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April 28, 2015

Illinois Environmental Protection Agency
Environmental Justice Officer
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794

Re: Formal Complaint Pursuant to Illinois Environmental Protection Agency's
Environmental Justice Grievance Procedure

To The Environmental Justice Officer:

Please be advised that I represent the Southeast Environmental Task Force (SETF), a not-for-profit organization dedicated to environmental education, open space preservation and pollution prevention on the southeast side of Chicago, Illinois. SETF's members include several individuals who live in neighborhoods immediately adjacent to the Agri-Fine facility, located at 2701 E. 100th Street, Chicago, IL 60617. Consequently, SETF is concerned about the compliance status of this facility, the potential effects of site activities on human health and environmental quality, and government oversight of facility operations.

Please accept this letter and the enclosed material as a formal Complaint pursuant to Illinois EPA's Environmental Justice Grievance Procedure. This Complaint is being filed based on Illinois EPA's failure to engage in public participation as part of its decision to issue a Lifetime Operating Permit to Agri-Fine on or about January 2, 2015. Based on IL EPA's failure to incorporate public participation as part of this final agency action, SETF asserts IL EPA acted in violation of Title VI, Section 601 of the 1964 Civil Rights Act, IL EPA's own environmental justice policies and IL EPA's commitments pursuant to United States Environmental Protection Agency Administrative Complaint Number 13R-10-R5.

The basis for this Complaint is as follows.

1. The IL EPA failed to provide an opportunity for public participation as part of issuing the January 2, 2015 lifetime operating permit to Agri-Fine despite clear evidence that the community in which Agri-Fine operates is an environmental justice community. According to U.S. EPA's ECHO database, the population within a one mile radius of the Agri-Fine is 61.3% African-American and 33.24% Hispanic Origin. Within one mile of the facility, 9,063 people of a total population of 15,949 people live below the poverty level. Similarly, the population within a three mile radius of the Agri-Fine is 68.44% African-American and 25.71% Hispanic Origin. Within three miles of the facility, 60,287 people of a total population of 121,673 people live below the poverty level. According to Illinois EPA's Environmental Justice Public Participation Policy, an environmental justice community is a community with a minority and/or low-income population greater than twice the statewide average, which is clearly the case in this situation. IL EPA's permitting action occurred in an environmental justice community.

2. The IL EPA failed to provide an opportunity for public participation as part of issuing the January 2, 2015 lifetime operating permit to Agri-Fine, contrary to IL EPA's own commitments to environmental justice. These commitments are expressed in IL EPA's own guidance, and in IL EPA's obligations as part of resolving United States Environmental Protection Agency Administrative Complaint Number 13R-10-R5.

In the resolution of United States Environmental Protection Agency Administrative Complaint Number 13R-10-R5, IL EPA made a commitment to revise its environmental justice public participation policy "...so that permitting activities in areas identified as potential EJ communities will be given an appropriate level of outreach...". As part of its subsequently revised Environmental Justice Public Participation Policy, IL EPA identified a series of public participation initiatives that apply to "all permitting transactions." None of these public participation initiatives were employed in the context of the Agri-Fine permitting process:

1. There was no early and meaningful public involvement throughout the permitting process.
2. There was no determination of the appropriate outreach based on factors like the type of permit, potential impact of the project, type of source or level of interest.
3. There is no evidence the permit applicant was encouraged to meet with community stakeholders, to provide notice and information about the project or to develop a Community Relations Plan.
4. IL EPA did not provide the community with information via mailed EJ notifications.
5. IL EPA did not make or distribute fact sheets or project summaries.
6. IL EPA did not develop or publish a Public Notice.

7. IL EPA did not conduct an informational meeting or a public hearing.
8. IL EPA did not publish a draft permit for public review.
9. IL EPA did not have a public written comment period on the permit.
10. Prior to issuing the permit, IL EPA did make any effort to make information available to residents in a timely and efficient manner.

