December 17, 2020

External Civil Rights Compliance Office
Mail Code 2310A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington D.C. 20460

Submitted Via Email To: Title_VI_Complaint@epa.gov

Re: Title VI Complaint – Illinois Environmental Protection Agency June 24, 2020 Air Construction Permit for General III, LLC, 11600 S. Burley, Chicago, IL 60617, Application No. 19090021, I.D. No. 031600SFX

To The External Civil Rights Compliance Office:

Please be advised that we represent the Southeast Environmental Task Force ("SETF") and the Chicago Southeast Side Coalition to Ban Petcoke ("Coalition"). SETF and the Coalition are environmental education and advocacy organizations based on Chicago's southeast side. Their members include individuals who live, work and recreate on the southeast side. These organizations and their members work to ensure a healthy and safe environment for local residents, to preserve regional ecological resources and to achieve a sustainable economy that enhances local communities. SETF's office is located at 13300 S. Baltimore, Chicago, IL 60633 (see: http://setaskforce.org/). The Coalition is also using this location as its primary place of business (see: https://www.facebook.com/SSCBP60617/). For purposes of this document, these organizations will be referred to collectively as the "Environmental Justice NGOs."

Please accept this letter as an environmental justice complaint alleging that the Illinois EPA violated Title VI, Section 601 of the 1964 Civil Rights Act and acted in a manner that is contrary to the Illinois EPA's Environmental Justice Policy. Illinois EPA developed its Environmental Justice Policy to resolve previous Title VI investigations conducted by U.S. EPA's Office of Civil Rights. This environmental justice complaint arises from Illinois EPA's actions culminating in its decision to issue a Construction Permit to General III, LLC, 11600 S. Burley, Chicago, IL 60617 on or about June 24, 2020. This permit authorized the construction of a metal shredder and related operations. This complaint is being submitted in writing within 180 days of the issuance of the permit. This complaint will describe with specificity the actions by Illinois EPA that result in discrimination, the significant, adverse and disproportionate harm that will occur as the result of these actions and the predominantly minority communities that will be impacted by this discrimination.

Illinos EPA is prohibited from engaging in actions that have the effect of discriminating on the basis of race, color and national origin. Pursuant to Title VI of the Civil Rights Act of 1964, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity which, like Illinois EPA, receives federal financial assistance.

This complaint is based on the complete record of Illinois EPA's permitting process in the above-captioned case. This record includes multiple requests for Illinois EPA to conduct its permitting activities in a manner consistent with its Title VI obligations and environmental justice commitments, including requests for a full opportunity for public participation and for an environmental justice analysis to ensure the permitting of this facility will not create a significant adverse and disproportionate impact on the adjacent environmental justice community. These requests were made shortly after the permit application was filed, throughout Illinois EPA's permit review process, by several participants in a virtual public hearing and in many written comments, including extensive written comments submitted by the Environmental Justice NGOs.

Illinois EPA's administrative record of this permitting action is available on-line at: https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16917. This administrative record is described in this submission document: https://pcb.illinois.gov/documents/dsweb/Get/Document-103048. The Illinois EPA's permitting record is divided into twenty-two parts that are located at the end of the electronic docket.

This record was prepared by Illinois EPA as part of a pending permit appeal by General III, LLC before the Illinois Pollution Control Board. Illinois law allows permit applicants but not third parties to appeal minor source air construction permits. Consequently, the Environmental Justice NGOs are not parties to General III LLC's appeal and the appeal does not address any of the issues in this complaint. The Environmental NGOs filed a timely grievance with Illinois EPA that is substantially the same as this complaint, but have not received a response from Illinois EPA. Illinois EPA's deadline for responding to this state-based environmental justice grievance is concurrent with the deadline for the Environmental Justice NGOs to file this complaint with External Civil Rights Compliance Office.

