et al., *Section 404(b)(1) Evaluation for Chicago Area Waterway Systems (CAWS) Dredged Material Management Plan (DMMP)*, 4 (2020) at AR 038214, ECF No. 56-10 (“ECF No. 56-10”).

As noted above, Attorney General Raoul has the duty to ensure Illinois citizens’ right to a healthy environment, *supra* at p. 2, which includes those in Southeast Chicago where the CDF is located and the DMDF is proposed to be located. To that end, and especially due to the environmental justice concerns, the Attorney General intends to participate in any State permitting proceedings regarding the existing CDF and the proposed DMDF.

⁶ Illinois EPA, *Chicago Area Confined Disposal Facility*, <https://epa.illinois.gov/topics/community-relations/sites/cdf.html>.

⁷ *Id.*; *see also* Curtis Black, *South Chicago Lakeshore Dump Raises Environmental Justice and Climate Crisis Concerns*, The Chicago Reporter, Feb. 7, 2020, <https://www.chicagoreporter.com/south-chicago-lakeshore-dump-raises-environmental-justice-and-climate-crisis-concerns/>.

This brief provides an update on the permits about which the Court has inquired at prior hearings. In addition, the Attorney General sets forth a summary of the long history of environmental injustice visited upon Southeast Chicago, which argues for the conversion of the CDF into a park for the benefit of the Southeast Chicago community as opposed to an expansion of the toxic dredged fill material disposal facility on the shores of Lake Michigan.

ARGUMENT

A. Status of Required State Water Permits.

1. Water Pollution Control Permit.

Illinois EPA is the designated water pollution agency for the State of Illinois. 415 ILCS 5/4(l). Under such authority, on June 7, 2016 and September 29, 2017, Illinois EPA issued to the Corps Water Pollution Control Permit No. 2016-EO-60898 and Water Pollution Control Permit No. 2016-EO-60898-1 to operate the water pollution control facilities at the CDF.⁸ Thereafter, on March 29, 2021, the Corps submitted to Illinois EPA a permit application to further renew the Water Pollution Control Permit and vertically expand the CDF into the DMDF.⁹ The March 29, 2021 permit application remains pending with Illinois EPA.

Relatedly, on April 28, 2021, the Corps submitted to Illinois EPA a permit application, requesting a short-term renewal “to complete the currently scheduled Calumet Harbor navigational dredging project in the spring and summer of 2022.”¹⁰ Due to the CDF being in an environmental justice community, Illinois EPA accepted public comments between June 30, 2021 – July 31, 2021 and September 3, 2021 – October 26, 2021, and held a question and answer session on October 5, 2021.¹¹ On December 10, 2021, Illinois EPA issued to the Corps Permit No. 2021-EO-66302,

⁸ See *supra* n.6 and link to WPC permit-temporary extension therein.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

granting authority to operate the water pollution control facilities at the CDF until November 22, 2022, with certain additional conditions.¹² Since November 22, 2022, the Corps has not applied to Illinois EPA for a permit to operate the water pollution control facilities at the CDF, and Illinois EPA has not issued any further corresponding authorization to the Corps for the CDF or the proposed DMDF.¹³

2. Section 401 Water Quality Certification.

On March 1, 2023, the Corps submitted to Illinois EPA a request for certification for the proposed DMDF pursuant to Section 401 of the Clean Water Act. *See* Ex. 1, Letter from Darin E. LeCrone, Manager, Illinois EPA Division of Water Pollution Control, to Colonel Paul B. Culbertson, District Commander, U.S. Army Corps of Engineers (Apr. 6, 2023), a true and correct copy of which is attached hereto. On April 6, 2023, Illinois EPA issued correspondence to the Corps that identified several deficiencies in the Corps' March 1, 2023 Section 401 certification request and requested an additional response. *See id.* Following the Corps' subsequent submission of additional information to, and meeting with Illinois EPA, the Corps withdrew its request for a Section 401 certification for the DMDF on January 24, 2024. *See* Letter from Kenneth P. Rockwell, Colonel, U.S. Army Corps of Engineers, to Darin E. LeCrone, Division of Water Pollution Control, Illinois EPA (Jan. 24, 2024), ECF No. 39. To date, the Corps has not resubmitted to Illinois EPA its Section 401 certification request for the DMDF. Absent the filing of a request for certification and subsequent written approval by Illinois EPA, proceeding with the construction or operation of the DMDF would similarly be contrary to the requirements of the Act. 415 ILCS 5/12.

¹² *Id.*

¹³ The Corps admits that it "is currently operating the existing CDF." ECF No. 44-1 at 14. Yet, any operation of the CDF without a valid permit is contrary to the requirements of the Act. 415 ILCS 5/12.

3. Stormwater Permit.

On March 27, 2023, the Corps submitted to Illinois EPA a Notice of Intent for coverage under the “General Permit to Discharge Storm Water with Construction Site Activities” for the DMDF. *See* Ex. 2, Letter from Darin E. LeCrone, Illinois EPA Division of Water, to Linda M. Sorn, U.S. Army Corps of Engineers (Apr. 25, 2023), a true and correct copy of which is attached hereto. On April 25, 2023, Illinois EPA issued correspondence to the Corps, “providing notification that coverage under the general permit IL10 will not be granted and an application for coverage under an individual permit is necessary.” *See id.* To date, the Corps has neither sought nor been issued coverage under an individual permit for the site. As such, no construction or operation of the DMDF may proceed. *See* 415 ILCS 5/12.

B. Environmental Justice Concerns.

Among the many issues facing the Corps in its pursuit of the necessary Illinois EPA permits is the need to fully consider the environmental justice realities of the community that is being asked to host another toxic waste disposal site for the next two decades, all while it has already endured four decades of such disposal. *See* ECF No. 44-1 at 3 (noting that dredged sediment has been deposited into the CDF since 1984, and that approximately 500,000 cubic yards is estimated to be dredged over the next 20 years). In fact, the Corps’ decision to seek an expansion of the CDF would perpetuate the cycle that nearby vulnerable and underserved populations have had to endure.

1. Southeast Chicago has a long history of environmental harm.

Southeast Chicago was once one of the largest steel producing regions in the world.¹⁴ Industrial development in the years after the Civil War concentrated around the Calumet River.¹⁵

¹⁴ Rod Sellers, *Chicago’s Southeast Side Industrial History*, Southeast Hist. Soc’y 12 (Mar. 2006), <https://www.csu.edu/cerc/researchreports/documents/ChicagoSESideIndustrialHistory.pdf>.

¹⁵ Craig E. Colten, *Industrial Wastes in Southeast Chicago: Production and Disposal 1870-1970*, 10 Env’t. Rev. 93, 94-96 (1986); *supra* n.14 at 5.

Steel producers were also attracted to the area because of its proximity to railroads,¹⁶ which began to be constructed in the region in the 1840s.¹⁷ Four major steel mills were established in Southeast Chicago, including the United States Steel South Works¹⁸ (approximately one mile away from where the CDF currently sits),¹⁹ and coke plants were constructed at the same time, including the Acme Steel Coke Plant²⁰ (approximately three miles south of the current location of the CDF).²¹

Complaints about pollution and waste began almost immediately, as steel mills dumped liquid industrial waste, such as acids, phenols, benzene, tars, and oils, into the Calumet River,²² while coke plants released coal tar into its waters.²³ Residents experienced poor tasting water and were advised by their aldermen not to bathe near the mouth of the river.²⁴ Solid industrial wastes were left in the marsh areas surrounding the river with little to no regulation until after World War II, when the City began constructing sanitary landfills in the area.²⁵ While landfills were an

¹⁶ *Supra* n.14 at 3.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 12.

¹⁹ See Google Maps,

<https://www.google.com/maps/dir/3600+E+95th+St,+Chicago,+IL+60617,+USA/South+Works,+Chicago,+IL+60617/@41.730269,-87.5494394,2183m/data=!3m1!1e3!4m1!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x880e2801cf5860db:0xf5544fe033fcab09!2m2!1d-87.5404654!2d41.7375192!3e0!5m1!1e4?entry=ttu>.