3. The IL EPA failed to provide an opportunity for public participation as part of issuing the January 2, 2015 lifetime operating permit to Agri-Fine despite a pending enforcement action in the Circuit Court of Cook County, Illinois. The Complaint in this enforcement action alleges, among other violations, that Agri-Fine released significant and harmful contaminants into the air that were documented from January, 2011 to October, 2014. These releases included air pollutants that directly affect the quality of life for residents of nearby neighborhoods.

On November 28, 2014, the Illinois Attorney General initiated a lawsuit against Agri-Fine¹ in the Circuit Court of Cook County.² The Plaintiff in this case is The People of the State of Illinois represented by the Illinois Attorney General (“AG”). Upon information and belief, the AG initiated this lawsuit at the request of the Illinois Environmental Protection Agency. The lawsuit alleges Agri-Fine’s does not comply with several requirements that originate in the Clean Air Act, the Illinois Environmental Protection Act and/or the facility’s own air permit.³ The specific categories of alleged violations are:

Agri-Fine released significant and harmful contaminants into the air that were documented from January, 2011 to October, 2014. These releases included air pollutants that directly affect the quality of life for residents of nearby neighborhoods.

Agri-Fine added new two industrial boilers, a steam-heated biodiesel feedstock tank and twenty-five storage tanks to its facility without first seeking and obtaining a construction permit from the IL EPA. The purpose of the construction

¹ Agri-Fine processes corn, soybean, cottonseed and canola soapstock to produce animal feed products. Agri-Fine utilizes an acidification process to release oil from emulsified mixture. It then adds sulfuric acid and heats the mixture to 200 degrees Fahrenheit for approximately two hours. Each batch settles overnight, during which time the oil and another product called interphase separate from the water. The oil and interphase are placed into finished storage tanks. Wastewater is treated to remove fats, oils and grease prior to discharge into the sewer system.

² People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois v. Agri-Fine, Inc., an Illinois Corporation, In The Circuit Court of Cook County, Illinois, County Department, Chancery Division, 2014CH18557.

³ Air emission units at the Agri-Fine facility include rail car loading and unloading operations, numerous steam-heated primary and secondary storage tanks, a steam-heated biodiesel feedstock tank, 24 processing vats and two natural gas-fired boilers. There are also potential sources of fugitive particulate emissions including unpaved roads, conveyor systems and storage piles.

permit is to ensure the new units will control air pollution in a legally adequate manner.

Agri-Fine operated the new boilers, the feedstock tank, loading and unloading equipment, and storage tanks without an adequate operating permit, which would include emission limits, mandate pollution controls and require monitoring, recordkeeping and reporting.

Agri-Fine operated the new boilers without providing notice to the Illinois EPA, a requirement that applies to natural-gas powered electric generating units.

Agri-Fine's emissions of hydrogen sulfide exceeded the limits in its existing operating permit in 2011 and 2012.

Agri-Fine failed to compile up-to-date information about its fugitive particulate matter emissions, and neither maintained this information itself nor reported this information to the IL EPA.

Agri-Fine failed to develop an adequate fugitive particulate matter operating program, designed to minimize releases of particulate matter into the air from sources like unpaved roads, storage piles and material conveyor systems.

The Complaint seeks monetary penalties and injunctive relief.

4. The IL EPA failed to provide an opportunity for public participation as part of issuing the January 2, 2015 lifetime operating permit to Agri-Fine despite clear evidence in IL EPA's own records regarding the potentially significant, adverse and disproportionate impact of facility emissions on the residents of an environmental justice community. In support of this grievance, SETF attaches and incorporates by reference an inventory of information in IL EPA's own records at the time that it issued the permit on January 2, 2015. These records provide compelling evidence of the effects of the permitted facility on the surrounding environmental justice neighborhood, the basis for IL EPA's ongoing concerns about facility compliance and the high level of community interest in this matter.