The Environmental Justice NGOs, several public interest organizations and many local residents expressed specific environmental justice concerns during Illinois EPA's permitting activities in this case. These concerns are contained in correspondences, written comments and transcribed oral testimony that can be found in Illinois EPA's record of its decision. By way of summary, many public commentators expressed concern about the environmental impacts of this metal shredding operation, which they assert Illinois EPA inadequately characterized and failed to control through appropriately protective permit mandates. These commentators assert that the EJ area where the facility will operate is already characterized by air quality challenges like toxic metal emissions to which the facility will add. This concern includes emissions from several co-located and co-owned scrap processing facilities that were not included by Illinois EPA in its permitting process. Commentators expressed concerns about the air quality impacts posed by the hundreds of trucks that are needed to bring materials to the facility and to remove processed materials from the facility, especially on local PM-10 ambient air quality conditions. Because the permitted facility is transferring the business, operations and equipment from an existing metal shredder on Chicago's northside, dozens of commentators provided detailed information about the troubled compliance history of this northside operation and urged Illinois EPA to develop measures to address recurrent problems. Equally important, they questioned Illinois EPA's permitting process, which occurred during a pandemic, a period of local civil unrest and without translation services in a community where many residents are Spanish-speaking.

More specifically, this complaint is separated into eight individual claims. However, these claims should not only be considered individually, but also in terms of their discriminatory effect in combination. In every case, these claims also evidence failed Illinois EPA policy and practice on environmental justice.

Complaint Claim One: Illinois EPA failed to conduct an environmental justice analysis as part of its permit review.

The Environmental Justice NGOs made the following request at the opening bell of this permit transaction:

> "Moreover, considering the characteristics of the immediately surrounding area, the NGO coalition is formally requesting IL EPA to conduct an environmental justice analysis as part of its permitting process.
>
> There is a strong justification for an environmental justice analysis and for a full and complete opportunity for public participation. According to information derived from the demographic feature of U.S. EPA's ECHO database, there are 68,947 people living within a three-mile radius of General III's proposed facility. 49% of the people who live in that three-mile radius are Hispanic, and 30% are African American. The ECHO database also indicates that there are 26,624 households in this area as well as 19,051 minors younger than 18. Nearby residential communities include the East Side, South Deering and Hegewisch. The facility would operate immediately adjacent to the Calumet River. In addition, the facility is less than one mile from Washington High School. This area scores above 90% in eleven categories assessed by U.S. EPA's EJ screening tool, including PM 2.5, diesel PM, NATA air toxics cancer risk, NATA respiratory hazard index, traffic proximity, lead paint indicator, superfund proximity, risk management plan proximity, hazardous waste proximity and wastewater discharge proximity."

Notably, Illinois EPA characterized this permit transaction as triggering its environmental justice obligations when it distributed a public notice announcing the submission of a permit application by General III. In its public notice about the draft permit, Illinois EPA provided a link to its general environmental justice policies, but offered no description about how these environmental justice commitments would affect its review of the permit application, its interactions with the permit applicant, its interactions with the public or its Draft Permit.

Neither the Notice of Comment Period, the Project Summary nor the Draft Permit make any reference to an environmental justice analysis. The Illinois EPA's Environmental Justice Officer did not testify at the virtual public hearing. By contrast, like SETF and the Coalition, most public participants in the hearing specifically invoked environmental justice issues, including (b) (6) [redacted] and (b) (6) [redacted]. Consistent with the metrics presented in U.S. EPA's EJ screening tool, like SETF, all of these individuals expressed concern about the significant, adverse and disproportionate harm that could result by permitting General III in an already overburdened, primarily minority community.

At the opening bell of this permit transaction, the Environmental Justice NGOs alerted Illinois EPA that its responsibilities in this case included conducting an environmental justice analysis to ensure that its permitting actions do not result in a significant, adverse and disproportionate harm on a predominantly Latinx and African American community. Illinois EPA's Public Notice, Project Summary, Draft Permit and public hearing comments are devoid of any evidence of any effort to address the environmental justice issues that are in the record. Indeed, in its Responsiveness Summary, Illinois EPA disclaimed any legal basis to evaluate the range of environmental justice issues raised by the Environmental Justice NGOs and other public participants, asserting it was limited to air modeling for a limited number of pollutants.

