

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)
)
 Petitioner,)
)
 v.) PCB No. 14-110
) (Air Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

NOTICE OF ELECTRONIC FILING

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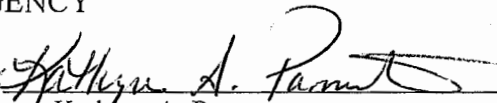
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PLEASE TAKE NOTICE that on the 17th day of September, 2014, Respondent's Motion for Reconsideration and Modification of Order Dated September 4, 2014 was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KCBX TERMINALS COMPANY,)	
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Petitioner,)	
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v.)	PCB No. 14-110
)	(Air Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

RESPONDENT'S MOTION FOR RECONSIDERATION AND MODIFICATION OF ORDER DATED SEPTEMBER 4, 2014

Respondent, Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to 35 Ill. Adm. Code 101.520 and 101.902, respectfully requests that the Illinois Pollution Control Board ("Board") reconsider and modify its Order entered on September 4, 2014 ("September 4 Order"), regarding the deadline within which the Illinois EPA is required to render its determination on remand. In support thereof, Respondent states as follows:

INTRODUCTION

1. On June 19, 2014, the Board entered its Opinion and Order ("June 19 Order") in the above-captioned Permit Appeal, stating, in pertinent part, that "KCBX's application is remanded to the Agency for additional consideration of the information in the application consistent with this order and with the requirements of the Act and applicable regulations." (June 19 Order at p. 57.)

2. On July 28, 2014, KCBX Terminals Company ("KCBX") filed its Motion for Reconsideration and Modification, requesting that the Board modify its June 19 Order to direct the Illinois EPA to immediately issue a revised construction permit or, alternatively, to find that the June 19 Order did not constitute a final action such that the requested revised construction

permit would issue by operation of law. By filing the July 28, 2014 motion for reconsideration, the June 19 Order was stayed. 35 Ill. Adm. Code 101.520 (“[a] timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of the motion in accordance with Section 101.300(d)(2) of the Part.”)

3. On September 4, 2014, the Board entered an Order denying KCBX’s July 28, 2014 Motion for Reconsideration and Modification. The Board also, on its own motion, modified the June 19 Order to include a deadline of Wednesday, October 22, 2014, for the Illinois EPA to issue its determination on remand. In doing so, the Board repeated its direction that “KCBX’s application is remanded to the Agency for additional consideration of the information in the application consistent with this order and with the requirements of the Act and applicable regulations.” (September 4 Order at pp. 6-7.)

4. As described more fully herein, the Illinois EPA is preparing a draft permit in response to the Board’s direction in its June 19 Order and September 4 Order. However, consistency with the requirements of the Illinois Environmental Protection Act (the “Act”) and applicable regulations may require the Illinois EPA to provide notice, conduct a public hearing and allow for public comment before it may issue any permit. Accordingly, the Illinois EPA respectfully seeks the Board’s reconsideration of the deadline for issuance of the Illinois EPA’s determination on remand so that it may act consistently with the requirements of the Act and applicable regulations.

ARGUMENT

A. Standard for Motions for Reconsideration or Modification.

Section 101.902 of the Board’s procedural rules provides that, “[i]n ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the

law, to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902; *see also Broderick Teaming Co. v. Illinois Env'tl. Protection Agency*, PCB 00-187, 2001 WL 376542 at *2 (April 5, 2001) (in discussing the standard for a reconsideration motion, the Board recognized that it may consider "errors in the court's previous application of the existing law") (quoting *Citizens Against Regional Landfill v. County Bd. of Whiteside County*, PCB 92-156, slip op. at 2 (March 11, 1993) (citing *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622 (1st Dist. 1991))). Because the Board's September 4 Order did not consider the applicability of the Illinois EPA's regulations concerning Public Participation in the Air Pollution Control Permit Program ("Illinois EPA Public Participation Regulations") and Procedures for Permit and Closure Plan Hearings ("Illinois EPA Permit Hearing Procedure Regulations"), the Board must reconsider such order to consider any "errors in [its] previous application of existing law." *Citizens Against Regional Landfill*, PCB 92-156, slip op. at 2 (citing *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622 (1st Dist. 1991)).

B. Issuance of a Revised Construction Permit to KCBX may Invoke the Illinois EPA Public Participation Regulations, Illinois EPA Permit Hearing Procedure Regulations and Illinois EPA Environmental Justice Policies, thereby Requiring an Extension of the October 22, 2014 Deadline.

Sections 252.102(a) and (b) of the Illinois EPA Public Participation Regulations provide, in pertinent part, that:

a) This Part applies to permit applications filed with the Agency for:

* * *

8) Permits for the construction of emission units of public interest at a source, the criteria for which are outlined in subsection (b) below.

b) The Director shall determine whether an emission unit is of public interest. In making the decision, the Director shall consider:

1) The type of permit for which the application is made;

- 2) The nature and amount of pollutants which will be emitted by the source;
- 3) Possible effects of the emissions on health and the environment;
- 4) The location of the source;
- 5) The interest in the source exhibited by the public, based on comments and inquiries received by the Agency;
- 6) Other factors which are distinctive to the source; and
- 7) The proposed action by the Agency.

35 Ill Adm. Code 252.102(a) and (b). To the extent that the Director determines that an emission unit is of public interest, the Illinois EPA shall “issue a notice of the issuance of any permit,” “prepare for public review a draft permit with findings and proposed conditions,” make copies of certain specified documents available for public inspection and hold a public hearing, as determined. 35 Ill Adm. Code 252.201(a), 252.202, 252.204, 252.205. Subpart A of the Illinois EPA Permit Hearing Procedure Regulations specifies how such public hearings must be conducted. 35 Ill. Adm. Code 166.110 *et seq.*

KCBX’s construction permit application seeks authority to install ten additional portable conveyors, one additional box hopper and one additional stacker at its site located at 10730 South Burley Avenue, Chicago Illinois (the “South Site”). (R186-R204; R190 (boxes 17-19).) Each additional conveyor, box hopper and stacker constitutes a new emission unit. (April 29 Tr. (T. Steinert testimony) at p. 192, lines 13-23.) The Director is required to determine whether the emission units are of public interest, thereby mandating compliance with the Illinois EPA Public Participation Regulations and the Illinois EPA Permit Hearing Procedure Regulations. 35 Ill. Adm. Code 252.102(a)(8), (b). Though this decision may not be predetermined, one of the factors that the Director is required to consider is “interest in the source exhibited by the public,

based on comments and inquiries received by the Agency.” 35 Ill. Adm. Code 252.102(b)(5). To date, the public has exhibited significant interest in KCBX’s South Site, as evidenced by comments and inquires that the Illinois EPA has received. *See* R29, R119-120, R172-173, R222-R537; *see also* correspondence from the Chicago Legal Clinic, Inc. on behalf of the Southeast Environmental Task Force to Lisa Bonnett, Illinois EPA Director, dated June 26, 2014, a true and correct copy of which is attached hereto as Exhibit A (without exhibits).