As you know, IL EPA's Environmental Justice Grievance Procedure contemplates that Complaints will be filed within 60 days of the alleged discriminatory act. However, the Procedure also explicitly allows IL EPA to waive this 60 day requirement in its discretion, in order to address allegations of potential discrimination caused by pending actions at the earliest and feasible juncture; or, for good cause, to address complaints more than 60 days after an alleged violation. There is good cause for IL EPA to waive the 60 day deadline in the present case. Because of IL EPA's failure to provide public notice prior to the final agency permitting action, SETF only discovered the existence of the January 2, 2015 Lifetime Operating Permit by complete chance. The permit was included in IL EPA's March, 2015 response to SETF's Freedom of Information Act request to IL EPA, which sought several categories of information about Agri-Fine. This

grievance is being filed within 60 days of IL EPA's first disclosure of the Agri-Fine Lifetime Operating Permit to SETF. Moreover, by accepting this grievance, IL EPA will have an opportunity to address this grievance directly with SETF. If this Illinois grievance is denied, SETF must resort to U.S. EPA's Office of Civil Rights because of its longer 180-day period for filing a Petition alleging a Title VI violation.

Consistent with the Environmental Justice Grievance Procedure, I look forward to receiving your initial response to this Complaint within 10 days. Please direct your responses to this Complaint to my attention at the letterhead address. As I've discussed with IL EPA Counsel, SETF is willing to engage in a direct negotiation with IL EPA to address this Complaint.

Sincerely,

A handwritten signature in black ink that reads "Keith Harley". The signature is written in a cursive, slightly slanted style.

Keith Harley
Attorney for the Southeast Environmental Task Force

enc

IL EPA; FOIA Request Summary**Index of Documents**

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3/4/2015	31600FDK exempt	IEPA	Exempt Document List
IL EPA FOIA Production - March 4, 2015			
1/14/1994	031600FDK-001	Agri-Fine	IEPA Annual Emissions Report – 1993
<ul style="list-style-type: none"> • 3 Page Document, Report received April 29, 1994, Documenting Allowable, IEPA Estimate, and Source Emissions from Agri-Fine's facility for 1993 • Emissions reported are CO, NOX, and SO2 • Includes previous year's data; however, zeros are show in all categories – probably unreported • 1993 Source data not filled in – further documents indicate IEPA estimated data was used instead • Page three lists two operating permits. Veg. Oil Acidulation permit marked Denied, Soybean Soapstock acidulation permit expires 6/5/96 			
1/5/1995	031600FDK-002	Agri-Fine	IEPA Annual Emissions Report – 1994
<ul style="list-style-type: none"> • Report received Feb 14, 1995; Documents source emissions for 1994 • Report indicates same pollutants as above, still under the allowable rates • 1994 emissions number exactly the same in tons per year as in 1993 • Same permits listed on third page 			
1/3/1996	031600FDK-003	Agri-Fine	IEPA Annual Emissions Report – 1995
<ul style="list-style-type: none"> • Report received March 5, 1996; Documents source emissions for 1995 • Report indicates same pollutants as above, still under the allowable rates • 1995 emissions number exactly the same in tons per year as previous years • Permit page missing 			