Notably, many of these public requests were for a range of impacts *to be assessed* NOT for Illinois EPA to impose specific permit terms and conditions. As a threshold matter, Illinois EPA's refusal *to assess* many potential impacts on an environmental justice community is a stark example of its failure to fulfill its most basic responsibilities pursuant to Title VI, Section 601 of the 1964 Civil Rights Act, the Illinois EPA's Environmental Justice Policy and the Illinois Civil Rights Act of 2003. Assessing impacts is well within the discretionary authority of Illinois EPA; the question of what effect an assessment of these impacts should have on a permit is a separate question. Illinois EPA had nine months *to assess* the impacts of this facility following the Environmental Justice NGO's initial request and entirely failed to do so. It failed to complete this assessment despite credible information from U.S. EPA sources that the immediately surrounding area includes 68,000 mostly minority residents, a public park and two schools, and that this area already scores above 90% in eleven categories assessed by U.S. EPA's EJ screening tool including PM 2.5, diesel PM, NATA air toxics cancer risk, NATA respiratory hazard index, traffic proximity, lead paint indicator, superfund proximity, risk management plan proximity, hazardous waste proximity and wastewater discharge proximity.

Instead, Illinois EPA repeatedly exercised its discretion in ways that will result in a significant, adverse and disproportionate harm on the surrounding environmental justice community. At multiple decision points in this permitting process, Illinois EPA made discretionary choices that have an adverse and discriminatory effect on the environmental justice community near this facility. In the following comments, the Environmental Justice NGOs identify multiple discretionary choices made by Illinois EPA that are discriminatory and also fail to comply with clear legal mandates designed to protect the health, safety and welfare of Illinois residents.

Complaint Claim Two: Contrary to its own well-established permitting standards, Illinois EPA failed to incorporate several related, co-located facilities in its Permit. Consequently, the Permit is based on an incorrect source determination that does not include all of the pollutant-emitting activities that are part of a single source. General III and the other facilities co-located at 11600 S. Burley are a single source, but are being segmented into constituent operations for purposes of permitting. Illinois EPA's decision to allow this single source to be segmented for purposes of permitting is to the advantage of the permit applicant, but is contrary to the health, safety and welfare of the nearby environmental justice community. This is especially problematic because other related, co-located facilities that will operate with General III as a single source are being registered and/or permitted by Illinois EPA in contemporaneous but completely separate processes. Even more egregious, for these other facilities, these activities are necessary because Illinois EPA apparently completely neglected to require proper registration and/or permitting over many years.

IL EPA's standard permit language states that separate facilities can be considered a single stationary source if they:

"a. belong to the same industrial grouping or operate as a support facility,

b. are located on contiguous or adjacent properties, and,

c. are under common ownership or common control.

Common control differs from common ownership in that there is an inherent limitation on a facility's ability to operate "but for" another facility providing its services."[1]

In the present case, the 11600 S. Burley facilities include Napuck Salvage, Reserve Marine Terminals, South Chicago Recycling, RSR Partners/Regency Technologies, General III LLC and, perhaps, Calumet Transload. Based on a review of Illinois EPA documents acquired using FOIA, it appears that Illinois EPA concludes that these facilities constitute a single source. Despite this, the agency appears to be conducting separate permitting activities which inappropriately segment a single source into its constituent operations. Illinois EPA issued its permit despite having only a partial and incomplete picture of this single source, and consequently had an inadequate, incomplete basis to grant or deny any request for any constituent operation including General III.

Complaint Claim Three: Contrary to the Illinois Environmental Protection Act, Illinois EPA failed to take account of evidence of the compliance history of General Iron, which is transferring its business, operations and equipment to the 11600 S. Burley facility. Illinois EPA's decision is to the advantage of the permit applicant, but contrary to the health, safety and welfare of the nearby environmental justice community.

General III, LLC is the entity that sought a construction permit for the southeast Chicago facility from the Illinois Environmental Protection Agency in September, 2019. The permit applicant expressly linked the decommissioning of another facility, called General Iron, to the construction of the facility on the southeast side:

> "The facility described in this application will replace an existing facility currently owned and operated by General Iron Industries, Inc. (General Iron) located at 1909 North Clifton Avenue in Chicago, Illinois, which is scheduled to close by the end of 2020. This existing facility has been in operation at that location for over 60 years. Another RMG affiliate, GII, LLC (GII), is purchasing certain assets used in connection with the operation of General Iron's scrap metal business and intends to operate the business for a period of time at the existing facility and then transition scrap metal operations from the Clifton Avenue location to its property at South Burley Avenue. Currently, the existing facility is processing approximately 750,000 ton [sic] per year of shreddable recyclables

[1] On November 26, 2019, U.S. EPA issued a new guidance document regarding single source determination that clarified that adjacency, not functional relatedness, is the decisive factor is establishing a single source. While this doesn't change the analysis for the co-related, adjacent operations at 11600 S. Burley, this may necessitate a change in Illinois EPA's standard permit language.

but is configured to process 1,000,000 tons per year. For purposes of this application, the existing facility is known as the "GII facility."