In addition, the Director is required to consider the location of the source in making her determination regarding whether the emission units are in the public interest, 35 Ill. Adm. Code 252.102(b)(4), including whether the emission units are or will be located in a community with a low-income and/or minority population greater than twice the statewide average (a “Potential Environmental Justice Community”). Utilizing Illinois EPA’s demographic assessment tool, it previously determined that the South Site is located within a Potential Environmental Justice Community. (May 1 Tr. (J. Armitage testimony) at p. 115, line 8 – p. 116, line 11.) As a result, the Illinois EPA’s Environmental Justice Policy and Environmental Justice Public Participation Policy, which describe the Illinois EPA’s enhanced public outreach procedures for environmental justice communities, apply. (A true and correct copy of the policies is attached hereto as Exhibit B.) The Illinois EPA’s failure to comply with the Illinois EPA Public Participation Regulations, the Illinois EPA Permit Hearing Procedure Regulations and the Illinois EPA’s Environmental Justice Policy and Environmental Justice Public Participation Policy may (a) subject the Illinois EPA to an administrative complaint under Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. §§ 2000d to 2000d-7, and the implementing regulations at 40 C.F.R. Part 7, and/or (b) cause the Illinois EPA to be in violation of the Settlement Agreement for Administrative Complaint No. 13R-10-R5 between the Illinois EPA

and the United States Environmental Protection Agency (USEPA) Office of Civil Rights, a true and correct copy of which is attached hereto as Exhibit C.

Because the Director may determine that KCBX's emission units are of public interest, thereby requiring a timeframe for compliance with the Illinois EPA Public Participation Regulations and the Illinois EPA Permit Hearing Procedure Regulations, the Illinois EPA proposes the following schedule for issuance of the revised construction permit to KCBX:

Sept. 4 – October 21, 2014	Complete consideration of application and prepare draft permit
October 22, 2014	Illinois EPA to provide copy of draft permit to KCBX pursuant to 415 ILCS 5/39(u) ¹
October 23, 2014	Notice Sent for Opportunity to Submit Public Comments
Not later than December 12, 2014	Public Hearing if determined pursuant to 35 Ill. Adm. Code 252.205 ²
January 12, 2015*	Closure of the Hearing Record ³ and Public Comment Period
January 30, 2015*	Completion of the Hearing Record, including the Responsiveness Summary ⁴
February 2, 2015*	Illinois EPA to provide copy of final permit to KCBX pursuant to 415 ILCS 5/39(v)
February 3, 2015*	Issuance of permit

* Section 166.191 of the Illinois EPA Permit Hearing Procedure Regulations provides that, “[u]nless the Hearing Officer provides otherwise, the hearing record shall be closed 30 days after the date of the last hearing. The comment period may be extended upon good cause shown or by

¹ KCBX has previously requested a copy of the draft and final permit in advance.

² 35 Ill. Adm. Code 166.130(b) provides that “the first notice of a hearing shall be given at least 45 days before the date of the hearing.”

³ 35 Ill. Adm. Code 166.180 sets forth the requirements of the contents of the Hearing Record.

⁴ 35 Ill. Adm. Code 166.192 sets forth the requirements of the contents of the Responsiveness Summary.

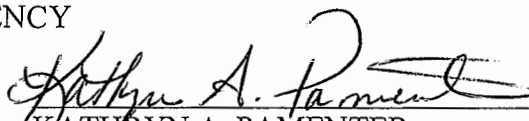
agreement of the parties, however, statutory time limitations of Title X (Section 39 through 40.1) of the Environmental Protection Act shall take precedence over any extension of the comment period. 35 Ill. Adm. Code 166.191; *see also* 35 Ill. Adm. Code 252.201(e). Accordingly, the January 12, January 30, February 2 and February 3 deadlines may be extended if the comment period is extended pursuant to 35 Ill. Adm. Code 166.191 and 35 Ill. Adm. Code 252.201(e).

CONCLUSION

Based on the foregoing, Respondent respectfully requests that the Board grant this Motion for Reconsideration and Modification and modify the Illinois EPA's deadline for its determination on remand in accordance with the schedule set forth above.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By:



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EXHIBIT A

CHICAGO LEGAL CLINIC, INC.

South Chicago • Pilsen • Austin • Downtown

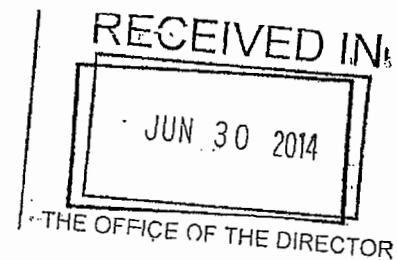
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* also admitted in Indiana

June 26, 2014

Lisa Bonnett, Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276



Re: Request for Public Hearing, Written Comment Period and Environmental Justice Analysis on the KCBX Request For Revision to Revised Construction Permit for its South Facility

Dear Director Bonnett:

Please be advised that I represent the Southeast Environmental Task Force ("SETF"), a not-for-profit organization that advocates for the people who live, work and recreate in southeast Chicago neighborhoods. SETF is comprised of residents of southeast Chicago, including residents who live in homes that are immediately adjacent to the KCBX facility located at 10730 South Burley Avenue in Chicago, commonly known as the KCBX South Facility.

On behalf of SETF, I am formally requesting that IL EPA hold a public hearing and a subsequent written comment period regarding the above captioned permitting matter. As you are aware, this permitting matter was recently remanded to the Illinois EPA from the Illinois Pollution Control Board. KCBX Terminals Company v. Illinois EPA, PCB 14-110. I represented SETF in this IPCB proceeding. Consistent with comments I submitted to the IPCB, the Board's Order remanding this matter to the Illinois EPA does not foreclose your authority to conduct a public hearing and written comment period as part of completing the Agency's deliberative process.

As you know, the State of Illinois has regulations that allow for public participation in the permitting process, beyond those hearings otherwise required by law or regulation. (See: 35 Ill. Adm. Code 166.) That category of hearings is termed "informational hearings"; i.e., a hearing that is not required by law to be held, but which is held for the purpose of informing the public of a proposed Illinois EPA action or when the Illinois EPA wishes to gather information or comments from the public prior to making a final decision on a

matter. (See: 35 Ill. Adm. Code 166.120(b).) Under Illinois law, the Director of the Illinois EPA may determine whether the construction of an emission unit (or the revision to a permit for such a unit) is of public interest, and allow for public participation in the permitting process where such participation is not otherwise required. (See: 35 Ill. Adm. Code 252.102(a)(6) & (a)(8)). The criteria that the Director may consider in determining whether an emission unit is of public interest include:

- The type of permit for which the application is made;
- The nature and amount of pollutants that will be emitted by the source;
- Possible effects of the emissions on health and the environment;
- The location of the source;
- The interest in the source exhibited by the public, based on comments and inquiries received by the Illinois EPA;
- Other factors that are distinctive to the source; and
- The proposed action by the Illinois EPA.

The public participation process includes: providing the public with notice of its intent to issue a permit; providing the public with a copy of the proposed permit and supporting documentation for comment; electing to hold a public hearing on the proposed permitting action without waiting for a request to do so in matters where a hearing is not statutorily required and providing for a written comment period following the hearing; and preparing a detailed responsiveness summary addressing all significant public comments on the proposed permitting action. (See: 35 Ill. Adm. Code 166).