²⁰ USEPA, *EPA Adds Acme Steel Coke Plant in Chicago to Superfund National Priorities List*, Mar. 5, 2024, <https://www.epa.gov/newsreleases/epa-adds-acme-steel-coke-plant-chicago-superfund-national-priorities-list#:~:text=Beginning%20in%20the%20late%201800s,SVOCs%2C%20cyanide%2C%20and%20mercury>.

²¹ See Google Maps,

<https://www.google.com/maps/dir/3600+E+95th+St,+Chicago,+IL+60617,+USA/11236+South+Torrence+Avenue,+Chicago,+IL/@41.7072777,-87.5694974,4368m/data=!3m2!1e3!4b1!4m1!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x880e270ba192a78d:0x5730a5753ddf5de4!2m2!1d-87.5620749!2d41.691465!3e0!5m1!1e4?entry=ttu>.

²² *Supra* n.15 at 96-7.

²³ Andrew Hurley, *Industrial Pollution*, Encyclopedia of Chicago (2005), <http://www.encyclopedia.chicagohistory.org/pages/638.html>.

²⁴ *Supra* n.15 at 97.

²⁵ *Id.* at 100.

improvement over dumping, they also created another burden on Southeast Chicago residents: by 1990, the Tenth Ward in Southeast Chicago had over 25 square miles of landfills.²⁶

The steel industry in Southeast Chicago largely relied on immigrants to do dangerous labor for low pay.²⁷ As a result, the residential areas that developed within the area close to the mills were largely immigrant communities.²⁸ In the late 1800s, a large population of Polish immigrants inhabited the area, later followed by Mexican immigrants who arrived at the beginning of the 20th century.²⁹ Social workers at the time described how immigrants lived in poor conditions and were affected by the steel mill industry “in physically offensive ways,”³⁰ noting how the mills shut off their access to Lake Michigan and “belch[ed] forth dense masses of smoke which hang over the neighborhood like clouds of darkness and pollute the atmosphere so that no whiff of the air comes untainted...”³¹ Investment in homes and infrastructure was lower than in other areas of the city, as residents “found shelter in the most used, most outworn and derelict housing which the city keeps.”³²

In the New Deal era, the status of the areas surrounding the current location of the CDF as areas unworthy of investment was further solidified by the process of redlining, a discriminatory practice whereby neighborhoods in large US cities were assigned one of four categories by the Home Owners’ Loan Corporation (HOLC), spanning from “Best” (A), to “Hazardous” (D), as a

²⁶ Christopher Thale, *Waste Disposal*, Encyclopedia of Chicago (2005), <http://www.encyclopedia.chicagohistory.org/pages/1322.html>.

²⁷ Michael Innis-Jimenez, *No Cheerful Patches of Green*, City of Lake and Prairie: Chicago’s Environmental History 137, 140 (Kathleen A. Brosnan, William C. Barnett, & Ann Durkin Keating, eds., 2020).

²⁸ *Id.* at 140-42.

²⁹ *Id.* at 141.

³⁰ Sophonisba P. Breckinridge & Edith Abbott, *Chicago Housing Conditions, V: South Chicago at the Gates of the Steel Mills*, 17 Am. J. Soc. 145, 145 (1911).

³¹ *Id.* at 174.

³² *Supra* n.27 at 143-144 (quoting Elizabeth Ann Hughes, *Living Conditions for Small Wage Earners in Chicago*, City of Chicago Dep’t. Pub. Welfare 9 (1925)).

measure of their creditworthiness.³³ The racial makeup of the neighborhood was a factor in the classification that perpetuated discrimination.³⁴ Hazardous neighborhoods, outlined in red on HOLC maps, were deemed to be poor investments,³⁵ creating unequal access to mortgage borrowing.³⁶ Both Area D100,³⁷ located just to the north of the current site of the CDF, and Area D115 located just to the south, were given grades of “D.”³⁸ Area D100 was deemed the “worst in South Chicago,” noting the predominance of Mexican, Black, and Polish populations.³⁹ Neighborhoods that were redlined have been found to have poorer environmental conditions today than neighborhoods that were given higher grades, including higher levels of pollution and noise and fewer green spaces.⁴⁰

Industrial pollution continued in Southeast Chicago throughout the 20th century.⁴¹ Authorities did not closely monitor waste treatment processes during increased production due to World War II.⁴² In 1954, for example, the Corps filed a complaint against three steel mills alleging that water removed from the Calumet River for industrial purposes was returned with solid

³³ University of Richmond, *Mapping Inequality: Redlining in New Deal America*, <https://dsl.richmond.edu/panorama/redlining/>.

³⁴ See Wenfei Xu, *Legacies of Institutionalized Redlining: A Comparison Between Speculative and Implemented Mortgage Risk Maps in Chicago, Illinois*, 32 Housing Pol’y Debate 249, 252 (2022).

³⁵ *Supra* n.33.

³⁶ *Supra* n.34 at 249.

³⁷ See University of Richmond, *Mapping Inequality: Redlining in New Deal America, Area D100*, https://dsl.richmond.edu/panorama/redlining/map/IL/Chicago/area_descriptions/D100#loc=12/41.7324/-87.5877.

³⁸ See University of Richmond, *Mapping Inequality: Redlining in New Deal America, Area D115* https://dsl.richmond.edu/panorama/redlining/map/IL/Chicago/area_descriptions/D115#loc=14/41.7354/-87.5503.

³⁹ *Supra* n.37.

⁴⁰ See, e.g., Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 Env’t. Sci. Tech. Lett. 345 (2022); Cesar O. Estien et al., *Historical Redlining Is Associated with Disparities in Environmental Quality across California*, 11 Env’t. Sci. Tech. Lett. 54 (2024); Bev Wilson, *Urban Heat Management and the Legacy of Redlining*, 86 J. Am. Plan. Ass’n 443 (2020).

⁴¹ *Supra* n.15, at 100-103.

⁴² *Id.* at 100.

particles that accumulated in the bottom of the river.⁴³ Similarly, a 1965 report by the U.S. Department of Health, Education, and Welfare described how “popcorn slag” from the steel mills collected on beaches, bothering residents with a “sulfide odor and gritty texture.”⁴⁴

2. Southeast Chicago is currently overburdened with environmental harm.

Today, while the steel mills have closed and there is an increased focus on cleaning up past pollution, Southeast Chicago remains an industrial center that continues to experience significant environmental burdens. By way of example, the area is still Chicago’s largest industrial corridor by land area,⁴⁵ home to many active industrial sites including a Ford assembly plant,⁴⁶ scrap processing yards,⁴⁷ and bulk cargo handling facilities.⁴⁸ Southeast Chicago is currently home to

⁴³ *Id.*

⁴⁴ U.S. Dep’t of Health, Educ., and Welfare, *Report on the Pollution of the Waters of the Grand Calumet River; Little Calumet River, Calumet River, Lake Michigan, Wolf Lake, and Their Tributaries* 44 (Feb. 1965), <https://nepis.epa.gov/Exe/ZyNET.exe/2000TUWT.TXT?ZyActionD=ZyDocument&Client=EPA&Index=Prior+to+1976&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C70thru75%5CTxt%5C00000002%5C2000TUWT.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#>.

⁴⁵ Jasmine Anderson, *An End to Sacrifice Zoning in Chicago*, 28 Pub. Int. L. Rep. 10, 12 (2022).

⁴⁶ Neil Steinberg, *A Century of Ford Cars Made at Torrence Avenue*, Chicago Sun Times, Feb. 27, 2024, <https://chicago.suntimes.com/columnists/2024/02/27/ford-assembly-plant-chicago-torrence-avenue-100-years-model-t-aurus-explorer>.

⁴⁷ For example, Sims Metal is located at 9331 S. Ewing Ave, a half a mile away from the CDF. See Google Maps, 3600 E. 95th St. to 9331 S. Ewing Ave, available at <https://www.google.com/maps/dir/3600+East+95th+Street,+Chicago,+IL/9331+S+Ewing+Ave,+Chicago,+IL+60617/@41.7250902,-87.5428607,1106m/data=!3m1!1e3!4m14!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x8811d8077f1e29f3:0x9749b53628e3101e!2m2!1d-87.5392764!2d41.7272358!3e0!5m1!1e4?entry=ttu>.