The proposed GIII facility on South Burley Avenue will also be configured to process 1,000,000 tons per year of shreddable recyclables and will effectively replace the GII facility."

Because of the connection between General Iron and General III, LLC, several members of the public introduced evidence of a history of non-compliance at the General Iron facility. Illinois EPA categorically refused to consider this evidence, including evidence of an explosion at General Iron that occurred during the permitting process and that led the Chicago Department of Public Health to order the closure of the General Iron facility for several weeks. Illinois EPA's categorical refusal to consider this evidence is contrary to protecting the health, safety and welfare of the residential communities in proximity to the General III, LLC facility.

Illinois EPA's first authority pursuant to 415 ILCS 5/39(a) is this:

"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."

Illinois EPA's second authority pursuant to 415 ILCS 5/39(a) is this:

"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."

Illinois EPA's third authority pursuant to 415 ILCS 5/39(a) is this:

"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."

As an initial matter, the Environmental Justice NGOs believes that Illinois EPA's lawyer fundamentally mischaracterized the law on this matter during the public hearing, misleading public participants and unfairly discouraging them from testifying on compliance matters relevant to the permit application. Illinois EPA's lawyer did not refer to the three constituent parts of 415 ILCS 5/39(a), but rather conflated them in a completely confusing and misleading fashion. The lawyer justified Illinois EPA's position by alluding to court decisions, but provided no reference to any specific case. The lawyer did not distinguish between cases that preceded the legislation described above by contrast to cases that interpret these specific provisions. In response to testimony that was clearly relevant under the second and third parts cited above, the lawyer incorrectly stated that Illinois EPA was precluded from considering this testimony. This is part of an overall pattern of Illinois EPA's misleading and unfair conduct in the public process that will be discussed later in these comments. Illinois EPA's interpretation of its authority of 415 ILCS 5/39(a) is problematic and its public statements are confusing and misleading; in the

present case, this created an unfair public process and exacerbated the hazards to this environmental justice community.

The three authorities granted to Illinois EPA in 415 ILCS 5/39(a) were all at issue in the present matter. In terms of specifically adjudicated matters, neither the Draft Permit nor the Project Summary reference In the Matter of General Iron Industries, Inc. Chicago, Illinois, Docket No. EPA-5-19-113(a)-IL-08. In this case, U.S. EPA asserts that General III significantly underestimated its metal shredder's VOM emissions when the shredder, in fact, had a potential to emit more than 100 tons of VOM per year.[2] Despite this, General Iron did not have any emission capture or control equipment to achieve an overall reduction of uncontrolled VOM emissions of at least 81 percent, nor did it have the appropriate operating permit that corresponded with its VOM emissions.[3] U.S. EPA identified the magnitude of the VOM emissions through inspections using its FLIR camera and a Section 114 Information Request.[4] As part of an August 22, 2019 Administrative Consent Order, General Iron agreed to complete the installation of a regenerative thermal oxidizer (RTO) with a minimum VOM destruction efficiency of 98%.[5] This is legally relevant to the present case because the RTO mandated by U.S. EPA's Administrative Consent Order is to be transferred to the proposed General III facility. This U.S. EPA-mandated RTO is the very piece of pollution control equipment that exploded at the General Iron facility a few days after the public hearing. By not incorporating U.S. EPA's August 22, 2019 Administrative Consent Order, Illinois EPA is improperly ignoring an adjudication and creating perilous conditions for an environmental justice community.

Illinois EPA's second authority pursuant to 415 ILCS 5/39(a) - "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" – is also directly relevant to the present case. An adjudication is only one way that relevant information related to compliance can be presented to Illinois EPA. Another way is information derived by partner agencies, for example, the City of Chicago. NRDC submitted extensive information about multiple enforcement initiatives currently underway on the city level. This information is directly relevant to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance, particularly since the pollution control equipment from this facility will be transferred to the General III facility. In its Responsiveness Summary, Illinois EPA simply

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[2] In the Matter of General Iron Industries, Inc. Chicago, Illinois, Docket No. EPA-5-18-IL-14, U.S. EPA Region 5, July 18, 2018, at 4. Available at: https://www.epa.gov/sites/production/files/2018-07/documents/general_iron_industries_inc._nov-fov.pdf