This request is made in the context of Illinois EPA's commitment to environmental justice and to providing full and complete opportunities for public participation in environmental justice communities. The area immediately surrounding the KCBX South Facility is an environmental justice community. According to information derived from the demographic feature of U.S. EPA's ECHO database, more than 83% of the people who live within a one mile radius of KCBX South are Hispanic (77.46%) or African-American (6.03%). U.S. EPA's ECHO database further reveals that the environmental justice community also extends in a three mile radius from the facility, consisting of 82.69% minority residents including 44.15% of residents who are Hispanic and 38.54% of residents who are African-American.

As stated by Illinois EPA itself, the agency has found that where it conducts a dialogue with interested and potentially affected citizens, the permit application process tends to function more smoothly for the applicant, the Illinois EPA, and the public. Many of the questions from the public seek information within the following categories: the permit process, the nature and operation of the facility, technical aspects of pollution control, legal requirements, and public input. Risks to public health and the environment, monitoring the facility's operation, and opposition to a proposed facility are issues that often involve the coordinated participation of other organizations in developing a response.

SETF cannot predict the full range of questions and testimony that will be offered at a public hearing. However, based on its interaction with nearby residents, it believes there are several matters that will be directly relevant to Illinois EPA's permitting decisions.

For example, nearby residents directly experience the consequences of air emissions from the facility. For these nearby residents, these air quality problems are experienced as dust that emanates from facility operations into the nearby community. Local residents are legitimately concerned that the dust is not solely a nuisance conditions, but rather, reflects inadequate or ineffective air pollution control technologies and techniques at this facility. They are concerned about the local and residual risks that are posed by these emissions in this urban context. Moreover, provisions of the Illinois Protection Act that are part of the Illinois SIP characterize these kinds of emissions as contaminants that should not be released beyond the perimeter of a regulated facility.

The Illinois Environmental Protection Act prohibits any person from:

Caus[ing] or threaten[ing] or allow[ing] the discharge of emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under [the Environmental Protection] Act. 415 ILCS 5/9(a).

For purposes of this provision, "air pollution" is defined as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such character and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property." 415 ILCS 5/3.115. A "contaminant" is "any solid, liquid or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.165. For its part, the Board's implementing regulation, 35 Ill.Adm.Code 201.141, states: "No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard."

When measured against these legally mandated standards, the citizen complaints that are already in Illinois EPA's files include highly relevant information for the Illinois EPA to include in its deliberative process. The complaints which specifically identify the responsible company as the KCBX/Koch south facility describe:

1. "dust particles in house and on property"
2. "constant black dust in house even with windows closed"
3. "constantly cleaning black dust from [excised] outside"
4. "petcoke windstorms and in the river", recorded on November 16, 2013,

5. "unable to open windows or doors without black soot coming in"
6. "cannot sell my property because of the smell and pollution in this area"
7. "There are very large piles of petroleum coke stored along the waterways of the southeast side of Chicago. We have seen large clouds of black dust floating through the air. This has been to the extent of people refraining from open air festivities such as backyard parties and family gatherings. The dust accumulates on the streets and coats our homes. If our bricks are turning black from this dust, what is happening to our lungs. These piles are uncovered and some are as high as five stories! The trucks that transport this petcoke generally travel uncovered as well, which spreads the dust around faster...I feel that the mere presence of this hazardous material in my neighborhood lowers the value of the real estate. [excised] darkened considerably in the past 18 months," recorded November 16, 2013.
8. "The ash from this terminal is constantly all over my property. Is all over my [excised] lawn furniture, it comes in through the CLOSED windows and gets all over my house. This problem happens whether the wind is present or not....This happens every day at no specifis [sic] time. If the day is windy, that's when it gets worse." November 15, 2013.
9. "Dust from the Coke flying around covering the ground and air and water we eat and drink from." November 15, 2013.
10. "The fumes of petroleum are coming [excised] constantly feeling nauseated and feel extremely tired...For the past 3 months, during the night, after 9pm, I've noticed the smell of petroleum fumes coming [excised]." November 15, 2013.
11. "The problem is anytime there is wind the petcoke dust flies all over our community. There were 2 severe windstorms this past summer 2013 the dust that landed and coated everything outside (luckily my windows were shut). The dust was almost measurable, after sweeping it up I became congested and coughing. Another concern is my [excised] but when the dust settles and becomes part of the soil, it's contaminated and toxic. So then I'm ingesting it when I [excised]." November 15, 2013.
12. "petcoke piles stored outdoors, when wind blow it gets all over home, cars, gardens, cars, gardens. children have trouble brething [sic]." November 15, 2013.
13. "Frequent petcoke dust covers our neighborhood. Company is being allowed to operate without a proper functioning suppression system. Using street sweepers to wash away petcoke which is seeping into our sewers. Connecting street sweepers to our fire hydrants to fill water trucks on the street sweepers without the REQUIRED BLACKFLOW PREVENTERS is allowing petcoke to backwash into our drinking water." November 15, 2013.

14. "Pet coke is getting in my house and yard...Dirty windows, brick [excised] in the yard until I clean." November 14, 2013.

A public hearing and written comment period will provide residents to provide up-to-date information about these conditions.

Local residents are also concerned about the compliance status of this facility, an issue that is also directly relevant to Illinois EPA's permitting decisions. SETF emphasizes that concerns about compliance are not merely speculation. On June 3, 2014, U.S. EPA Region 5 issued a Notice of Violation to KCBX Terminals Company based on air monitoring data for the period from February 18, 2014 through May 10, 2014. A true and accurate copy of this Notice of Violation is attached and labeled as SETF Exhibit One. Based on monitoring data and corroborating dust wipe sampling from homes in southeast Chicago, U.S. EPA identified violations of the PM-10 NAAQS and, in turn, the Clean Air Act and the Illinois State Implementation Plan. On May 8, 2014, a violation of the PM-10 NAAQS was identified at a continuous PM-10 monitor installed on the northeast perimeter of the KCBX facility located at 10740 South Burley Avenue. Importantly, U.S. EPA conducted wipe sampling from homes and public spaces in the residential neighborhoods adjacent to this facility. These wipe samples were correlated with PM-10 air emissions by U.S. EPA.

Although U.S. EPA's NOV focuses on violations of the 24-hour PM-10 standard, it is important to note that very high PM-10 levels are routinely detected at the KCBX perimeter monitors. Several days from 4/12/14-5/24/14 that are characterized by bursts of PM-10 pollution are detailed in the attached analysis of monitoring data that U.S. EPA has posted to its website, which is labeled as SETF Exhibit Two. Compliance issues at this and other KCBX facilities are also relevant to the Illinois EPA's permitting decisions (see: 415 ILCS 5/39: "In making its determinations on permit applications under this Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment. In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance. The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder.")

These issues are directly related to the subject matter of the permit request. KCBX Terminals seeks to install new air emission units in the form of ten portable conveyors, one box hopper and one stacker. In addition to being new sources of air emissions, the units would also enable the applicant to increase the throughput rate of its material handling and storage operations. The new emission units would be installed at a facility that was and remains the subject of enforcement actions and citizen complaints regarding air pollution even while operating under existing conditions. These releases occurred when the facility operated without the additional air emitting units it seeks to install, and before the applicant could increase the throughput rate of its operations using the new equipment. Residents should be given an opportunity to question how a request: 1. to

add new air emitting units, 2. that would also increase the throughput rate, 3. at a facility that is already generating citizen complaints and is subject to enforcement actions, can be approved consistently with the Act and regulations.

