



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

December 18, 2020

Certified Mail and Electronic Mail

Keith Harley  
Greater Chicago Legal Clinic, Inc.  
211 West Wacker, Suite 750  
Chicago, Illinois 60606

Nancy Loeb  
Environmental Advocacy Clinic,  
Northwestern Pritzker School of Law  
375 East Chicago Avenue  
Chicago, Illinois 60611

Meleah A. Geertsma  
Natural Resources Defense Council  
20 North Wacker Drive, Suite 1600  
Chicago, Illinois 60606

Re: Environmental Justice Investigation, Responses and Resolution  
General III - Issuance of Construction Permit  
I.D. No. 031600SFX, App. No. 19090021

Dear Mr. Harley, Ms. Loeb and Ms. Geertsma:

This letter conveys the Illinois Environmental Protection Agency's (Illinois EPA) response to the formal complaint sent on behalf of the Southeast Environmental Task Force (SETF) and other non-governmental organizations (NGOs),<sup>1</sup> and received by electronic mail on August 20, 2020, regarding the above-mentioned matter. The complaint was filed in accordance with the Illinois EPA's Complaint Procedure that is implemented as part of its Environmental Justice (EJ) Policy to address allegations of discrimination (including race or national origin) attributed to agency decision-making in the administration of programs.<sup>2</sup> I mailed an acknowledgment of receipt of the complaint on August 27, 2020.

As described in more detail in this letter and related attachment, the complaint generally addresses concerns regarding the Illinois EPA's issuance of a state construction permit on June 24, 2020 to General III, LLC, (General III) for a scrap metal recycling facility to be located in an industrial corridor adjoining the Calumet River at 11600 South Burley Avenue, Chicago, Illinois.

## OVERVIEW

This response letter is set forth in two parts: an Investigative Report and Responses section that sets forth background information relating to the underlying permit proceeding; an overview of the discrimination alleged in the complaint and general responses thereto; an attached overview of the alleged permit deficiencies that contributed to alleged discrimination and specific responses by the

---

<sup>1</sup> Also represented in the complaint are the Natural Resources Defense Council (NRDC) and Chicago South East Side Coalition to Ban Petcoke. The signatories to the letter are referred to collectively in this response letter as the NGOs.

<sup>2</sup> The EJ Policy can be found at <https://www2.illinois/epa/topics/environmental-justice/Pages/ej-policy.aspx>.

Mr. Harley, Ms. Loeb and Ms. Geertsma  
December 18, 2020  
Page 2

Illinois EPA's Bureau of Air to them; and a Resolution section that details measures that the Illinois EPA will be implementing to address one part of a claim in the complaint (i.e., Claim Five).

#### ILLINOIS EPA INVESTIGATION, REPORT AND RESPONSES:

The Illinois EPA received a permit application for the construction of a scrap metal recycling facility from General III on September 26, 2019. The application proposed to build a shredder, material separation systems and related emissions units to process recyclable metals, such as end-of-life vehicles, used appliances and other products containing both ferrous and non-ferrous materials.

An EJ notification letter was sent to local officials, environmental advocacy groups and other interested persons from the Illinois EPA's EJ Officer on October 1, 2019. The letter apprised recipients of the Illinois EPA's receipt of the permit application and provided contact information for anyone who had questions or interest.

A letter was received by the EJ Officer from the NGOs on October 30, 2019, expressing concern for the impacts of the proposed project on the local community. The letter also requested a formal public hearing and comment period to allow residents to voice concerns about the project. Follow-up discussions and/or emails were shared with the NGOs acknowledging receipt of the letter and indicating that they would be kept informed of a future public hearing and/or comment period.

Discussions between General III and the Illinois EPA's Bureau of Air concerning an examination of issues relating to air quality impacts and fugitive emissions from the project commenced in the Fall of 2019 and progressed through early Spring of 2020. An initial air dispersion modeling assessment of metal emissions impact from the proposed facility by General III was received by the Illinois EPA on January 27, 2020. Updated emission estimates for both the permit application and air dispersion modeling were received on January 28, 2020. Supplemental materials to the air dispersion modeling were submitted on February 12, 2020.

On March 2, 2020, the Illinois EPA's modeling analyst completed a written memorandum finalizing his review of the air dispersion modeling submitted by General III.

Following extended correspondence regarding various drafts of a Fugitive Particulate Operating Program (FPOP) for the new facility, General III submitted a proposed final version to the Illinois EPA on March 20, 2020.

An email was received from SETF's attorney, Keith Harley, by the EJ Officer on or about March 17, 2020, expressing concerns as to whether an in-person hearing requested previously by the groups could proceed in light of events surrounding the COVID-19 pandemic. Separate communications followed from the Illinois EPA to Mr. Harley concerning an on-going review of options and, later, a decision to schedule a virtual hearing.