[3] In the Matter of General Iron Industries, Inc. Chicago, Illinois, Docket No. EPA-5-18-IL-14, U.S. EPA Region 5, July 18, 2018, at 5. Available at: https://www.epa.gov/sites/production/files/2018-07/documents/general_iron_industries_inc._nov-fov.pdf

[4] In the Matter of General Iron Industries, Inc. Chicago, Illinois, Docket No. EPA-5-18-IL-14, U.S. EPA Region 5, July 18, 2018, at 4. ("35. During the May 24 & 25, 2018 inspection, EPA observed and recorded hydrocarbons exiting the hammermill shredder with a FLIR infrared camera."). Available at: https://www.epa.gov/sites/production/files/2018-07/documents/general_iron_industries_inc._nov-fov.pdf

[5] In the Matter of General Iron Industries, Inc. Chicago, Illinois, Docket No. EPA-5-19-133(a)-IL-08, U.S. EPA Region 5, August 22, 2019 at 7. Available at: https://www.epa.gov/sites/production/files/2019-08/documents/general_iron_industries_inc_aco.pdf

asserts it is not common for the Agency to exercise its authority to consider this evidence. Illinois EPA's categorical refusal to consider this evidence is contrary to its authority pursuant to 415 ILCS 5/39(a) and will create perilous conditions for the nearby environmental justice community.

Illinois EPA's third authority pursuant to 415 ILCS 5/39(a) - "[T]he 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" – is also directly relevant to the present case. The plain language of this provision stands in stark contrast to another fundamentally misleading statement made by an Illinois EPA representative at the public hearing, whose testimony was subsequently introduced into the permit repository in written form. By contrast to the cited authority granted in 415 ILCS 5/39(a), the Illinois EPA representative stated:

> "In its review of an application, the Illinois EPA has no choice legally but to issue a construction permit to a source if the source will be in compliance with all state and federal air pollution control regulations."

By contrast, in its Responsiveness Summary, Illinois EPA acknowledged that it possesses the authority to 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.

Illinois EPA is not at liberty to ignore the authorities and responsibilities provided by the legislature, and it is not at liberty to misstate the plain language of the Illinois Environmental Protection Act. In permitting, Illinois EPA is expressly authorized to impose conditions that 1. are necessary to accomplish the purposes of the Act, and, 2. are not inconsistent with the regulations. Illinois EPA can impose conditions that go beyond the regulations if they are "not inconsistent" with the regulations and accomplish the purposes of the Act. Again, Illinois EPA's interpretation of its authority of 415 ILCS 5/39(a) is problematic and its public statements are confusing and misleading; in the present case, this created an unfair public process.

As a practical matter, critical measures beyond technical regulatory compliance are authorized by law and are essential to health, safety and welfare of the environmental justice community. For example, 415 ILCS §5/9(a) states:

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

This same provision is repeated in 35 Illinois Administrative Code 201.102, approved as part of the federally enforceable SIP for the State of Illinois on May 31, 1972. 37 Fed. Reg. 10842. This SIP approval also included 35 Illinois Administrative Code 201.101, which defines air pollution as "…the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonable interfere with the enjoyment of life or property."

Public testimony and written comments that address air pollution that is injurious to human, plant or animal life, to health, or to property, or which unreasonably interferes with life or property is legally relevant to this permitting. This is especially true because the same pollution control equipment used by General Iron will be transferred to the proposed facility. If these issues are raised – as they were repeatedly in the present case - mere assurances of technical compliance are not adequate. To this point, (b) (6), a resident who lives near the current General Iron facility testified about years of poor performance, serial violations and specific health impacts (b) (6) she experienced as a result of that facility's operations. (b) (6), another resident living near General Iron, testified about negative health consequences and a history of violations, prompting the Illinois EPA attorney to immediately intervene to discount this testimony. Another General Iron neighbor, (b) (6), testified that there were severe impacts from its current operations that have no place in the city or anywhere else because of negative effects on its neighbors.

Illinois EPA responded to these kinds of comments by asserting these are enforcement not permitting matters. In response, the Environmental Justice NGOs requested Illinois EPA to include the record of its enforcement activities at the General Iron facility, the record of its enforcement referrals to the Attorney General for this facility as well as any operating permit it issued anytime over the past 15 years. Illinois EPA failed to include this information in its Responsiveness Summary. It is inappropriate for IL EPA – having failed to enforce and failed to permit – to hide behind these failures to justify self-imposed limits in the present permitting.