The decision whether to permit additional air emitting units at this facility, in this environmental justice community, more than justifies granting an opportunity for a public hearing and a written comment period. These same factors justify an environmental justice analysis to ensure Illinois EPA's permitting decision will not create or increase a significant, adverse and disproportionate impact on the surrounding community.

Thank you for your consideration of this request and the comments in support of this request. Please contact me if you have any questions or require any additional information regarding this request.

Sincerely,



Keith Harley
Attorney for Southeast Environmental Task Force

enc

EXHIBIT B



Illinois State Seal

Pat Quinn, Governor

Environmental Justice

Léalo en Español

Environmental Justice (EJ) Policy

Introduction

The Illinois Environmental Protection Agency (Illinois EPA) is committed to protecting the health of the citizens of Illinois and its environment, and to promoting environmental equity in the administration of its programs to the extent it may do so legally and practicably. The Illinois EPA supports the objectives of achieving environmental equity for all of the citizens of Illinois.



This document carries out that belief in written policy and provides specific parameters for the Illinois EPA's bureaus, divisions and offices to implement the policy to reduce environmental inequities, and to prevent and reduce pollution overall.

The assumption of this policy is that it is evolutionary. Environmental Justice or EJ (also known as Environmental Equity or EE) policies and activities will continue to develop, as appropriate, through the normal course of the Illinois EPA's regulatory and programmatic duties. Illinois EPA recognizes that this policy will not alone achieve environmental equity in all instances. Moreover, public and private commitment to the implementation of this policy is needed to achieve the goals of this policy and to promote environmental equity in this State.

Key goals of this policy are as follows:

- to ensure that communities are not disproportionately impacted by degradation of the environment or receive a less than equitable share of environmental protection and benefits;
- to strengthen the public's involvement in environmental decision-making, including permitting and regulation, and where practicable, enforcement matters;
- to ensure that Illinois EPA personnel use a common approach to addressing EJ issues; and
- to ensure that the Illinois EPA continues to refine its environmental justice strategy to ensure that it continues to protect the health of the citizens of Illinois and its environment, promotes environmental equity in the administration of its programs, and is responsive to the communities it serves.

Definition

The Illinois EPA defines the term "environmental justice " as follows:

"Environmental Justice" is based on the principle that all people should be protected from environmental pollution and have the right to a clean and healthy environment. Environmental justice is the protection of the health of the people of Illinois and its environment, equity in the administration of the State's environmental programs, and the provision of adequate opportunities for meaningful involvement of all people with respect to the development,

implementation, and enforcement of environmental laws, regulations, and policies.

Elements Of The Policy

1. Defining Responsible Persons

The Illinois EPA will identify the persons responsible for coordinating various EJ activities, including an Illinois EPA EJ Officer responsible for coordinating all of the EJ activities for the Illinois EPA, and a work group including a representative from each of the Bureaus of Air (BOA), Water (BOW) and Land (BOL), the Division of Legal Counsel and the Office of Community Relations (collectively, IEPA EJ Work Group).

The EJ Officer shall have primary responsibility for coordinating all EJ efforts on the behalf of the Illinois EPA, acting as the spokesperson for the Illinois EPA on EJ, remaining current on all national developments on EJ, and coordinating, reviewing and signing off on responses to EJ complaints involving the Illinois EPA. The EJ Officer may review proposed permits, plans, and policies for consistency with this policy.

The EJ Officer is also the contact person for citizens and communities who believe their health or surrounding environment is at a significant risk. The EJ Officer will serve as a liaison between the citizen or community and the relevant Illinois EPA personnel to seek resolution of the action.

The EJ Officer will also facilitate and coordinate the continued development of the Illinois EPA's approach to EJ, addressing the areas of public notice and hearing process with respect to bilingual notice or any form of "special" notice or hearing, complaint response, permitting response, and planning and analysis. This approach should be developed based on separate analyses and recommendations developed by the BOA, BOW and BOL (collectively, the Bureaus), the Division of Legal Counsel, and the Office of Community Relations for these areas. The approach will include an analysis by the Illinois EPA of the tools it possesses to address EJ in these areas, and a list of employees who could be assigned to handle various tasks identified in its recommendations.

2. Defining EJ Activities

The EJ Officer will coordinate the following EJ activities on behalf of the Illinois EPA, with the advice of the IEPA EJ Work Group:

- Arrangements for bilingual publication of notice, where appropriate, on proposed Illinois EPA permitting actions or informational hearings, or any form of "special" public notice;
- Arrangements for bilingual or multi-lingual hearings, where appropriate, on proposed Illinois EPA permitting actions or informational hearings, or any form of "special" public hearings or meetings;
- Response to public comments received on proposed permitting actions raising EJ concerns, including the preparation of environmental justice assessments as needed to support responses;
- Response to EJ complaints challenging the Illinois EPA's permitting actions;
- Response to EJ concerns raised about the Illinois EPA's enforcement program or a specific enforcement matter;
- Response to EJ concerns raised in implementation of emissions trading programs (e.g., the BOA's Emission Reduction Market System or ERMS program);
- Public participation to address or mitigate, if possible, EJ concerns, and
- Response to general inquiries concerning EJ.

3. Preparing for Avenues of Entry for EJ Concerns or Inquiries

When an EJ issue or concern is raised or inquiry is made anywhere within the Illinois EPA, the EJ Officer will be promptly advised by e-mail and voice mail and will meet with the appropriate IEPA EJ Work Group member(s) to formulate the Illinois EPA's actions and responses.

EJ Policy

Once a response or action plan has been developed to address a specific inquiry or activity, the EJ Officer will assemble the IEPA EJ Work Group to review and comment on the proposed action plan. The EJ Officer will then revise the Action Plan as he/she deems appropriate and take the Action Plan to the Director or his or her designee for approval.

Approaches/Strategies To Address And Coordinate EJ Activities

1. Public Notice and Hearing and Receipt of Public Comments

Community Outreach

The Illinois EPA has developed and implemented a public participation strategy for permits, programs and actions in potential EJ communities¹. The Illinois EPA's Office of Community Relations (Community Relations) works with host communities to identify and address environmental concerns regarding proposed facilities and projects of significant interest and to identify environmental issues affecting communities in Illinois prior to the permitting or action stage. After identifying environmental matters and any Illinois EPA actions of concern to communities, Community Relations holds regional meetings in and around the potentially affected communities. The number and scope of these meetings has varied from year to year depending on site activities and the level of community interest.

¹ A "potential" EJ community is a community with a low-income and/or minority population greater than twice the statewide average. In addition, a community may be considered a potential EJ community if the low-income and/or minority population is less than twice the state-wide average but greater than the statewide average and that has identified itself as an EJ community. If the low-income and/or minority population percentage is equal to or less than the statewide average, the community should not be considered a potential EJ community.