Mr. Harley, Ms. Loeb and Ms. Geertsma  
December 18, 2020  
Page 3

On March 20, 2020, General III submitted to the Illinois EPA final estimates of metal emissions associated with the South Chicago Property Management facilities operating at the existing site of the General III project proposal.

The Illinois EPA issued a notice of hearing and a public comment period on March 30, 2020.

A formal letter from the environmental advocacy groups was sent to the EJ Officer during the comment period on April 22, 2020, conveying several concerns relating to the proposed virtual hearing. These concerns were taken into consideration in the planning and presentation of the virtual hearing and later addressed by the Illinois EPA in the formal Responsiveness Summary (RS).

A virtual public hearing was held on May 14, 2020, in both an afternoon session and an evening session. A total of 21 people provided comments and over 200 people participated in the hearing.

The public comment period closed on June 15, 2020. A total of 329 commenters submitted written statements, comments and/or exhibits.

General III submitted supplemental information to the permit application on June 25, 2020, concerning plans for measuring combustion gases of the capture and control systems through monitoring equipment and installing an emergency bypass valve.

General III submitted a final version of the FPOP for the new facility on June 25, 2020.

The Illinois EPA issued a final state construction permit to General III on June 25, 2020. A written response to comments in the form of the RS accompanied the permit issuance.

#### Merits of Alleged Discrimination:

The complaint alleges discrimination under Section 601 of Title VI of the federal Civil Rights Act of 1964,<sup>3</sup> which generally prohibits discrimination on the basis of race, sex or national origin with respect to, among other things, any program or activity involving a recipient of federal financial assistance.<sup>4</sup> The Illinois EPA issued a construction permit to an emissions source, General III, that is located in an area of EJ concern, which is any community with a low-income and/or a minority population of greater than twice the statewide average. In this instance, the community satisfies both criteria. The NGOs allege that Illinois EPA's decision-making with respect to its review of the permit application discriminated against the community on account of race or national origin.

---

<sup>3</sup> 42 U.S.C., §2000d et seq.

<sup>4</sup> The Illinois EPA receives federal funding from the United States Environmental Protection Agency (USEPA) for its administration of air pollution control programs.

The NGOs also allege that the issuance of the construction permit similarly resulted in discrimination under separate provisions of the Illinois Civil Rights Act of 2003.<sup>5</sup> These allegations pertain to both intentional discrimination<sup>6</sup> and the effects of discrimination.<sup>7</sup> The NGOs further allege in two of the claims that the Illinois EPA's review of the permit application and issuance of the construction permit violated the requirements of its EJ policy, which is shared on the agency's website and identifies steps that the Illinois EPA undertakes to promote public participation in EJ communities affected by regulatory activities involving the Illinois EPA, including its permitting programs.

The complaint identifies eight claims alleging discrimination by the Illinois EPA in conjunction with the issuance of the General III construction permit. None of the claims allege facts showing a discriminatory intent, and the Illinois EPA strongly denies that its review of the permit application sought to disadvantage citizens of Southeast Chicago. The claims generally assert that through the exercise of discretionary actions, the Illinois EPA's decision-making resulted in significant, adverse, and disproportionate impacts on the community.<sup>8</sup> However, the complaint does not elaborate on facts or applicable law that would place the Illinois EPA's actions within the protections of federal and/or state laws designed to protect against intentional or disparate impacts discrimination.

The complaint does not demonstrate adverse impacts to the residents of Southeast Chicago. Based on the Illinois EPA's review, emissions (as depicted through air quality modeling of heavy metals that can be expected from the metal recycling facility) will pose no significant impact to local air quality, and localized impacts from odors, fugitive emissions or the presence of uncontrolled automotive shredder residue cannot be presumed given that they are dependent upon site-specific factors. The complaint also does not distinguish between *any* effects caused by agency decision-making from those that are *significant*. And the complaint also does not identify disproportionate impacts attributable to the Illinois EPA's decision-making, with exception of a recurring statement that agency decisions favored the permittee and disfavored local residents.<sup>9</sup>

The Illinois EPA's general responses to the claims in the attachment to this letter provide ample justification for its decision-making and, similarly, reveal that there were no instances in which other alternatives were available to the permit authority to remedy the alleged discrimination. Additionally, although the NGOs question the use of agency discretion in several permit-related decisions in their

---

<sup>5</sup> 740 ILCS 23/5 (2018).

<sup>6</sup> 740 ILCS 34/5(b)(1).

<sup>7</sup> 700 ILCS 34/5(b)(2).

<sup>8</sup> This standard suggests that the legal theory supporting the complaint for Title VI purposes lies with a disparate impacts analysis. Disparate impact discrimination under Title VI of the Civil Rights Act generally prohibits the "use of criteria or methods" in the administration of a program or activity having the effect of discrimination on account of race or national origin.