Complaint Claim Four: Illinois EPA issued its permit despite the catastrophic failure of the pollution control equipment that will be transferred from General Iron to General III. Illinois EPA issued its permit without the completion of the official review about why this pollution control equipment failed. Illinois EPA's decision is to the advantage of the permit applicant, but contrary to the health, safety and welfare of the nearby environmental justice community.

During the General III public hearing, IL EPA indicated that the equipment employed by General Iron would be moved to the proposed General III facility, including the RTO and other pollution control equipment. Consistent with this, the pending application and the draft permit are based on the operating characteristics of existing equipment employed by General Iron. In this way, General III's permit application is not typical because it proposes to move existing pollution control equipment from General Iron to a new location. This facility will be utilizing used parts, specifically the emissions capture hood, cyclone, filter and RTO and associated pollution control equipment. Provisions relating to the air pollution control equipment that will be transferred from General Iron include Paragraphs 9a and 11a – 11h. Equally important, the emission limits in the Permit are based on the effective operation of this transferred pollution control equipment. If this transferred pollution control equipment does not operate effectively, it is also uncertain if the facility can maintain a potential to emit for air pollutants consistent with a minor source designation.

Much of the Permit is based on the performance of this transferred equipment. In turn, the performance of this equipment is legally relevant because of the mandate imposed by 35 IAC 201.160 "Standards for Issuance":

a) No construction permit shall be granted unless the applicant submits proof to the Agency that:

1) The emission unit or air pollution equipment will be constructed or modified to operate so as not to cause a violation of the Act or of this Chapter

Pursuant to 35 IAC 212.324(f), the owner or operator shall maintain and repair all pollution control equipment in a manner that assures that emission limits and standards in 35 IAC 212.324 shall be met at all times.

Consequently, Illinois EPA issued the permit without an answer to the most essential question – has the pollution control equipment that is being transferred to the General III worked effectively at General Iron? The Environmental Justice NGOs assert that the representations in the permit application does not accurately represent the operation of the equipment that will be employed at the proposed new General III facility. The permit application was an inadequate basis for permit review and was incomplete. The Environmental Justice NGOs assertion is based on the explosion that occurred at General Iron shortly after the public hearing, coupled with the long history of compliance issues related to this equipment that are detailed in written comments submitted by NRDC. Initial reports suggest the explosion originated in the RTO, one of the pieces of pollution control equipment that is to be transferred to the proposed General III facility. Moreover, even if the operation of the RTO is not the only cause of the explosion, the transfer of any equipment that can cause this kind of catastrophic failure suggests the applicant's representations should have been revisited as part of any credible permit review.

The permit in this case creates a significant, disproportionate and adverse risk of harm because the applicant's representations about the proposed use of any equipment, its control efficiency, and the applicant's ability to operate the equipment safely and effectively were accepted without a complete investigation of the explosion incident. In light of the explosion and incomplete investigation, the Illinois EPA could not establish this transferred air pollution equipment will be constructed so as to not cause the violations of the Act that result from catastrophic failure, fires, explosions and the uncontrolled release of pollutants. Moreover, existing emission estimates and air quality models that do not account for emissions during periods of catastrophic failure also must be reassessed. Additional permit terms and conditions were necessary to prevent future accidents and to ensure the integrity of the equipment and the applicant's operating systems, all of which are relevant permitting considerations. Omitting this analysis is inconsistent with the health, safety and welfare of nearby schools, parks, river users and residential neighborhoods.

For this reason, the Environmental Justice NGOs assert the pending permit application was incomplete and did not provide a basis for Illinois EPA to make permitting decisions about the General III facility. Illinois EPA should not have proceeded to final permit decisions until it possessed a final investigative report about the equipment that the applicant is proposing to transfer and its ability to operate this equipment in a safe and effective manner, as required by 35 IAC 201.160. In the meantime, it could have exercised its authority to issue a Notice of Incompleteness regarding the pending permit application or an outright permit denial.