Community Relations is charged with the following tasks:

- Preparing and Issuing Public Hearing Notices
- Identifying Community Questions and Concerns
- Preparing and Distributing Fact Sheets
- Responding to Questions from the Public and the News Media
- Establishing Local Repositories
- Conducting Small Group Meetings
- Assisting Illinois EPA Staff in preparing answers before public hearings
- Assisting with Public Hearings
- Preparing Responsiveness Summaries

The Illinois EPA has found that where it conducts a dialogue with interested and potentially affected citizens, the permit application process tends to function more smoothly for the applicant, the Illinois EPA, and the public. Many of the questions from the public seek information within the following categories: the permit process, the nature and operation of the facility, technical aspects of pollution control, legal requirements, and public input. Risks to public health and the environment, monitoring the facility's operation, and opposition to a proposed facility are issues that often involve the coordinated participation of other organizations in developing a response.

Community Relations has also developed "Mailing Lists of Interested and Potentially Affected Citizens." Individuals may request to be added to these lists or, based on prior contact, the Illinois EPA may add these individuals or groups to a list. These individuals or groups receive notices of hearings on regulations, permit applications, or any other significant Agency action likely to impact the community in which the individual lives, or in which the group has expressed an interest.

Small Group Meetings

For any permit action requiring public notice and for which the Illinois EPA receives a request for public hearing, Community Relations often holds "small group" or "living room" meetings in the affected community. Community Relations maintains a list of all "smaller" environmental groups (i.e., grass root organizations formed to address local environmental issues), and contacts the affected group(s) to participate in the small group meetings. (Note: This list generally contains between 120 and 180 organizations.) A smaller, more intimate forum is generally selected to hold these meetings, such as the mayor's office or the public library. This type of forum is selected because it encourages greater participation and candid dialogue, and more time can be spent addressing the issues of concern. Through these efforts, the Illinois EPA attempts to encourage public participation and awareness of environmental concerns and of Illinois EPA actions affecting local communities.

Informational Hearings

In addition, the State of Illinois has regulations that allow for public participation in the permitting process, beyond those hearings otherwise required by law or regulation. (See: 35 Ill. Adm. Code 166.) That category of hearings is termed "informational hearings"; i.e., a hearing that is not required by law to be held, but which is held for the purpose of informing the public of a proposed Illinois EPA action or when the Illinois EPA wishes to gather information or comments from the public prior to making a final decision on a matter. (See: 35 Ill. Adm. Code 166.120(b).) Under Illinois law, the Director of the Illinois EPA may determine whether the construction of an emission unit (or the revision to a permit for such a unit) is of public interest, and allow for public participation in the permitting process where such participation is not otherwise required. (See: 35 Ill. Adm. Code 252.102(a)(6) & (a)(8)). The criteria that the Director may consider in determining whether an emission unit is of public interest include:

- The type of permit for which the application is made;
- The nature and amount of pollutants that will be emitted by the source;
- Possible effects of the emissions on health and the environment;
- The location of the source;
- The interest in the source exhibited by the public, based on comments and inquiries received by the Illinois EPA;
- Other factors that are distinctive to the source; and
- The proposed action by the Illinois EPA.

The public participation process includes: providing the public with notice of its intent to issue a permit; providing the public with a copy of the proposed permit and supporting documentation for comment; electing to hold a public hearing on the proposed permitting action without waiting for a request to do so in matters where a hearing is not statutorily required and providing for a written comment period following the hearing; and preparing a detailed responsiveness summary addressing all significant public comments on the proposed permitting action. (See: 35 Ill. Adm. Code 166)

Local Siting Approval

The State of Illinois is somewhat unique compared to many other states in that there is also a local siting approval process under the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 et seq.) for "Pollution Control Facilities" or "PCFs." PCFs include landfills, commercial incineration facilities,

wastewater treatment plants, and similar waste treatment, storage or disposal facilities.

The local siting approval process requires that the developer of a new PCF demonstrate to the satisfaction of the governing body of a municipality or the county board of a county in which the proposed PCF is to be located that the project will meet nine specific criteria set forth in the statute. In addition, the application is subject to a public participation process that requires providing written notice of the application to certain adjacent property owners and members of Illinois' General Assembly from the legislative district in which the facility is to be located, and notice to the general public by newspaper publication. At least one public hearing must be held and any person may comment on the proposed facility. The decision of the governing body must be in writing, must state its bases and may be appealed to the Pollution Control Board. The Illinois EPA is not a participant in this process, other than to ensure that a project that is a new PCF has the requisite siting approval prior to the issuance of a construction or development permit. (See: 415 ILCS 5/39.2).

These efforts ensure that there is an appropriate level and quality of outreach for all significant new and existing Illinois EPA programs, regulations, permitting actions and community listening sessions.

Bi- and Multi-Lingual Efforts

As part of the Illinois EPA's EJ Policy, the EJ Officer will determine when public notices should be bi- or multi-lingual, where these notices should be published, and when translators should attend hearings. The EJ Officer will also review and approve the proposed response to EJ comments raised at hearing or in written comments, and coordinate this response among the Bureaus, Division of Legal Counsel and the Office of Community Relations.

Exploring New Avenues for Public Participation

Increased and alternative approaches to public participation are the areas in which most states are focusing their EJ efforts. The EJ Officer and the EJ Advisory Work Group will explore better opportunities for increased public participation in sensitive rulemakings and permitting actions. The EJ Officer and EJ Advisory Work Group will also explore opportunities for public participation in the resolution of enforcement actions.

2. Receipt of EJ Complaint

The Illinois EPA has developed, implemented and published an EJ Grievance Procedure. The EJ Grievance Procedure defines the procedural and substantive standards utilized by the Illinois EPA to evaluate EJ complaints. Specifically, the EJ Grievance Procedure provides a process for filing a timely complaint to the Illinois EPA and describes the process that is used to investigate and resolve the complaint. However, the procedures described therein do not apply to administrative actions that are being pursued in another forum (e.g., a permit appeal or a civil rights complaint filed with the United States Environmental Protection Agency Office of Civil Rights).

3. Permitting Actions

When concern is expressed or identified regarding potential environmental impacts in an environmental justice area, the Illinois EPA will look at the information provided and other available information to assess whether there are potential significant adverse environmental impacts. If there are any such potential adverse impacts, the Illinois EPA will either request an assessment or assess these impacts using the information and tools reasonably available, and within the time constraints allowed by applicable state and federal law. The Illinois EPA will make such assessments available to the public and other affected persons or entities. An appropriate response will be made based on these assessments.

However, these assessments raise feasibility and resource issues. The Illinois EPA notes that the task of addressing EJ is exacerbated by the absence of a consensus on the validity of cumulative risk assessment tools and clear direction at the federal level. There are significant uncertainties regarding the availability and effectiveness of cumulative risk assessment tools, the availability of emissions data and emissions inventories, and these uncertainties increase as the scope of cumulative impact analysis increases. The availability of resources to make such assessments is also a major concern. However, the Illinois EPA will continue to commit appropriate staff time and other resources to become familiar with developments in risk assessment models and methodologies.