⁴⁸ For example, the Illinois International Port District is located adjacent to the CDF. See Google Maps, 3600 E. 95th St. to Illinois International Port District, available at <https://www.google.com/maps/dir/3600+East+95th+Street,+Chicago,+IL/Illinois+International+Port+District,+3600+E+95th+St,+Chicago,+IL+60617/@41.7257613,-87.5403418,1106m/data=!3m1!1e3!4m14!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x8811d808c72c053f:0x1fc7ebc2e6f8f4a4!2m2!1d-87.5355008!2d41.7286146!3e0!5m1!1e4?entry=ttu>.

250 facilities that are regulated by the United States Environmental Protection Agency (“USEPA”)⁴⁹ and is the only industrial corridor in Chicago zoned to store hazardous waste.⁵⁰ In addition, according to USEPA, since 2014, over 75 companies in Southeast Chicago have been investigated for noncompliance with the Clean Air Act,⁵¹ and Superfund sites in the area include the site of the Acme Coke Plant, more than 100 acres of contaminated land containing carcinogenic chemicals and harmful metals.⁵² Further, a large number of properties in the area are located next to or within 400 feet of a truck route⁵³ and close to railroads,⁵⁴ resulting in bothersome noise and fumes. This concentration of industrial and superfund sites in Southeast Chicago has resulted in a lack of green spaces for residents to enjoy,⁵⁵ which have been favorably linked to better health outcomes.⁵⁶

Against this backdrop, Southeast Chicago and the four neighborhoods that comprise it have been identified as environmental justice communities, in part because of their demographic

⁴⁹ USEPA, *Southeast Chicago Ambient Air Quality Analysis*, <https://www.epa.gov/il/southeast-chicago-ambient-air-quality-analysis>.

⁵⁰ National Resources Defense Council, *Mining for Limestone on Chicago's Southeast Side? Residents Gear Up for a Fight (Again)*, Feb. 17, 2023, <https://www.nrdc.org/stories/mining-limestone-chicagos-southeast-side-residents-gear-fight-again>.

⁵¹ USEPA, *Environmental Issues in Southeast Chicago*, <https://www.epa.gov/il/environmental-issues-southeast-chicago>; Letter from Michael S. Regan, Administrator, USEPA to Lori E. Lightfoot, Mayor, City of Chicago (May 7, 2021), <https://www.epa.gov/system/files/documents/2022-02/letter-to-mayor-lightfoot-5.7.21.pdf>.

⁵² Brett Chase, *Acme Steel site on Southeast Side becomes newest Chicago Superfund priority*, Chicago Sun Times, Mar. 6, 2024, <https://chicago.suntimes.com/environment/2024/03/06/acme-steel-epa-southeast-side-superfund-priority-cleanup>.

⁵³ See City of Chicago, *CSI: A Manufacturing Work Plan for the 21st Century* 23 (2011), https://www.chicago.gov/content/dam/city/depts/zlup/Sustainable_Development/Publications/Chicago_Sustainable_Industries/Chicago_Sustainable_Book.pdf.

⁵⁴ See *id.* at 25.

⁵⁵ See Gia Clark, *A Deep Dive Into Chicago's Climate Inequality*, 14 East, Nov. 3, 2023, available at <http://fourteeneastmag.com/index.php/2023/11/03/a-deep-dive-into-chicagos-climate-inequality/>.

⁵⁶ See Kirsten M.M. Beyer et al., *Exposure to Neighborhood Green Space and Mental Health: Evidence from the Survey of the Health of Wisconsin*, 11 Int'l J. Env't. Res. & Pub. Health 3453 (2014).

makeup.⁵⁷ Over 70% of the residents of South Chicago, the neighborhood within Southeast Chicago directly adjacent to the CDF, are Black and over 20% are Hispanic.⁵⁸ More than a third of residents have an annual income less than \$25,000,⁵⁹ and close to one fourth speak a language other than English in the home.⁶⁰ Nearly one in five residents do not have a high school diploma.⁶¹ By all indicators, this is a vulnerable community.

In fact, every level of government has recognized Southeast Chicago as an environmental justice community. USEPA's EJ Screen tool has ranked Southeast Chicago at the highest levels for many pollution indicators, including fine particulate matter, air toxics cancer risk, respiratory hazard, traffic proximity, lead paint, Superfund site proximity, hazardous waste proximity, and wastewater discharges.⁶² Similarly, Illinois EPA has identified the area containing the CDF as an environmental justice community.⁶³ Further, Southeast Chicago received a very high Environmental Justice Index Score in the City of Chicago's 2023 Cumulative Impact Assessment, indicating that it has some of the highest exposure to environmental harm in the city.⁶⁴

3. Residents of Southeast Chicago suffer from disproportionate health burdens.

A 2020 report by the City of Chicago on Air Quality identified the neighborhoods of Southeast Chicago as areas of great concern, noting that "chronic disease is the leading driver of

⁵⁷ See Illinois EPA, Illinois EPA EJ Start, <https://www.arcgis.com/apps/webappviewer/index.html?id=f154845da68a4a3f837cd3b880b0233c>.

⁵⁸ Chicago Metropolitan Agency for Planning, *South Chicago Community Data Snapshot 3* (2023), <https://www.cmap.illinois.gov/documents/10180/126764/South+Chicago.pdf>.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 4.

⁶¹ *Id.*

⁶² USEPA EJScreen, <https://ejscreen.epa.gov/mapper/>; Letter from Michael S. Regan, Administrator, USEPA to Lori E. Lightfoot, Mayor, City of Chicago (May 7, 2021), <https://www.epa.gov/system/files/documents/2022-02/letter-to-mayor-lightfoot-5.7.21.pdf>

⁶³ *Supra* n.6.

⁶⁴ City of Chicago, *Chicago's Cumulative Impact Assessment Environmental Justice Map* (2023), https://www.chicago.gov/content/dam/city/depts/cdph/environment/CumulativeImpact/Chicago-EJ-Index_CAs.jpg.

Chicago's nine-year life expectancy gap between Black and white residents" and that "[a]ir pollution can both increase risk of chronic illnesses like heart and lung diseases and contribute to worse outcomes for people living with certain health conditions."⁶⁵ In fact, South Chicago has higher rates of chronic disease than Chicago as a whole, including adult asthma, COPD, and lung cancer.⁶⁶ There is also a higher rate of children aged 1-5 diagnosed with lead poisoning and the rate of children born with a very low birthweight in South Chicago is twice that of the City of Chicago.⁶⁷

4. The proposed expansion of the CDF would increase the already heavy environmental burden experienced by residents of Southeast Chicago.

The proposed expansion of the CDF would significantly increase the quantity of toxic waste permanently disposed of in Southeast Chicago. *See* ECF No. 56-10 at 4 (describing how the expansion would permanently hold 530,000 cubic yards of waste). Specifically, the expansion would occur less than a mile from a residential neighborhood and many popular community areas, such as Douglas Taylor Elementary School, Calumet Park Beach, and the Calumet Park Softball, Soccer, and Baseball fields.⁶⁸ After 40 years of toxic dumping, rather than the promised green

⁶⁵ City of Chicago, *Air Quality and Health Report 5-7* (2020), https://www.chicago.gov/content/dam/city/depts/cdph/statistics_and_reports/Air_Quality_Health_doc_FI_NALv4.pdf.

⁶⁶ Chicago Health Atlas, *South Chicago*, <https://chicagohealthatlas.org/neighborhood/1714000-46?place=south-chicago&tab=data>.

⁶⁷ *Id.*

⁶⁸ *See* Google Maps, <https://www.google.com/maps/dir/3600+East+95th+Street,+Chicago,+IL/Douglas+Taylor+Elementary+School,+9912+S+Avenue+H,+Chicago,+IL+60617/Calumet+Park+Beach,+Chicago,+IL/Calumet+Park+Softball+Field+North+East,+East+Foreman+Drive,+Chicago,+IL/Calumet+Park+Baseball+Field+1,+Calumet+Park,+South+Avenue+G,+Chicago,+IL/@41.717899,-87.5426481,2212m/data=!3m1!1e3!4m32!4m31!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x8811d80cc1ffc0c3:0x5ffa46f686258102!2m2!1d-87.5331979!2d41.7154019!1m5!1m1!1s0x8811d8129390b589:0xec060c941a483d0d!2m2!1d-87.5286558!2d41.7158686!1m5!1m1!1s0x8811d8103561eb47:0x3863411c8d19b4e2!2m2!1d-87.5284624!2d41.7218103!1m5!1m1!1s0x8811d900184bb273:0xf5a42b0aa20a2817!2m2!1d-87.528543!2d41.718745!3e0!5m1!1e4?entry=ttu>.

space in an area significantly lacking in such spaces,⁶⁹ the proposed expansion of the CDF over the next 20 years would add 530,000 cubic yards of toxic waste to an area already heavily blighted with dangerous pollutants. *See* ECF No. 56-10 at 4.