1/2/1997	031600FDK-004	Agri-Fine	IEPA Annual Emissions Report – 1996
<ul style="list-style-type: none"> • Report received April 25, 1997; Documents source emissions for 1996 • 1996 estimates missing, exact same source numbers as previous years • Same permits listed; however, expiration date on granted permit is removed • Fourth page: letter from Agri-Fine in re permit/1986 permit application 			
12/3/2001	031600FDK-005	Agri-Fine	IEPA Annual Emissions Report – 2001
<ul style="list-style-type: none"> • Report received May 1, 2002; Documents source emissions for 2001 • CO, NOX, SO2 emissions for 2001 and 2002 still exactly the same as previous reports • Added reporting for PART, PM10, and VOM; marked n/a for 2002 • Equipment listings added to report • Change in Soybean Soapstock Acidulation permit from 'operating' to 'lifetime' 			
12/10/2002	031600FDK-006	Agri-Fine	IEPA Annual Emissions Report – 2002
<ul style="list-style-type: none"> • Report received May 1, 2003; Documents source emissions for 2002 • All previous emissions still the same • Added reporting for NH3 • Emissions remain under designated limits 			
12/5/2003	031600FDK-007	Agri-Fine	IEPA Annual Emissions Report – 2003
<ul style="list-style-type: none"> • Received April 30, 2004 • All previous emission numbers the same • Emissions remain under designated limits 			
12/28/2004	031600FDK-008	Agri-Fine	IEPA Annual Emissions Report – 2004
<ul style="list-style-type: none"> • Received April 14, 2005 • Added reporting for H2S and PM2.5 • Source report matches IEPA estimates exactly for each pollutant except CO – one decimal place off • CO emission limit increased. • Emissions under designated limits 			
12/13/2005	031600FDK-009	Agri-Fine	IEPA Annual Emissions Report – 2005
<ul style="list-style-type: none"> • Received February 6, 2006 • Report and IEPA estimation again exactly the same (same CO discrepancy as 009) 			

<ul style="list-style-type: none"> Emissions under designated limits 			
11/28/2006	031600FDK-010	Agri-Fine	IEPA Annual Emissions Report – 2006
<ul style="list-style-type: none"> Received April 16, 2007 The source report numbers have changed! Each is under IEPA estimates, but by small increments and close to the old number Emissions remain under designated limits 			
12/6/2006	031600FDK-011	Agri-Fine	IEPA Annual Emissions Report – 2007
<ul style="list-style-type: none"> Received August 4, 2008 Added CO2, Methane, and N2O to report; marked N/A, future report used estimate Again, small shift in source reports; also, the particle emissions entry for 2006 do not match up with the last report Emissions remain under designated limits 			
12/1/2008	031600FDK-012	Agri-Fine	IEPA Annual Emissions Report – 2008
<ul style="list-style-type: none"> Received July 23, 2009 Still marked N/A for CO2, Methane and N2O Emissions remain under designated limits 			
11/30/2009	031600FDK-013	Agri-Fine	IEPA Annual Emissions Report – 2009
<ul style="list-style-type: none"> Received May 3, 2010 Similar to last report Acidulation tanks and steam generators added to equipment list Emissions reported for 2008 remain under designated limits 			
11/16/2010	031600FDK-014	Agri-Fine	IEPA Annual Emissions Report – 2010
<ul style="list-style-type: none"> Received stamp date illegible Similar to last report Emissions reported for 2009 remain under designated limits 			
11/29/2011	031600FDK-015	Agri-Fine	IEPA Annual Emissions Report – 2011
<ul style="list-style-type: none"> Received June 14, 2012 Emissions reported for 2010 remain under designated limits 			
4/15/2013	031600FDK-016	Agri-Fine	IEPA Annual Emissions Report – 2012