4. Training / Policy Handbook

The EJ Advisory Work Group will develop internal procedures for addressing EJ complaints, including specific concerns about permitting actions. The EJ Advisory Workgroup will also develop a policy handbook for distribution among Illinois EPA personnel to keep them apprised of developments in the Illinois EPA's EJ Policy.

ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION POLICY

I. TITLE: Environmental Justice Public Participation Policy

II. PURPOSE: The purpose of this policy is to explain the Illinois Environmental Protection Agency's (Illinois EPA or Agency) approach to involving the public in communities located in areas identified as potential Environmental Justice (EJ) areas by the Illinois EPA¹ in accordance with the Agency's EJ policy (www.epa.state.il.us/environmental-justice/policy.html), the Illinois EPA EJ Public Participation Procedure² and the Illinois EPA Environmental Justice Start tool³. The Illinois EPA's EJ public participation policy predominately addresses public outreach in the context of permitting transactions but can be applied likewise to additional Illinois EPA matters, including enforcement actions or remediation projects.

III. RESPONSIBLE PERSON: The Environmental Justice Officer shall have the primary responsibility for coordinating all EJ efforts on behalf of the Illinois EPA and shall act as the spokesperson for the Illinois EPA on EJ. The Office of Community Relations will have a lead role in preparing the EJ public participation plans, establishing local repositories and conducting community meetings. The Bureaus and the Office of Community Relations will coordinate on the preparation and issuance public notices and fact sheets. Projects with significant public interest will require the Office of Community Relations and the bureaus to work together in preparing public hearing notices and fact sheets.

The EJ Officer is the contact person for citizens and communities in potential EJ areas. The EJ Officer will serve as a liaison between the citizen or community and the relevant Illinois EPA personnel to seek resolution of any EJ issues.

IV. COVERED ACTIVITIES

¹ "For the purposes of this document, a "potential" EJ community is a community with a low-income and/or minority population greater than twice the statewide average. In addition, a community may be considered a potential EJ community if the low-income and/or minority population is less than twice the state-wide average but greater than the statewide average and it has identified itself as an EJ community. If the low-income and/or minority population percentage is equal to or less than the statewide average, the community should not be considered a potential EJ community."

² The Illinois EPA EJ Public Participation Procedure is the Agency's internal procedure for conducting outreach activities.

³ The Illinois EPA EJ Start tool is an internal computer based geographic and demographic tool utilized by the Agency to determine whether a given source is in or near a potential EJ area.

A. Permitting transactions.

1. Illinois EPA's EJ public participation policy applies to all permitting transactions.
2. Illinois EPA is committed ensuring appropriate level of outreach as discussed below if the source involved in the permitting transaction is a High Priority Violator per USEPA guidance or is the subject of an enforcement action (i.e., has been referred to a prosecutorial agency such as the Illinois Attorney General's Office).

B. Remediation Projects in the Bureau of Land (except for projects covered by the Superfund Community Involvement Policy).

C. Complaint Investigations

1. Illinois EPA will timely respond to complaints from EJ communities.
2. Illinois EPA will apprise complainants of the results of the investigations including providing copies of inspection reports and any correspondence, such as a Violation Notice, sent to the source of concern .

D. Enforcement

1. Much of the enforcement process consists of confidential communications between the Illinois EPA, the Attorney General's Office, and the alleged violator. However, the Division of Legal Counsel will determine what types of enforcement decisions can be communicated to the public, when and how.
2. Illinois EPA will continue to solicit ideas for the Supplemental Environmental Project Bank for EJ Communities.
3. Databases of ongoing enforcement cases and compliance histories are available on-line at www.epa.state.il.us/enforcement/orders/.

V. COMMUNITY OUTREACH PROCEDURES

- A. An effective public participation strategy emphasizes early and meaningful public involvement throughout the permitting process.
- B. The Illinois EPA will determine the appropriate outreach, if any, based on, among other considerations, the type of permit, potential impact of the project, type of source and level of interest.
- C. Each Bureau will review all permit applications and other actions identified herein to determine whether the action will take place in a defined EJ area as determined by the Illinois EPA EJ Start tool.

D. Public participation options in potential EJ areas

1. Community Outreach

- a. For permitting transactions, Illinois EPA will encourage the permit applicant(s) to meet with community stakeholders to promote open dialogue early in the permitting process for appropriate permitting actions. As discussed below, preferably initial public outreach occurs prior to the submission of a permit application.
 - i. In such cases, the applicant(s) will be encouraged to provide notice to residents located in and around a defined EJ area about the pending permit application and the proposed project, and to provide basic information about the project to interested residents.
 - ii. The applicant(s) are encouraged to develop a Community Relations Plan to structure ongoing dialogue with neighboring communities.
- b. Illinois EPA will provide the community with information regarding proposed projects via EJ notifications, which are mailed to community leaders, public officials, environmental groups, concerned citizens and the affected source.
- c. Illinois EPA will make fact sheets available on the Agency's webpage or via a link from the Agency's webpage when appropriate. Written information will be made available for persons without internet access when requested.
- d. Public Notices will be written in terminology and languages easily understood by the majority of readers, except where specific public notice language is otherwise required. When required, notices will be placed in legal notice sections or other sections of local publications.

2. Public Meetings

- a. Informational meetings – The Illinois EPA and/or the source may hold an informational meeting or availability session.
 - i. For permitting transactions, the purpose of the meeting is to inform the residents in and around a potential EJ Area of the scope and nature of the project in a timely, interactive manner and explain the permitting process. Informational meetings

may be held prior to a public hearing or may be held when a public hearing is not required.

ii. Informational meetings may also be held to explain enforcement related matters, remediation projects or other Illinois EPA activities that are of concern to the public.

b. Public hearings – The Illinois EPA will make a good faith effort to provide an interpreter when it is known that residents do not speak English very well or when the Illinois EPA receives a request for an interpreter within two weeks of any public hearing or meeting and when the need for an interpreter is adequately justified.

3. Fact Sheet and Project Summary

- a. Illinois EPA will provide a plain language summary of the major aspects of the proposed project, including the purpose and location of the proposed activity and facility, and any anticipated environmental impacts, and any controls or work practices that will limit those impacts.
- b. As appropriate, the Illinois EPA will translate fact sheets into the predominate language of the community if it is not English.

4. Document Availability

- a. The Illinois EPA will take every effort to make information available to residents in potential EJ Areas in a timely and efficient manner.
- b. The Illinois EPA may create document repositories, place information on the Internet and provide information through the Illinois Freedom of Information Act.