As their history demonstrates, the residents of Southeast Chicago have shouldered an unfair share of environmental harm for far too long. Prohibiting the expansion of the CDF into the DMDF is an important step to prioritize the quality of life of the residents of Southeast Chicago, ensure their constitutional right to a healthful environment, and bring long overdue environmental justice to the community.

KWAME RAOUL,
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: /s/ Stephen J. Sylvester
Stephen J. Sylvester
Bureau Chief
Kathryn A. Pamenter
Senior Assistant Attorney General
Caitlin Kelly
Assistant Attorney General
Illinois Atty. General's Office, Env. Bureau
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

⁶⁹ *Supra* n.55.

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2024, I caused the foregoing document to be electronically filing with the Clerk of the Court for the U.S. District for the Northern District of Illinois using the CM/ECF system, which sent notification of such filing to counsel of record in this case.

By: /s/ Caitlin Kelly
Caitlin Kelly
Assistant Attorney General
Illinois Atty. General's Office, Env. Bureau
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 415-7164
Caitlin.Kelly@ilag.gov

Date: July 11, 2024

EXHIBIT B



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

February 23, 2024

In Reply Refer to:

EPA Complaint No: 01RNO-21-R5

John J. Kim
Director
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
John.j.kim@illinois.gov

Re: Resolution of EPA Complaint No. 01RNO-21-R5

Dear Director Kim:

This letter is to notify you that the U.S. Environmental Protection Agency ("EPA"), Office of Environmental Justice & External Civil Rights ("OEJECR"), Office of External Civil Rights Compliance ("OECRC"), has resolved EPA Complaint No. 01RNO-21-R5 based on the enclosed Informal Resolution Agreement ("Agreement"), which is entered into between EPA and the Illinois Environmental Protection Agency ("IL EPA").

On January 25, 2021, EPA accepted for investigation a complaint filed on behalf of the Southeast Environmental Task Force ("SETF") and the Chicago Southeast Coalition to Ban Petcoke ("Coalition") against IL EPA alleging discrimination on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964 ("Title VI") and EPA's nondiscrimination regulation, at 40 C.F.R. Parts 5 and 7. Specifically, EPA accepted for investigation the following issues:

1. Whether IL EPA discriminated against the predominantly Latino and African American community in southeast Chicago on the basis of race and national origin in violation of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7, in its permitting process and issuance of a Construction Permit to General III, LLC.
2. Whether IL EPA has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the IL EPA's services, programs, and activities, for individuals with limited English proficiency and individuals with

John J. Kim, Director

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disabilities, and whether the IL EPA has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

During the course of EPA's investigation, IL EPA agreed to enter into the IRA process in order to resolve EPA Complaint No. 01RNO-21-R5. The enclosed Agreement, signed on February 14, 2024, is entered into by EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI and 40 C.F.R. Parts 5 and 7. It is understood that the Agreement does not constitute an admission by IL EPA of any violation or a finding by EPA of compliance or noncompliance with applicable federal non-discrimination laws and regulation.

The enclosed Agreement does not affect IL EPA's continuing responsibility under Title VI, 40 C.F.R. Parts 5 and 7, and other federal nondiscrimination laws, nor does it affect OECRC's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth EPA's disposition of the complaint. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such.

We thank IL EPA for its willingness to work collaboratively with EPA to develop this IRA in the interest of ensuring that all people in the state of Illinois have access to clean air without regard to race, color, or national origin. We appreciate IL EPA's commitment to implement enhancements to its air-related permitting process to assure nondiscrimination under Title VI of the Civil Rights Act and to promote transparency and public engagement in this process. EPA is committed to working with IL EPA as it implements the provisions of the Agreement.

In addition, we appreciate the Complainants' efforts in raising these important issues. We thank Complainants for their cooperation and responsiveness to EPA's outreach during this informal resolution process.

If you have any questions regarding this letter and the Agreement between EPA and IL EPA, please contact me at (202) 809-3297 or by e-mail at hoang.anhthu@epa.gov.

Sincerely,

ANHTHU
HOANG

Digitally signed by
ANHTHU HOANG
Date: 2024.02.22
16:37:33 -05'00'

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

John J. Kim, Director

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Enclosure

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

Cheryl Newton
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 5

Robert Kaplan
Regional Counsel
U.S. EPA Region 5



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

INFORMAL RESOLUTION AGREEMENT

between

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IL EPA)

and

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EPA COMPLAINT NO. 01RNO-21- R5

I. PURPOSE AND JURISDICTION

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI") and other federal nondiscrimination laws, and United States Environmental Protection Agency's ("EPA") implementing regulation at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance.¹
- B. The Illinois Environmental Protection Agency ("IL EPA") receives federal financial assistance from the EPA. As a term and condition, IL EPA agreed to comply with federal nondiscrimination laws, including Title VI, and all applicable civil rights regulations.² IL EPA also provided assurance that it would "fully comply with all applicable civil rights statutes and EPA regulations."³ Therefore, IL EPA must assure nondiscrimination in programs and activities pursuant to the provisions of Title VI, the other federal non-discrimination laws, and the EPA's implementing regulation.

¹ Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

² See Term and Condition 36, Civil Rights Obligations at https://www.epa.gov/sites/production/files/2019-09/documents/fy_2020_epa_general_terms_and_conditions_effective_october_1_2019.pdf.

³ See Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance.

- C. On December 17, 2020, the EPA's Office of External Civil Rights Compliance ("OECRC")⁴ received Complaint No. 01RNO-21-R5 ("Complaint"), which alleged discrimination by IL EPA based on race and national origin.
- D. In response to the complaint, on January 25, 2021, the EPA accepted for investigation the following issues:
 - 1. Whether IL EPA discriminated against the predominantly Latino and African American community in southeast Chicago on the basis of race and national origin in violation of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7, in its permitting process and issuance of a Construction Permit to General III, LLC.
 - 2. Whether IL EPA has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the IL EPA's services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether the IL EPA has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.
- E. During the course of the EPA's investigation of Complaint No. 01RNO-21-R5, on February 11, 2021, IL EPA agreed to engage in the voluntary Informal Resolution Agreement ("Agreement") process in order to resolve the Complaint.
- F. This Agreement is entered into by IL EPA and the EPA.
- G. This Agreement is entered into pursuant to the authority granted to the EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and the EPA's implementing regulation found at 40 C.F.R. Parts 5 and 7, and resolves Complaint No. 01RNO-21-R5.

⁴ 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 these goals in accordance with the procedure described in the Case Resolution Manual.

- H. This Agreement does not constitute an admission by IL EPA of a violation of, or a finding of compliance or noncompliance by the EPA with, Title VI or 40 C.F.R. Parts 5 and 7.
- I. IL EPA has acknowledged its responsibilities in carrying out its programs in a nondiscriminatory manner, in accordance with the requirements of Title VI and other federal non-discrimination laws and the EPA regulation at 40 C.F.R. Parts 5 and 7. For purposes of this Agreement, the responsibilities addressed by the IL EPA in accordance with Title VI and EPA's implementing regulations shall hereinafter be referred to as affecting or pertaining to "civil rights." The commitments detailed in Sections IV and V of this Agreement, which IL EPA has voluntarily agreed to undertake and implement, are in furtherance of these ongoing responsibilities.
- J. Nothing in this Agreement contemplates that the terms or commitments applying to the IL EPA expressed herein shall constitute a "rule" for purposes of the Illinois Administrative Procedure Act, 5 ILCS 100/¶1-1 - ¶15-10.