<sup>9</sup> It is not known if this vague reference is a factor or test used in discrimination cases, but it seems unlikely that a "for or against" standard, without more, is helpful in discerning disproportionate impacts.

claims, the exercise of such authority is inherent in an administrative agency like the Illinois EPA and was appropriately exercised here. It largely consists of the power to make choices within the framework of expressed or implied authorities under the Environmental Protection Act. But discretion is not to be confused with an agency's obligation to comply with established law. In this regard, the complaint does not contain reference to the types of legal requirements (i.e., specific criteria or methods used in administering an agency program) that are the primary emphasis of disparate impacts cases. As such, while the NGOs highlight discretionary choices made by the Illinois EPA within a broader context of permitting, they do not allege agency decision-making of the type that bring their claims within the prohibitions addressed by discrimination laws.

Merits of Alleged Permit Deficiencies:

Due to the specialized nature of the issues presented in the complaint, the investigation and responses generated by this review relied heavily upon the contributions from the Illinois EPA's Bureau of Air and the Office of Community Relations. For convenience, the evaluation of the merits of the permit deficiencies raised in the complaint are set forth in Attachment 1 to this letter.

ILLINOIS EPA RESOLUTION:

The Illinois EPA recognizes that the General III proposal generated considerable controversy in southeast Chicago neighborhoods, and the large number of comments received during the public comment period is a testament to the energy and dedication to environmental advocacy shared by local officials, NGOs and community residents alike. The Illinois EPA appreciates that the NGOs opted to pursue their concerns regarding EJ through the Grievance Procedure as an initial matter. The administrative process is not a mandatory requirement of federal agency oversight with respect to Title VI compliance, but it can facilitate a better understanding by an affected agency of the EJ-related concerns raised in a complaint.

As mentioned in the detailed Investigation and Responses attachment to this letter, Claim Five of the complaint challenges several aspects of the Illinois EPA's decision-making regarding the public hearing that was held as part of the General III permit review. One aspect of the hearing that the NGOs find deficient involved the omission of language translation services to meet the needs of the predominantly Spanish-speaking residents of Southeast Chicago. In particular, the NGOs fault the Illinois EPA for failing to provide notice of the hearing and public comment period, and to provide Spanish translation services at the hearing to assist community residents who are not fluent in English.

Since the initial development of the EJ Policy, the Illinois EPA has relied upon at least three safeguards for the policy's implementation. One is the mutual trust and working relationships that are established

with elected officials and environmental advocacy groups, including the NGOs, throughout our State. The second is the EJ Notification process recognized under our EJ Policy, which serves as a critical part of the initial outreach effort by the Illinois EPA in permitting and other matters. As noted elsewhere, the EJ Notification process relies upon the collaboration of people who are actively engaged in

Mr. Harley, Ms. Loeb and Ms. Geertsma  
December 18, 2020  
Page 6

local environmental affairs and in the feedback of concerns regarding projects of concern. Lastly, the front-line accessibility and efforts by the Illinois EPA's EJ Officer and the Office of Community Relations to stay in tune with the needs of people who are active in environmental advocacy is not only important but something in which we take pride in and continue to find new ways to improve.

All three of these safeguards were utilized in the General III permit review. The EJ Notification was received by nearly fifty local officials and interested persons. Numerous emails and phone calls involving both individuals and advocacy groups, including the NGOs, were shared between the EJ Officer and the Office of Community Relations, as well as the Directors Office, throughout the course of the permit proceeding. The notice of the hearing and comment period was shared, by email or mail, with nearly 100 people. Even though the notice specifically identified a process for how requests for language translation needs could be made, there were no such requests until the hearing.

The Illinois EPA regrets that the language translation issues were raised too late in the permitting process to allow for a remedy and that, as a result, there was a missed opportunity by all to enhance public participation. The Illinois EPA generally believes that the EJ Policy, and the work of agency staff in implementing it, is generally successful in attaining its goals, and that implementation of the process worked as intended in this instance. However, upon further reflection, there may be room for improvements to prevent a recurrence of these events. To this end, the Illinois EPA is assessing the review process that the EJ Officer and Office of Community Relations undertake to determine when language translation for documents or hearing presentations is advisable for affected projects, notwithstanding that the issues have not been raised through other safeguards.

In addition, the Illinois EPA is committing to having a heightened awareness for issues relating to language translation needs of people with limited English proficiency among residents of Southeast Chicago in future projects of interest to the community. In the event that future permitting for the General III facility is planned, the Illinois EPA will commit to providing Spanish language translation for any notice and for the accompanying project summary, and for either simultaneous or sequential translation services at the public hearing.

If you have any questions or comments relating to this response letter, please do not hesitate to call me at (217) 524-1284.

Sincerely,



Chris Pressnall  
Environmental Justice Officer

Attachment 1