EXHIBIT C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 23 2013

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #: 7004-1160-0002-3622-7854

In Reply Refer To:

EPA File Nos.: 03R-06-R5 &
13R-10-R5

Ms. Lisa Bonnett
Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: Notification of Closure for Title VI Administrative Complaints, EPA File Nos. 03R-06-R5 & 13R-10-R5

Dear Director Bonnett:

This letter constitutes closure of two administrative complaints filed with the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), on April 24, 2006, with supplements that OCR received on October 26, 2006, March 6, 2007, and May 5, 2010, by Mr. Keith Harley on behalf of South Suburban Community Opposed to Polluting our Environment (SS-COPE) against the Illinois Environmental Protection Agency (IEPA) under Title VI of the Civil Rights act of 1964, as amended 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and EPA's implementing regulations at 40 C.F.R. Part 7. By letter dated January 27, 2009, OCR accepted the following allegation for investigation under Title VI Complaint No. 03R-06-R5:

Whether Illinois EPA's issuance of an air construction permit to Geneva Energy to restart operations at a tire-to-energy facility in Ford Heights, Illinois has resulted in a disparate impact on the African American residents who live near the facility.¹

On July 23, 2010, OCR accepted the following allegation for investigation under Title VI Complaint No. 13R-10-R5:

Whether the IEPA intentionally discriminated against the African American residents of Ford Heights, Illinois, by not providing an opportunity for meaningful involvement in the decision making process with the issuance of construction permits for the Midwest Micronutrients processing facility and for the trial use of wood biomass fuel at the Geneva Energy facility.²

¹ Acceptance of Administrative Complaint Letter from Karen D. Higginbotham, Director, Office of Civil Rights, EPA, to Mr. Keith Harley, Attorney, Chicago Legal Clinic, Inc. (January 27, 2010).

The complaint investigation revealed concerns about IEPA's public involvement practices and OCR addresses those in the enclosed settlement agreement.

Title VI prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving Federal financial assistance. Pursuant to EPA's Title VI implementing regulations, recipients of EPA financial assistance may not intentionally discriminate, or use criteria or methods of administering its program that have a discriminatory effect based on race, color, or national origin.

OCR investigated the complainant's allegation of disparate impact related to IEPA's issuance of an air construction permit to the Geneva Energy facility and OCR also investigated the intentional discrimination complaint in regards to IEPA's public participation program. Following its investigation spanning from 2009 to 2011, EPA and IEPA began negotiations to settle both complaints of disparate impact and intentional discrimination. OCR periodically reached out to Mr. Harley in order to keep SS-COPE apprised of new developments.

The Geneva Energy facility ceased its operations at the 1705 Cottage Grove Avenue address on August 27, 2011. The permanent shutdown of the Geneva Energy facility was confirmed by the IEPA in letters dated November 21, 2012. (*See* attached). In addition, U.S. EPA reached agreement with Geneva Energy on the terms of a consent decree to resolve allegations that the company violated the Clean Air Act. (*See* www.epa.gov/region5/air/enforce/genevaenergy.html).

Because the accepted allegation for complaint no. 03R-06-R5 concerns the Geneva Energy facility which is no longer operating, OCR has determined that your allegation for this complaint is moot and is being dismissed. On April 18, 2013, OCR and IEPA entered into a settlement agreement (copy enclosed) regarding complaint no. 13R-10-R5. Based on the facility closure and the execution of the settlement agreement, OCR closes both complaint investigations. OCR will continue to monitor IEPA's performance under the settlement agreement.

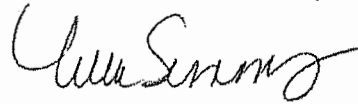
Resolution of these two complaints is part of OCR's broader effort to improve the manner in which it addresses Title VI. For example, the Agency has:

- o increased Title VI staff in both OCR and the Office of General Counsel,
- o engaged the complainant party for input during the settlement negotiation process,
- o worked closely with DOJ on Title VI legal issues,
- o received training from DOJ on investigations and the law,
- o established an internal network of Title VI contacts to leverage the expertise of EPA's regions and programs, and
- o developed an improved complaint tracking system to better monitor the progress of investigations.

² Acceptance of Administrative Complaint Letter from Rafael DeLeon, Acting Director, Office of Civil Rights, EPA, to Mr. Keith Harley, Attorney, Chicago Legal Clinic, Inc. (July 23, 2010).

If you have any questions, please feel free to call Helena Wooden-Aguilar, Assistant Director of OCR's External Compliance Program, at (202) 564-0792. My staff and I are available to address any questions you or your clients may have about the investigation or the settlement agreement. Thank you for your cooperation throughout this process.

Sincerely,



Vicki Simons
Acting Director

Enclosure(s)

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Mr. Keith Harley, Atty
Chicago Legal Clinic, Inc.
205 West Monroe Street, 4th Floor
Chicago, IL 60606

Chris Pressnall, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Susan Hedman, Regional Administrator
Region V

Alan Walts, Director,
Director, Office of Enforcement and Compliance Assurance (OECA)
Region V

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SETTLEMENT AGREEMENT FOR
ADMINISTRATIVE COMPLAINT NO.
13R-10-R5

I. PURPOSE

- A. This Agreement is entered into by the Illinois Environmental Protection Agency (IEPA) and the United States Environmental Protection Agency (USEPA) Office of Civil Rights (OCR) to resolve administrative complaint number 13R-10-R5, which was filed with USEPA on May 5, 2010, by Keith Harley on behalf of South Suburban Citizens Opposed to Polluting our Environment (SS-COPE) pursuant to Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq. and USEPA's implementing regulations at 40 C.F.R. Part 7. By letter dated July 23, 2010, OCR accepted the complaint for investigation.
- B. The parties to this Agreement, IEPA and USEPA, are entering into a settlement, to resolve the identified issues and avoid the burdens and expense of further investigation and possible litigation. The parties' signatures on this document are evidence of their agreement to this settlement.
- C. The IEPA is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and USEPA regulations at 40 C.F.R. Part 7. The activities detailed in Paragraphs III.A.1.(a)-(i) of this Agreement, which IEPA has voluntarily agreed to undertake and implement, are in furtherance of this commitment. The Director, in her capacity as an official of IEPA, has the authority to enter into this Agreement for purposes of carrying out the activities listed in the following paragraphs.

II. JURISDICTION

- A. Title VI prohibits recipients of Federal financial assistance from conducting their programs or activities in a manner that discriminates on the basis of race, color, or national origin. IEPA is a recipient of financial assistance from USEPA and is subject to the provisions of Title VI and USEPA's implementing regulations.
- B. This Agreement is entered into by USEPA pursuant to the authority granted to it under Title VI and its implementing regulations to investigate administrative complaints alleging discrimination by recipients of USEPA financial assistance and to resolve such complaints using voluntary, non-adversarial means.

III. SPECIFIC COMMITMENTS

- A. IEPA voluntarily agrees to undertake the following specific commitments with respect to permitting, public participation, and environmental justice.
1. IEPA will expand the scope of its Environmental Justice Public Participation Policy (EJ PPP), as well as the activities conducted pursuant to the EJ PPP as follows:
 - a) Within (180) days of the effective date of this settlement, IEPA will revise its EJ PPP so that permitting activities in areas identified as potential EJ communities will be given an appropriate level of outreach as described below. IEPA will identify potential EJ communities using best available screening methods, which includes IEPA demographic criteria prior to any permitting activity as described in paragraph b). The Illinois EPA will implement the revised EJ PPP within (30) days of said revision.
 - b) The revised EJ PPP shall provide for notice to the public (e.g., posting to the IEPA website, letter to community and EJ leaders, etc.) for proposed construction or operating permits that are non-administrative in nature and where the source has been issued a Violation Notice by the IEPA for any violation classified as a "High Priority Violation" under USEPA's guidance within the two years immediately preceding the proposed permit. If there is specific public interest in response to the aforementioned notice to the public, the IEPA will conduct appropriate public outreach as necessary to assure nondiscriminatory public participation in review and comment on the proposed permit, such as – but not limited to – providing a public hearing, public availability session or public meeting.
 - c) Within (180) days of the effective date of this agreement, IEPA will post information on its website concerning grievances received pursuant to IEPA's EJ Grievance Procedure and the IEPA's response.
 - d) Within 1 year of the effective date of this settlement, IEPA will complete the redesign of its online permit tracking system webpage to further facilitate the implementation of the EJ PPP. IEPA shall create a system that will identify all projects in potential EJ communities and notify IEPA's EJ Officer who will determine the appropriate outreach activities.
 - e) By September 1, 2013, IEPA shall submit to USEPA and USEPA Region 5, an Interim Status Report that includes its progress relative to each term included within this settlement. The Interim Status Report shall state with specificity all actions/steps that IEPA has taken to address section III.A.1. of this agreement, associated dates, and all relevant supplemental materials

and references indicating the status with this agreement (e.g., examples of public notice and public hearings, revised EJ PPP, etc).