II. BACKGROUND

- A. General III, LLC, ("General III") submitted a construction permit application ("App. No. 19090021") to the IL EPA that was received on September 25, 2019, seeking a new scrap metal recycling facility at 11600 South Burley Avenue in Chicago, Illinois. The project contemplated the relocation of an existing facility formerly owned by General Iron Industries, Inc., in the Lincoln Park area of Chicago to a site operated by South Chicago Property Management, Ltd., an affiliate of the Reserve Management Group.⁵
- B. Following several waivers of the permit decision deadline, as well as issuance of an Environmental Justice ("EJ") notification, notices of public comment and a public hearing for a draft permit, deliberative sessions with EPA/Region V staff regarding modeling and draft permit, and preparation of a responsiveness document to address a large compilation of public comments, the IL EPA issued a final construction permit to General III on June 25, 2020.
- C. On August 20, 2020, the IL EPA received a formal Grievance on App. No. 19090021 from environmental advocacy groups, Southeast Environmental Task Force ("SETF"), Natural Resources Defense Council and the Chicago Southeast Coalition to Ban

⁵ See, Construction Permit Application for Scrap Metal Recycling Facility, dated September 24, 2019, submitted by RK & Associates, Inc., on behalf of General III, LLC, at Section 1.0, page 1.

Petcoke ("Coalition"), that was filed under procedures implemented in accordance with the IL EPA's EJ policy and EJ Grievance Procedures.⁶

- D. The Grievance alleged that several aspects of the IL EPA's review of the permit application and issuance of the construction permit for General III resulted in discrimination on the basis of race or national origin in violation of Title VI of the Civil Rights Act of 1964, and the Illinois Civil Rights Act of 2003 at 740 ILCS 23, as well as violated the requirements of IL EPA's EJ policy. The IL EPA rejected the alleged claims of discrimination in a formal response to the Grievance on December 18, 2020.

III. IL EPA'S EXISTING PERMIT REVIEW PROCESS

- A. As part of informal resolution discussions between OECRC and the IL EPA in this matter, a general process of permit review was identified by the IL EPA to describe the various stages of permit review and methods of administering Illinois' air-related permitting process for certain air construction permit applications as identified in this Agreement. This process is included here to promote transparency and to illustrate those areas of the process that the IL EPA aims to improve through the implementation of its future commitments in light of Title VI requirements and EPA's implementing regulations.
- B. IL EPA currently evaluates its obligations with Title VI and EPA's implementing regulations in conjunction with administering permitting programs.
- C. The permitting process for emission sources in Illinois involves construction and operating permit applications for major and minor sources of emissions. The permit review process described in Section III (D) below applies only to the following air construction permit applications for projects that are located in an area of EJ concern as determined by IL EPA:
1. A construction permit for a new source that is to be located in an area of EJ concern and that will require a Clean Air Act Permit Program ("CAAPP") (codified at 415 ILCS 5/39.5) permit or a Federally Enforceable State Operating Permit ("FESOP") (codified at 415 ILCS 5/39(a)) permit;
 2. A construction permit for any existing source that is located in an area of EJ concern, that possesses a CAAPP permit or FESOP and that seeks an increase in annual permitted emissions; or

⁶ The IL EPA's EJ Grievance Procedures serve as administrative procedures required under EPA regulations found at 40 C.F.R. §7.90.

3. A construction permit for any existing source that is located in an area of EJ concern, that seeks an increase in annual permitted emissions and that will require a new CAAPP permit or new FESOP permit for the first time.

D. The Bureau of Air's permit review process currently consists of the following:

1. A construction permit application submitted to the IL EPA is subject to a 90-day decision deadline unless notice of comment and opportunity for public hearing are required by applicable law or regulation. If notice of comment and opportunity for public hearing is required, the decision deadline is 180 days. The Bureau of Air's Permit Section monitors the decision deadline during the review process, requesting waivers from the applicant, as needed, to avoid issuance of a permit by default.
2. An initial evaluation of the application is undertaken to determine whether the source location falls within an area of EJ concern. This evaluation utilizes the EJ Start GIS program originally created to help guide the implementation of the IL EPA's Policy, along with additional screening that uses the environmental, health, and demographic indicators in EPA's EJ Screen to identify which permitting projects may need additional scrutiny.
3. If EJ Start reveals that the project addressed in the application is for a location within an area of EJ concern, a "review request" is submitted to the EJ Tracking System. The EJ Coordinator and staff review the request, using information concerning the type of facility, the nature of the permit action, previous interest in the source and other factors to determine whether an EJ notification is appropriate.
4. If determined appropriate, an EJ notification letter is prepared containing details of the application and a short summary of the project. The notice is sent to elected officials (federal, state and local), community groups and individuals who have requested to be notified, to inform them of the pending application for permit.
 - (a) An EJ notification letter is typically sent out conventional mail or electronically within 14 days of receipt of an application.
 - (b) Any follow-up inquiries or comments to the EJ notification letter are used by the IL EPA EJ Coordinator and the IL EPA Office of Community Relations ("OCR") to inform future public outreach needs during the review of the permit application.

5. Environmental and demographic screening information is accessed by IL EPA's OCR and IL EPA's EJ Coordinator to aid in the above evaluation. The screening information is also distributed to the Permit Section to assist in the evaluation of the permit application.
6. As part of the initial review of the permit application, an evaluation of the emissions of the proposed application is made by the Bureau of Air's Permit Section in consultation with the permit applicant. This evaluation focuses on whether emission increases from the project can be reduced or voluntarily limited by the source to avoid or minimize potential impacts to an affected EJ community.
 - (a) The Bureau of Air's Permit Section evaluates proposed emissions increases and decreases associated with the source, as well as permit allowable limits from an existing source permit.
 - (b) If necessary to avoid or minimize project emissions, the Permit Section may encourage a source to accept reductions in permitted source limits, capture emission offsets that may be of qualitative significance or achieve emission reductions that go beyond compliance. These deliberations typically occur during the earliest stages of development of a draft construction permit.
7. The need for air quality modeling is evaluated by Bureau of Air Modeling Unit to confirm that the project will not threaten or compromise existing National Ambient Air Quality Standards ("NAAQS") or other legal standards appropriate for comparison with other pollutants of concern.
 - (a) The staff of the Bureau of Air's Modeling Unit conducts outreach with the applicant to determine the proper scope of emissions modeling conducted by third-party consultant (or independently by the Modeling Unit) and identifies the standards to be used for comparison.
 - (b) The Modeling Unit may consult with EPA/Region V to address modeling issues of concern.
 - (c) Modeling results obtained from an applicant are audited by the Modeling Unit; issues raised from the audit review are addressed as needed. If the Modeling Unit conducts the modeling, the modeling results are shared or discussed with the applicant or its consultant.

- (d) A final air quality modeling memorandum is prepared by the Modeling Unit and forwarded to Permit Section. If a draft permit is subject to a public comment period and/or hearing, a copy of the memorandum will be posted to the IL EPA's public notice website at the time of public notice of the comment period and/or hearing.
- 8. The Permit Section evaluates appropriate permit enhancements to address potential impacts to an area of EJ concern. These enhancements frequently involve emissions monitoring, recordkeeping, reporting or testing requirements and can include, subject to either agreement by the applicant or agency enabling authority under existing law, the following types of permit conditions:
 - (a) Improved monitoring systems, including parametric and continuous monitoring systems, that go beyond existing practices or rule requirements;
 - (b) Development of a fugitive dust operating program/plan (or enhancements to an existing program/plan);
 - (c) Consideration of operational requirements to establish limits on potential-to-emit or to demonstrate source compliance with an emission rate;
 - (d) Increased use or frequency of emissions testing;
 - (e) Development of enforceable requirements to go into the construction permit assuring that the facility meets certain modeling assumptions used in the air quality modeling (including hours of operation, operating requirements, operating schedule, meteorological assumptions, property boundaries, etc.);
 - (f) Development of an odor control plan, where appropriate, to identify and mitigate potential off-site odor impacts from the project;
 - (g) Development of odor monitoring of third-party complaints, including a process for tracking complaints and inspecting affected process operations known to be capable of causing air pollution;
 - (h) Discretionary use of prior adjudications of the Environmental Protection Act by the applicant that involved a release of a contaminant into the environment in evaluating the permit application;