<ul style="list-style-type: none"> Received June 11, 2013 Emissions reported for 2011 are in excess of allowable limits for CO (18% over), H2S (280% over), NH3 (1167% over), and VOM (2,445% over) 			
1/15/2013 (?)	031600FDK-017	Agri-Fine	IEPA Annual Emissions Report – 2013
<ul style="list-style-type: none"> Received April 25, 2014 15 pages; documentation includes fuel consumption data, scrubber emissions, monthly emissions breakdown, and quarterly soapstock production Emissions reported for 2012 are in excess of allowable limits for CO (57% over), H2S (288% over) and VOM emissions 			
1996 - 2013	031600FDK-018	Agri-Fine	Document Collection
<ul style="list-style-type: none"> 28 Page document, including: Tier II Inspection and report, Inspected May 24, 2013 <ul style="list-style-type: none"> Description of Soapstock Production states 'City of Chicago took Agri-Fine to court' Open storage system showed evaporation and odor. No permit application in 2007, for new boilers. No permit application for new fiberglass vats. citing recommendation (9(a)) Violated emissions of H2S Investigator's intra-agency recommendation 4 recorded complaints <ul style="list-style-type: none"> Odors (Putrid, foul) E-mail in re: complaints 6 annotated images of facility (From inside facility) EPA region 5 request for information from Agri-Fine (1/27/2011) Department of Health Inspector's Narrative (4/17/2013) <ul style="list-style-type: none"> Foul Odor issued 7/28/080 nuisance and atmospheric pollution (for odor) Permit to operate both boilers dated May 10, 1996 			
2014	031600FDK-019	Agri-Fine	Investigation Reports
<ul style="list-style-type: none"> 23 Page Document including: Tier II inspection, dated June 3, 2014; Includes 'Odor Surveillance' <ul style="list-style-type: none"> pH adjusted before sewer disposal "strong, putrid odor"; "Nasty"; "Bad Odor"; "Pungent" Odor summary table 11 "mister pipes" spraying mist Previous Agri-Fine contact handling odor reduction, no longer is employed 			

<ul style="list-style-type: none"> • Investigator's recommendations <ul style="list-style-type: none"> ◦ Recommended 9(a) violation • IEPA complaint and incident record <ul style="list-style-type: none"> ◦ smells like a "slaughterhouse or animal processing" • Weather history records for day(s) of investigations • Photos from surrounding area 			
8/21/2014	031600FDK-020	Agri-Fine	IEPA Complaint Record
<ul style="list-style-type: none"> • One page incident report, in re: odor <ul style="list-style-type: none"> ◦ "foul, putrid odor"; "affects our community" • Reviewed Nov 17, 2014 			
9/4/2014	031600FDK-021	Agri-Fine	IEPA Complaint Record
<ul style="list-style-type: none"> • One page incident report, in re: odor • Reviewed Nov 17, 2014 			
11/18/2014	031600FDK-022	Agri-Fine	IEPA Complaint Records and Review
<ul style="list-style-type: none"> • 3 detailed incident reports, incidents ranging from August to October of 2014 <ul style="list-style-type: none"> ◦ "VOMIT" ◦ "smells like FECES"; "I thought my dog pooped in my house!" ◦ "Can't go outside because the odor is very bad." • Final disposition: referred to AGO 			
1/29/2014	031600FDK-023	Agri-Fine	Correspondence - Permit Denial (Letter)
<ul style="list-style-type: none"> • IEPA construction application permit denial <ul style="list-style-type: none"> ◦ due to possible 35 Ill. Adm. Code 201.142 violation ◦ 			
1/29/2014	031600FDK-024	Agri-Fine	Correspondence - Notice of Incompleteness
<ul style="list-style-type: none"> • IEPA letter requesting more information from Agri-Fine in re: operating permit for boilers • Incomplete pursuant to 35 Ill. Adm. Code 201.158 <ul style="list-style-type: none"> ◦ 201.157 ◦ 201.160 ◦ 201.169 			
12/19/2014	031600FDK-025	Agri-Fine	Correspondence - Permit Denial (Letter)