Complaint Claim Five: Despite the pleas of local residents, Illinois EPA conducted a virtual public hearing during the pandemic and the written comment period during a period of civil

unrest. This is contrary to Illinois EPA's own environmental justice guidelines and unfairly impeded public participation. Illinois EPA's decision is to the advantage of the permit applicant, but contrary to the health, safety and welfare of the nearby environmental justice community. In the absence of full and complete public participation, Illinois EPA did not have an adequate basis to assess and develop appropriate protections for this environmental justice community.

On April 22, 2020, SETF sent the following communication to Illinois EPA via Brad Frost and the Agency's Environmental Justice Coordinator:

> Please be advised that I represent the Southeast Environmental Task Force. As you know, SETF and its community partners have placed the highest priority on public participation in IL EPA permitting transactions related to the General III facility, which would be co-located with several existing, related facilities at 11600 S. Burley in southeast Chicago.
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> SETF prides itself on being a responsible community partner with IL EPA when, as in the present case, it requests public participation. Specifically, SETF has played a central role in publicizing and facilitating public hearings with IL EPA over a 25+ year period. Even when it disagrees with IL EPA, SETF has been a good faith partner with IL EPA because its interests in public participation align with the Agency.
>
> Unfortunately, SETF believes IL EPA's proposed virtual hearing for the General III air construction permit will not be successful. SETF cannot remedy the problems it foresees. It's concerned that large segments of the public will not be heard as part of this important permitting process.
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> Neither SETF's members nor other local residents have participated in this type of hearing. Many do not have the technology and/or technical capability to participate. SETF cannot provide training to remedy this problem because its office is closed and its leadership, members and local residents are required to be distant from one another. As a small non-profit, SETF is experiencing almost insurmountable complications to continue functioning, let alone to mount a major campaign to facilitate public participation in an unfamiliar venue.
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> Under these circumstances, SETF is concerned that a public hearing will suppress public participation, effectively exclude many potentially affected residents and skew the public record in favor of more sophisticated participants who may not represent community members and their interests. Even though I will prepare written comments on behalf of SETF, this is not a surrogate for the testimony of the full range of local residents who would participate in a traditional public hearing.
>
> SETF acknowledges that you and other IL EPA personnel are working under very difficult circumstances due to the pandemic. Having said this, the legislators who mandated intractable permit decision deadlines were not contemplating a pandemic. Surely, the permit applicant wouldn't want to foreclose public participation or gain any advantage by virtue of a pandemic that no one could foresee. SETF believes

there should be a moratorium on further permit proceedings in this case until the Governor concludes Illinois can return to in-person social interactions.

Illinois EPA never responded to this message and proceeded to its virtual public hearing. Predictably, most of the participants who testified asserted that Illinois EPA's decision was fundamentally unfair and defeated the purpose for a public hearing. The inadequacy and unfairness of the hearings was made worse by the failure of Illinois EPA to consider and remedy the need for outreach and translation in Spanish for this predominantly Latinx community. In a "Catch 22" that provided no meaningful language access, Illinois EPA announced and provided instructions *in English* informing Spanish speakers that they could request translation at the hearing. No translation services were provided. The testimony of participants included the following:

(b) (6) – His family has lived on the East Side for 70 years, and he has a petition with 2,000 signatures of local residents opposing General III. Despite this, because there was no information in Spanish, very few local residents knew about the hearing or how to participate, including people who use nearby Rowan Park and families whose children attend nearby Washington High School.

(b) (6) – It's unfair to have a hearing during the pandemic. This reflects the racism that causes southeast Chicago to be a sacrifice zone.

(b) (6) – Many members of the public are unable to login because they are required to download an app on their phones but either don't have the storage for the app or can't afford to purchase additional storage. The hearing is inaccessible for Spanish speakers. Spanish speaking and hearing-impaired individuals face obstacles preventing their participation. Is this ADA compliant? It's unfair to hold a public hearing in such desperate times when people are facing so many other challenges.

(b) (6) – In light of the emergency conditions, this is an unfair process that excludes many community members.

(b) (6) – The compressed timeline for the public process unfairly inhibits public participation. There was a lack of translation services for Spanish speakers. Was the public notice available in Spanish?

(b) (6) – Holding a meeting during the pandemic is unjust and an insult to the community, and disregards local residents.

(b) (6) – East Side resident who strongly objects to the "pandemic hearing". The hearing excludes poor people who lack the technology and technical skills to participate. The Spanish-speaking residents who are the most directly affected are the most excluded. Many of her own family members are unable to participate.