- f) Within (60) days of USEPA's receipt of the Interim Report, the USEPA will review the Interim Report and provide any recommendations to IEPA.
- g) Within (90) days of IEPA's receipt of any USEPA recommendations, IEPA shall implement USEPA recommendations, or present to USEPA IEPA's alternative options for complying with the agreement, or provide a written explanation for why USEPA's recommendations are not necessary for IEPA to comply with the settlement agreement.
- h) On or before the date which is 1 year from the signing of this agreement by both parties, IEPA shall submit to USEPA and USEPA Region 5 its Final Report. The Final Report shall include IEPA's progress in meeting each term set forth in this settlement. The Final Report shall state with specificity all actions/steps that IEPA has taken to address section III.A.1. of this agreement, associated dates, and all relevant supplemental materials and references indicating the status with this agreement. IEPA may have one extension to submit this report if necessary to accomplish the tasks set forth in this settlement agreement, but such extension shall not exceed (60) days from the Final Report deadline.
- i) Once IEPA believes it has satisfied all terms and conditions of this Agreement and has submitted all necessary documentation, it shall submit a letter to the Director of OCR so stating. USEPA shall provide, within (60) days of receipt of IEPA's letter, written notice to IEPA of whether IEPA has or has not satisfied all terms and conditions of this Agreement. This Agreement shall be considered complete upon USEPA's written notice to IEPA that all terms and conditions of this Agreement have been satisfied or, if USEPA fails to respond to the letter, (90) days after USEPA received the letter.

IV. EFFECT OF AGREEMENT

- A. This Agreement does not constitute an admission by IEPA or a finding by USEPA of any violations of 40 C.F.R. Part 7 with regard to the complainants' allegations. The effect of this Agreement is to memorialize IEPA's commitment to resolve the issues raised in administrative complaint number 13R-10-R5.
- B. In consideration of IEPA's implementation of, and adherence to, the provisions of this Agreement, USEPA will close administrative complaint number 13R-10-R5. USEPA retains the right to accept and investigate any future Title VI complaints alleging discriminatory acts not contained in administrative complaint number 13R-10-R5 with respect to IEPA's programs or activities.

- C. If either IEPA or USEPA desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to IEPA's or USEPA's program or authorities, or for other good cause, the party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Director of IEPA and the Director of OCR at USEPA.
- D. This Agreement constitutes the entire Agreement between IEPA and USEPA regarding the matters addressed herein, and no other statement, promise, or Agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by IEPA and the USEPA. Additionally, this Agreement is a public document. A copy of this Agreement and any information contained in it may be made available to any person by IEPA or USEPA on request under the Freedom of Information Act or otherwise.
- E. If USEPA determines that IEPA has not satisfied a term or condition of this Agreement, or if a submission provided by IEPA under this Agreement lacks sufficient detail for USEPA to make the determination, USEPA shall promptly notify IEPA of that determination in writing. If the parties are unable to reach a mutually agreeable resolution regarding USEPA's determination, USEPA may reinstitute its administrative process consistent with 40 C.F.R. Part 7.
- F. This Agreement does not affect IEPA's continuing responsibility to comply with Title VI of the Civil Rights Act of 1964 and USEPA's implementing regulations, nor does it affect USEPA's responsibility to investigate any allegations in Title VI complaints against IEPA other than those addressed herein. Furthermore, this Agreement does not address any matter not specifically covered by the terms of this Agreement, nor does it constitute a finding that the actions to be taken herein by themselves will absolve IEPA from further actions to ensure compliance with Title VI or 40 C.F.R. Part 7.

The effective date of this Agreement is the date on which the parties affix their signatures below. This Agreement may be signed in counterparts. The Director of IEPA and the Director of OCR at USEPA have the authority to enter into this Agreement on behalf of their agencies.

V. CONTACTS

For purposes of this settlement the points of contact for IEPA and USEPA are listed as follows:

IEPA

Chris Pressnall
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
chris.pressnall@illinois.gov

USEPA

Helena Wooden-Aguilar
Assistant Director
USEPA-OCR (External Civil Rights)
(Mail Code 1201A), 1200 Pennsylvania Avenue N.W.,
Washington D.C. 20460
(202) 564-0792
wooden-aguilar.helena@epa.gov

VI. NOTICE

Where notice is required by this Settlement, by certified mail, each signatory to this settlement should use the following address for:

IEPA

Director Lisa Bonnett
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217)782-3397

FOR EPA

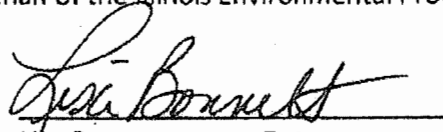
Acting Director, USEPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460

And

Director, USEPA Region 5 Office of Enforcement and Compliance Assurance (OECA)(Mail Code E-19J), 77 West Jackson Boulevard, Chicago, Ill. 60604

SIGNATURES

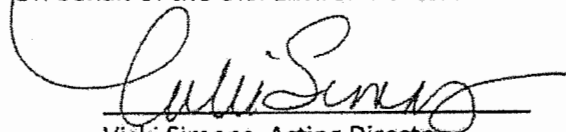
On behalf of the Illinois Environmental Protection Agency,



Lisa Bonnett Date

4/4/13

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



Vicki Simons, Acting Director
Office of Civil Rights

4/8/13
Date

CERTIFICATE OF SERVICE

I, Kathryn A. Pamentor, an Assistant Attorney General, do certify that I caused to be served this 17th day of September, 2014, the attached Notice of Electronic Filing and Respondent's Motion for Reconsideration and Modification of Order Dated September 4, 2014 upon (a) Katherine D. Hodge, Edward W. Dwyer and Matthew C. Read, of Hodge Dwyer & Driver and Stephen A. Swedlow and Michelle Schmit, of Quinn Emanuel Urquhar Sullivan LLP *via facsimile and via regular mail* by placing a true and correct copy in an envelope addressed as set forth on the Notice of Electronic Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 pm., (b) Keith Harley, Chicago Legal Clinic, by placing a true and correct copy in an envelope addressed as set forth on the Notice of Electronic Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 pm. and (c) Bradley P. Halloran and John Therriault *via email*.


KATHRYN A. PAMENTER