<ul style="list-style-type: none"> • IEPA construction application permit denial <ul style="list-style-type: none"> ◦ possible 35 Ill. Adm. Code 201.142 violation 			
1/2/2015	031600FDK-026	Agri-Fine	Lifetime Operating Permit
<ul style="list-style-type: none"> • Outlines conditions for operation of Scrubber, 24 vats, 2 natural gas boilers, and 2 sulfuric acid tanks in relation to soapstock acidulation • Increases Tons of emission per year rate with regards to H2S, SO2 and VOM • Issued January 2, 2015. I.D. # 031600FDK <ul style="list-style-type: none"> ◦ Small industrial; 40 CFR 60 (A) & (Dc) ◦ Soapstock Limits <ul style="list-style-type: none"> ▪ Hydrogen Sulfide (H2S) = .79 (lbs/hr) or 6.92 (Tons/Yr) ▪ Sulfur Dioxide (SO2) = .063 (lbs/hr) or .56 (Tons/Yr) ▪ Volatile Organic Material (VOM) = 1.92 (lbs/hr) or 16.32 (Tons/Yr) ◦ Natural Gas emission Limits <ul style="list-style-type: none"> ▪ Carbon Monoxide (CO) = 84 (lbs/hr) or 8.76 (Tons/Yr) ▪ Nitrogen Oxides (NOx) = 100 (lbs/hr) or 10.42 (Tons/Yr) ▪ Particulate Matter (PM) = 7.6 (lbs/hr) or .79 (Tons/Yr) ▪ Sulfur Dioxide (SO2) = .6 (lbs/hr) or .06 (Tons/Yr) ▪ Volatile Organic Material (VOM) = 5.5 (lbs/hr) or .57 (Tons/Yr) ◦ 34 Storage tanks are exempt, pursuant to 35 Ill. Adm. Code 201.146(n)(2) ◦ Includes 24 process vessels & two 11.9 mmBtu/hr natural gas fired steam generators. 			
1/29/2014	031600FDK-027	Agri-Fine	Correspondence - Complete Permit Denial
<ul style="list-style-type: none"> • 13 pages, consisting of: • Permit Denial <ul style="list-style-type: none"> ◦ 35 Ill. Adm. Code 201.142 possible violation • Permit Application review/worksheet • Notice of Violation of Illinois Environmental Protection Act to Agri-fine stamped Oct 23, 2013 <ul style="list-style-type: none"> ◦ 425 ILCS 5/31(a)(1) violation • 9 Violations listed <ul style="list-style-type: none"> ◦ emissions of odor ◦ failed to obtain construction permits for 2 boilers ◦ failed to register for the Smaller Sources program (ROSS) ◦ failed to pay construction permit ◦ failed to obtain operating permit ◦ exceeded emissions of H2S ◦ failed to notify anticipated startup of boilers ◦ failed to submit annual and quarterly reports ◦ failed to document and maintain records 			

Jan, May 2013	031600FDK-028	Agri-Fine	IEPA violator classification from
<ul style="list-style-type: none"> Identifies Agri-Fine as 1b class violator for NSPS boilers and exceeding emissions Notice of violations to Agri-Fine. 			
10/23/2013	031600FDK-029	Agri-Fine	Correspondence - Violation Notice
<ul style="list-style-type: none"> IEPA violation notice to Agri-Fine Violations <ul style="list-style-type: none"> release of odor failure to obtain construction permit failure to register Smaller Sources program (ROSS) failure to pay construction permit failure to obtain an operation permit exceeding emissions limits (H2S) Failure to submit construction/startup notification failure to submit annual/quarterly reports failed to document and maintain required records (35 Ill. Adm. Code 212.31(g)(2)) Recommendations to IEPA 			
april, 2011	031600FDK-030	Agri-Fine	Correspondence - Email for Information request
<ul style="list-style-type: none"> E-mail and letter in re: intent to test Andrew Rubio (Agri-Fine) notifies IEPA of finalizing details of compliance test protocol 			
6/15/2012	031600FDK-031	Agri-Fine	Invoice - Annual Site Fee 2012
<ul style="list-style-type: none"> Letter to Agri-Fine in re: Air Pollution Control fee invoice 			
6/15/2013	031600FDK-032	Agri-Fine	Invoice - Annual Site Fee 2013
<ul style="list-style-type: none"> Letter to Agri-Fine in re: Air Pollution Control fee invoice 			
6/15/2014	031600FDK-033	Agri-Fine	Invoice - Annual Site Fee 2014
<ul style="list-style-type: none"> Letter to Agri-Fine in re: Air Pollution Control fee invoice 			