- (i) Discretionary use of reasonable conditions specifically related to an applicant's past compliance history with the Environmental Protection Act and as necessary to correct, detect, or prevent noncompliance;
 - (j) Encourage the use of pollution prevention techniques; and/or
 - (k) Encourage applicant outreach, independent of the permit review process, with the affected community.
- 9. The Permit Section routinely shares drafts of the construction permit for comment with the applicant or its consultant as a draft permit takes shape. The Permit Section may also share a permit draft or consult with EPA/Region V officials regarding the draft construction permit.
- 10. Contemporaneous with the development of a draft permit and emissions modeling, the IL EPA's Office of Environmental Justice ("OEJ") and OCR engage in public outreach as may be warranted by the comments received from the EJ notification process. Among other things, this may include:
 - (a) Preparing and distributing fact sheets, in consultation with Permit Section staff, that discuss aspects of the source, applicable regulations or the project;
 - (b) Arranging for local repositories that will contain the draft permit and notice, together with supporting documents, such as fact sheets, permit application materials or agency memoranda, that are available for public review. The same documents may also be posted to the IL EPA's public notice website.
 - (c) Conducting small group meetings in lieu of, or in addition to, a public hearing to discuss with the affected community their concerns about the project. These meetings can be appropriate where there has been no request for a public hearing or where criteria for holding a public hearing is not otherwise met under the Bureau of Air's public participation rules codified at 35 Ill. Adm. Code Part 252. These meetings can also be scheduled in anticipation of a public comment period or hearing, with the purpose being to inform the public in how to effectively present hearing comments or submit written comments during the comment period;

- (d) Arranging bilingual or multi-lingual publication, in accordance with the IL EPA's Language Access Plan (LAP), of public notices or, as appropriate, other materials;
 - (e) Arranging bilingual or multi-lingual public hearings, in accordance with the IL EPA's LAP, where appropriate; and/or
 - (f) Preparing for a formal public hearing and comment period for the project, as needed, in accordance with applicable regulations.
11. The review of the project emissions data, initial EJ screening, emissions modeling, selection of permit enhancements and other steps described above typically culminates in the development of a draft permit. For projects affecting EJ areas of concern, this review process constitutes an "EJ analysis," though the latter term is not officially recognized currently by Illinois statute or regulation.
 12. The determination of whether an application for a construction permit is subject to notice and opportunity for a hearing is determined by the IL EPA's public participation rules codified at 35 Ill. Adm. Code Part 252.
 13. The IL EPA hearing officer conducts the hearing (typically in-person but can be virtual) and generally facilitates the presentation of comments and accepts exhibits at hearing. A hearing panel, including representatives from the Permit Section, provide a brief overview of the permit process and draft permit at the outset of the hearing.
 14. The hearing officer receives comments during the comment period and responds to any inquiries received during or after the close of public comment, including extension requests, as appropriate.
 15. After the close of the comment period, the Permit Section, together with other IL EPA staff, review public comments and prepare a Responsiveness Summary. The Permit Section may seek assistance from the applicant or its consultant in responding to public comments and/or in negotiating additional changes to the draft permit to address comments.
 16. The Permit Section makes a final permit decision and informs the applicant of the decision by mail. OCR sends a letter or an email to persons registered on a contact list informing them of the decision. If the decision is to issue a permit, a copy of the permit and Responsiveness Summary is posted to the IL

EPA's public notice website. If the decision is to deny the permit, a copy of the denial letter is posted.

IV. IL EPA COMMITMENTS TO ADDRESS CIVIL RIGHTS AND EJ IN PERMIT REVIEW PROCESS

- A. The IL EPA commits to implementing enhancements to its permit review process, as described in Section III above, as part of the resolution of this Complaint. These enhancements consist of the following:
1. IL EPA agrees to continue its implementation of the general permit review process outlined in Section III above, subject to changes in existing provisions of the Illinois Environmental Protection Act, the Pollution Control Board's air pollution regulations or the IL EPA's administrative regulations.
 2. IL EPA is revising its EJ notification letter template to provide additional information as it relates to informing the public of rights to public participation in the permit review process, including how an individual can request a public hearing on a permit application. IL EPA commits to using the new template during the permit review process referenced in Sections III and IV.
 3. When considering an application for an air construction permit as outlined in Section III (C), IL EPA will:
 - (a) Affirmatively consider prior adjudications with respect to the Illinois Environmental Protection Act; and
 - (b) Affirmatively consider whether to impose reasonable permit conditions specifically related to an applicant's past compliance history under the Environmental Protection Act to correct, detect or prevent noncompliance. This may include consideration of:
 - (i) Information contained within the IL EPA's environmental compliance tracking system;
 - (ii) Information submitted in public comments to a construction permit application pending review;
 - (iii) Judicial or administrative consent decrees or compliance orders that are entered into, or issued, by EPA involving requirements of the Illinois State Implementation Plan; and
 - (iv) Information relating to State-only compliance history.

4. When reviewing construction permit applications referenced in Section III (C) for possible enhancements to the draft permit, IL EPA may conduct further analysis, as needed, to inform its permit decision. Such analysis may include consideration of the following:
 - (a) Information relating to other sources permitted by IL EPA or EPA/Region V;
 - (b) Information relating to regulated sources under state or federal environmental laws, such as those subject to federal or state requirements for reporting of waste generation or emissions (e.g., Toxics Release Inventory reporters, Resource Conservation and Recovery Act hazardous waste generator sites);
 - (c) Data bearing upon appropriate factors identified as environmental, health or socioeconomic indicators in EJ Screen;
 - (d) Location of sensitive populations or places near the proposed facility, including:
 - (i) Schools;
 - (ii) Hospitals;
 - (iii) Day care centers (e.g., children, elders);
 - (iv) Culturally significant resources (e.g., cemeteries, churches);
 - (e) Factors that may increase community exposure or vulnerability as compared to other populations (e.g., cultural practices, subsistence fishing, hunting, foraging information); and
 - (f) Consultation with EPA or other state and federal regulatory authorities regarding additional areas of study.
5. If the IL EPA's analysis described above in Section III (D) and Section IV shows disproportionate and adverse effects, IL EPA will consider:
 - (a) Making additional refinements to the project emissions analysis, air quality modeling or permit enhancements addressed in Section III (D)(6), (7) and (8) respectively;
 - (b) Prioritizing compliance inspections and any resulting enforcement initiatives of an applicant's existing permitted source and/or other

contributing sources to the affected area, with the aim of reducing existing adverse impacts;

(c) Prioritizing grant funding for projects in the affected community;

(d) Conducting consultation with EPA/Region V or other state and federal agencies relating to potential mitigation options, including fence-line monitoring, risk assessments or rulemakings.

6. The IL EPA will provide a written analysis of its evaluation of compliance and enforcement history, as well as any additional civil rights analysis or mitigation measures undertaken in Section IV (A) (3), (4) and (5) above. The written analysis will be prepared prior to the notice of public comment and/or hearing concerning a draft construction permit and will be posted among the documents available on the agency's public notice website and/or public repository. The public notice will reference the written civil rights analysis. If no public participation is provided for by IL EPA's Part 252 regulations rule, the written analysis will be posted to the IL EPA's public notice webpage at the time of permit issuance.

B. Revised EJ notification letter template referenced in Section IV A (2) above

1. Within 120 days of the effective date of this Agreement, IL EPA will submit to EPA for review and approval the revised EJ notification letter template, referenced in Section IV A (2) above.
2. Within 60 days, EPA will share feedback on the revised EJ notification letter template and IL EPA will address EPA's feedback within 60 days.

C. Within 180 days of the date of this Agreement, IL EPA will provide confirmation to EPA that appropriate IL EPA permit review staff have been made aware of the requirements of this Agreement regarding the process described in Section IV.

V. IL EPA COMMITMENTS TO ADDRESS PROCEDURAL SAFEGUARD REQUIREMENTS

A. Notice of Non-Discrimination under Federal Non-Discrimination Laws

1. IL EPA has updated its Notice of Nondiscrimination to include the language requested by EPA.

- (a) IL EPA has posted a revised notice of non-discrimination (Notice) on IL EPA's website homepage and in all IL EPA's offices and facilities, and may also include or reference such notice in its general publications that are distributed to the public. IL EPA will ensure that its revised Notice, including as posted on its website homepage, is accessible to individuals with limited-English proficiency (LEP) and individuals with disabilities, including ensuring that the Notice as posted on its website homepage is accessible to persons who are blind or have low vision.
- (b) If the identity of the Non-Discrimination Coordinator changes, then IL EPA will promptly update materials as appropriate.

B. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws⁷

- 1. IL EPA has revised its Grievance Procedure to include additional commitments to ensure that IL EPA's Grievance Procedure will promptly, fairly, and appropriately address nondiscrimination complaints.
- 2. IL EPA will ensure that it has prominently published online, and make available in print, its revised grievance procedures to process discrimination complaints filed under federal non-discrimination statutes and the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7. IL EPA will review the grievance procedures on an annual basis, and revise as necessary, to allow for prompt and fair resolution of discrimination complaints. IL EPA will also post revised grievance procedures in English and all appropriate languages on its website.
- 3. IL EPA will develop training for identifying how complaints filed under the Grievance Procedures will be investigated and processed by the investigatory staff and the decision-maker(s). IL EPA will submit a copy of the training materials to EPA within 30 days of the effective date of this Agreement. EPA may provide comments to IL EPA within 30 days of receipt.
- 4. IL EPA's Non-Discrimination Coordinator will record the disposition of each nondiscrimination complaint pursuant to 40 C.F.R. § 7.85(a)(3), post decisions on IL EPA's website, and maintain these records pursuant to 40 C.F.R. § 7.85(e) for a period of at least three years.

⁷ 40 C.F.R. § 7.90; 40 C.F.R. § 5.135(b).

C. **Enhanced Public Participation Plan**

1. IL EPA will revise its Enhanced Public Participation Plan to include the additional commitments outlined below and to ensure that IL EPA's public involvement process will be available to all persons regardless of race, color, national origin (including limited-English proficiency), age, disability, sex, or prior exercise of rights or opposition to actions prohibited under federal non-discrimination laws.
2. The revised Enhanced Public Participation Plan will:
 - (a) Ensure that the factors used to determine the time, place, location, duration, and security at public hearings and meetings are applied in a non-discriminatory manner.
 - (b) Ensure that public comments can be submitted to IL EPA (1) in writing, via conventional mail or electronically, during the public comment period and (2) orally at hearings, provided that both avenues for expression may be subject to reasonable deadlines established by the agency taking into account the nature of the hearings and their relationship to the agency's decision-making process.
 - (c) Ensure that its public outreach efforts are accessible to all persons regardless of race, color, national origin, limited English proficiency, disability, sex and age by:
 - (i) providing a process for identifying communities to be impacted by a particular IL EPA decision-making process;
 - (ii) requiring the posting of contact information for relevant staff members on its website, including phone numbers and email addresses, to allow the public to communicate with appropriate staff;
 - (iii) identifying a place to maintain records, consistent with the Illinois record retention laws, regarding past and present community concerns (including any complaints filed under the federal non-discrimination laws);
 - (iv) providing a mechanism for IL EPA's community partners to provide input into determinations of how to distribute project-specific notices (including, but not limited to, distributing notices to the LEP population);

- (v) requiring the consideration of contingency plans for unexpected events;
 - (vi) providing a mechanism for anyone without internet access to participate, through telephone access or other alternatives, in virtual hearings and meetings;
 - (vii) providing a mechanism to consider the accessibility of the location when in-person hearings and meetings are conducted;
 - (viii) maintaining resources for obtaining translation and interpretation services;
 - (ix) ensuring all public hearing notices include instructions for registration (if required), how to make comments, and how to request language assistance services and/or reasonable accommodations and auxiliary aids and services, including if any requests should be submitted by a date certain before an event;
 - (x) providing a mechanism for identifying the location of any information repositories; and
 - (xi) providing a mechanism for residents to access relevant information and consideration of whether a centralized public location within the community would meet the IL EPA's outreach goals.
3. The Non-Discrimination Coordinator(s) will ensure that appropriate staff receive training on the commitments expressed in the revised Enhanced Public Participation Plan, as related to public involvement in environmental permitting processes and other processes undertaken by IL EPA that include public engagement.
 4. IL EPA will submit to EPA for review a revised copy of its Enhanced Public Participation Plan within 90 days of the effective date of this Agreement, consistent with the considerations identified above. EPA will review the revised Enhanced Public Participation Plan and provide any comments within 30 days.
 5. Within 30 days of receiving EPA's comments, IL EPA will address EPA's comments and submit its draft Enhanced Public Participation Plan, including a translated Enhanced Public Participation Plan in all appropriate languages, for public

comment for 30 days. After the public comment period ends, IL EPA will review comments and finalize the Enhanced Public Participation Plan within 30 days. Thereafter, IL EPA will publish the final Enhanced Public Participation Plan, translated in all appropriate languages, on its website and in print.

D. IL EPA's Plan to Provide Meaningful Access for Persons with Limited English Proficiency ("LEP")

1. IL EPA will revise its LAP to include the additional commitments as outlined below.
2. IL EPA will conduct an appropriate analysis as described in EPA's LEP Guidance⁸ to identify the appropriate language groups within IL EPA's service area that may need language services and determine what language services or mix of language services the IL EPA needs to provide (*e.g.*, qualified interpreters and translators) to ensure that individuals with LEP can meaningfully participate in IL EPA's programs, services, and activities.
3. IL EPA will ensure that translations of vital documents done through an electronic, machine translated service (such as Google Translate), are verified through a qualified translator before they are provided to the public or individual customer. Further, IL EPA will use caution to ensure that it protects personal privacy whenever using an electronic translation system to ensure sensitive information is not accidentally released to the public. IL EPA will review, revise, publicize, and implement its existing written LAP to ensure meaningful access to all IL EPA's programs, services, and activities for individuals with LEP, at no cost to those individuals. As part of this plan, IL EPA will:
 - (a) Translate vital documents⁹ of general interest into the appropriate languages as identified in the section above, for individuals with LEP who are served by or likely to be encountered by the IL EPA's programs, services, and activities;

⁸ Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 F.R. 35602, <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>

⁹ Whether or not a document (or the information it disseminates or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurate or in a timely fashion. (See EPA's 2004 Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons at <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>)

- (b) Translate vital documents of individual interest to a particular individual with LEP or group individuals with LEP (e.g., an individual with LEP wishing to file a grievance);
 - (c) Provide for simultaneous or consecutive oral interpretation by qualified interpreters of live proceedings (e.g., town hall meetings and public hearings) and programs, services, and activities in prominent and other requested languages, and the ability for individuals with LEP to participate in those proceedings to a substantially similar extent as persons with English proficiency can participate (e.g., accommodate LEP individuals wishing to provide comments during meetings, hearings, proceedings, programs, services, and activities hosted by IL EPA);
 - (d) IL EPA will create a mechanism to allow the public, to provide feedback on the accuracy and quality of IL EPA's language assistance services;
 - (e) Utilize IL EPA's social media platforms to provide translated vital information and increase messaging to populations with LEP;
 - (f) Identify in the LAP how IL EPA will provide qualified language services, for example, whether through qualified employees or through a contract for such services.
- 4. Within 150 days of the effective date of this Agreement, IL EPA will submit to EPA for review a draft copy of its revised LAP. EPA will review the draft LAP and provide any comments within 30 days.
 - 5. Within 30 days of receiving EPA's comments, IL EPA will address EPA's comments and submit its draft LAP, including a translated LAP in all appropriate languages, for public comment for 30 days. After the public comment period ends, IL EPA will review comments and finalize the LAP within 30 days. IL EPA will publish the final LAP, translated in all appropriate languages, on its website and in print.

E. IL EPA Plan to Ensure Meaningful Access for Persons with Disabilities

- 1. IL EPA has prepared its Plan to Ensure Meaningful Access for Persons with Disabilities, which includes commitments requested by EPA, as described below.
- 2. IL EPA must ensure public meetings are accessible to persons with disabilities by developing and implementing policies and procedures by providing

individuals with disabilities the opportunity for meaningful access and opportunity for full participation in its programs, services, and activities.

3. Upon request with reasonable notice, IL EPA will provide, at no cost, appropriate auxiliary aids and services to individuals with disabilities, (including but not limited to, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication or an equal opportunity to participate fully in benefits, activities, programs and services provided by IL EPA in a timely manner.
4. IL EPA will continue to ensure that its facilities and other facilities utilized by IL EPA for public engagement activities are accessible to the public and physically accessible for individuals with disabilities.
5. Within 30 days of receiving EPA's comments, IL EPA will publish the Disability Plan, translated in all appropriate languages, on its website and in print, as appropriate.

F. TRAINING

1. Within 180 days of the effective date of this Agreement, IL EPA will forward to EPA for review a draft plan that ensures all its staff have been appropriately trained on federal non-discrimination obligations, anti-bias and cultural competency, and that ensures that appropriate staff have been trained on the revised Grievance Procedures, revised Enhanced Public Participation Plan, revised LAP and the Plan to Ensure Meaningful Access for Persons with Disabilities. IL EPA may request assistance from EPA for any of the training required in this Agreement.
2. Within 180 days of the effective date of this Agreement, IL EPA will forward to EPA for review a draft plan for ensuring that the aforementioned training, as applicable, is a routine part of the on-boarding process for new employees and is given regularly as refresher training to all employees. EPA will review the draft training plan and provide any comments to IL EPA within 30 days. IL EPA will respond to EPA's comments, discuss with EPA any concerns if necessary, and within 30 days of receiving EPA's comments, IL EPA will forward a final copy of the training plan to EPA and implement the above plan.

VI. GENERAL

- A. In consideration of IL EPA's implementation of commitments and actions described in Sections III, IV and V of this Agreement, the Federal Agencies will toll its time period for issuing preliminary findings for EPA Complaint No. 01RNO-21-R5 and not issue a decision containing findings on the merits of the complaint.
- B. EPA will monitor the implementation of the obligations in Sections III, IV and V of this Agreement, as appropriate, to ensure they are fully implemented. Once the obligations of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in EPA File No. 01RNO-21-R5 and closure of the complaint as of the date of that letter.
- C. EPA will review and provide feedback about any documentation submitted by IL EPA demonstrating completion of each obligation and will provide an assessment as to whether the documentation satisfies the obligations within 30 days of receipt of each such submission.
- D. EPA will, upon request, provide technical assistance to IL EPA regarding any of the civil rights obligations previously referenced.

VII. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" will mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period will run until the close of business of the next working day.
- B. Service of any documents required by this Agreement will be made personally via electronic mail as outlined below.
- C. Electronic documents submitted by IL EPA to EPA via email will be sent to the following email address: anhthu.hoang@epa.gov, with a copy to the Case Manager: katelyn.liesner@epa.gov.
- D. Documents submitted by EPA will be sent to the following email address: chris.pressnall@illinois.gov. Documents mailed by EPA will be mailed to: 1021 North Grand Ave. East (#38), P.O. Box 19276, Springfield, Illinois 62794-9276.

VIII. EFFECT OF THE AGREEMENT

- A. IL EPA understands that, if necessary, EPA may conduct a site visit, interview staff, and request such additional reports or data as are necessary for EPA to determine whether IL EPA has fulfilled the terms of this Agreement.
- B. IL EPA understands that the EPA will not close its monitoring of this Agreement until EPA determines that IL EPA has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-opening an investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to the IL EPA's program or authorities, or for other good cause, the Party seeking a modification will promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement will take effect only upon written agreement by the Director of IL EPA and the Director of OECRC.
- D. This Agreement constitutes the entire Agreement between IL EPA and the EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person will be construed to change any commitment or term of this Agreement, except as specifically agreed to by IL EPA and the EPA in accordance with the provisions of Section VIII(C) above.
- E. This Agreement does not affect IL EPA's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and the EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect the EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. This Agreement shall not be affected by future EJ legislation that may be adopted into Illinois law, including statutory requirements that create additional responsibilities for the IL EPA in its implementation of permitting programs, unless the new law's requirements conflict with the IL EPA's adherence to the commitments described herein. If a conflict arises, the IL EPA shall notify EPA, in writing, as soon as practicable following the enactment of the law and may propose modifications to this Agreement, as contemplated by Section VIII(C) above, to alleviate the conflict.

- G. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Director, in their capacity as an official of the IL EPA, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of OECRC has the authority to enter into this Agreement.

On behalf of IL EPA:



John J. Kim, Director

Illinois Environmental Protection Agency

(Signature)

2/14/24

(Date)

On behalf of the U.S. Environmental Protection Agency:

Hoang,
Anhthu

Digitally signed by Hoang,
Anhthu
Date: 2024.02.14
20:17:05 -05'00'

February 14, 2024

Anhthu Hoang, Acting Director

(Date)

Office of External Civil Rights Compliance

Office of Environmental Justice and External Civil Rights

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R25-18
BOARD CONSIDERATION OF	)	(Rulemaking – Procedural)
ENVIRONMENTAL JUSTICE IN	)	
BOARD PROCEEDINGS	)	

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have serve the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S

PUBLIC COMMENT upon the following:

See attached Service List

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Andrew Armstrong
Andrew Armstrong
Chief Legal Counsel
Division of Legal Counsel

DATED: October 31, 2025

2520 W. Iles Ave.
P. O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
andrew.armstrong@illinois.gov

SERVICE LIST

OFFICE OF THE ILLINOIS ATTORNEY GENERAL Jason E. James 201 West Point Drive, Suite 7 Belleville, IL 62226	GREATER CHICAGO LEGAL CLINIC, INC. Keith I. Harley 211 West Wacker, Suite 750 Chicago, IL 60606
ARENTFOX SCHIFF LLP Andrew N. Sawula One Westminster Place, Suite 200 Lake Forest, IL 60045	ILLINOIS DEPARTMENT OF NATURAL RESOURCES Renee Snow, General Counsel One Natural Resources Way Springfield IL 62702-1271
FAITH E. BUGEL Faith E. Bugel 1004 Mohawk Road Wilmette, IL 60091	HEPLERBROOM, LLC Melissa S. Brown Alec Messina 4340 Acer Grove Drive Springfield, IL 62711
ENVIRONMENTAL LAW & POLICY CENTER Daniel Abrams David Scott 35 E. Wacker Drive, Suite 1600 Chicago, IL 60601	ILLINOIS POLLUTION CONTROL BOARD Don Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605
MCDERMOTT, WILL & EMERY Mark A. Bilut 227 W. Monroe Street Chicago, IL 60606-5096	OFFICE OF THE ILLINOIS ATTORNEY GENERAL Caitlin Kelly 69 W. Washington, Suite 1800 Chicago, IL 60602
ILLINOIS ENVIRONMENTAL REGULATORY GROUP Kelly Thompson 215 E. Adams St. Springfield, IL 62701	ILLINOIS ENVIRONMENTAL PROTECTION AGENCY Charles E. Matoesian Dana Vetterhoffer Nick M. San Diego 2520 West Iles Avenue P.O. Box 19276 Springfield, IL 62794-9276
ARENTFOX SCHIFF LLP Joshua R. More Sarah L. Lode 233 S. Wacker Drive, Suite 6600 Chicago, IL 60606-6473	U.S. EPA, REGION 5 Jessica Schumacher Michael Leslie Ralph H. Metcalfe Federal Building 77 West Jackson Blvd. Chicago, IL 60604-3590

CITY OF SPRINGFIELD Deborah Williams 800 East Monroe Office of Public Utilities Springfield, IL 62757	NRG ENERGY, INC. Walter Stone 1825 K Street, NW, Suite 1203 Washington, DC 20006
BROWN, HAY & STEPHENS LLP Anthony D. Schuering 205 South Fifth Street, Suite 700 P.O. Box 2459 Springfield, IL 62705	GIBSON DUNN AND CRUTCHER LLP Michael L. Raiff 2001 Ross Avenue, Suite 2100 Dallas, TX 75201
ENVIRONMENTAL INTEGRITY PROJECT Abel Russ 1000 Vermont Avenue NW Suite 1100 Washington, DC 20005	AMEREN Michael Smallwood 1901 Choteau Avenue St. Louis, MO 63013
PRAIRIE RIVERS NETWORK Andrew Rehn 1902 Fox Drive, Suite 6 Champaign, IL 61820	
EARTHJUSTICE Mychal Ozaeta 707 Wilshire Blvd., Suite 4300 Los Angeles, CA 90017	
EARTHJUSTICE Jennifer Cassel 311 South Wacker Drive, Suite 1400 Chicago, IL 60606	
LAW FIRM OF ALBERT ETTINGER Albert Ettinger 7100 N. Greenview Chicago, IL 60606	