(b) (6) (NAACP) – The disproportionate impact of the pandemic on southeast and southwest side communities is compounded by the environmental injustice being perpetrated by IL EPA.

Illinois EPA's conduct is contrary to its own environmental justice commitments, developed in large part to resolve earlier civil rights complaints against the Agency for this type of unfair conduct. Illinois EPA's Environmental Justice Public Participation Policy identifies a series of public participation initiatives that apply "to all permitting transactions." These commitments include:

1. providing early and meaningful public involvement throughout the permitting process;

2. making a 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.

Illinois EPA's failure to provide early and meaningful public involvement, appropriate outreach, a meaningful public hearing, translation services and an adequate written comment period works to the advantage of the permit applicant, but was contrary to Illinois EPA's own environmental justice commitments.

Complaint Claim Six: Illinois EPA failed *to assess* the air quality impacts of emissions from new truck traffic that will move through local communities to access the General III facility. On a weekly basis, General III's operations will attract hundreds of trucks carrying junk automobiles, appliances and other scrap metal; this is an essential part of General III's business. Even if Illinois EPA cannot regulate tailpipe emissions from these mobile sources, it is Illinois EPA's responsibility to assess these emissions to determine if they will cause or contribute to unhealthy air quality for nearby residents. Illinois EPA's omissions are to the advantage of the permit applicant, but contrary to the health, safety and welfare of the nearby environmental justice community.

The General III facility cannot operate unless it receives deliveries of scrap metal by truck. This essential aspect of General III's operations will bring hundreds of trucks – and their associated tailpipe emissions – to its location every week. These trucks and their cumulative emissions will be a new, permanent source of air pollution in nearby residential neighborhoods, both when they come to and go from the General III facility using local roadways. These impacts will be compounded if trucks are allowed to idle at or near the facility, a practice that is not prohibited by the Permit.

Pursuant to 40 CFR 51.160 - "Legally enforceable procedures" – Illinois EPA has the authority to include an assessment of the air quality impacts from mobile sources in its permitting decisions. Illinois EPA must assure that the construction or modification of a facility will not result in interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located. 40 CFR 51.160 (a)(2). Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if it will interfere with the attainment or maintenance of a national standard. 40 CFR 51.160 (b)(2). The nature and amount of emissions to be emitted by mobile sources associated with a facility is expressly referenced as a relevant inquiry. 40 CFR 51.160 (c)(1). Illinois EPA must assess its activities in the context of a broader control strategy that includes consideration of "changes in

relocation of residential, commercial, or industrial facilities or transportation systems." 40 CFR 51.100.

The relocation of the business and operations of General Iron to the proposed General III facility will result in the introduction of hundreds of trucks every week of every year into southeast Chicago, including many diesel vehicles. Despite this, Illinois EPA did not assess if this result, directly associated with the proposed General III facility, will interfere with attaining and maintaining healthy air standards in the environmental justice community on Chicago's southeast side.

In fact, at the opening bell of this permitting, the Environmental Justice NGOs provided information about the potential impacts of truck traffic and tailpipe emissions on the southeast side. It appears this information was ignored. Even absent General III, the area surrounding the proposed General III facility scores above the 90% percentile in several risk-based, transportation related categories assessed as part of U.S. EPA's EJ screening tool, including PM 2.5, diesel PM, NATA air toxics cancer risk, NATA respiratory hazard index and traffic proximity. The tailpipe emissions that will result from the trucks needed to service the proposed General III facility will only exacerbate these risks, but were entirely unassessed by Illinois EPA. This omission is to the advantage of the permit applicant, but places the environmental justice community in peril.

Complaint Claim Seven: Provisions of Illinois law that are part of the approved Illinois SIP characterize odors as contaminants that should not be released in a manner that injures nearby residents. Under 415 ILCS §5/9(a):

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

This same provision is repeated in 35 Illinois Administrative Code 201.102, approved as part of the federally enforceable SIP for the State of Illinois on May 31, 1972. 37 Fed. Reg. 10842. This SIP approval also included 35 Illinois Administrative Code 201.101, which defines air pollution as "…the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonable interfere with the enjoyment of life or property." The definition of contaminant explicitly includes odors:

> Sec. 3.165. Contaminant. "Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source. (Source: P.A. 92-574, eff. 6-26-02.)

The concerns of the local environmental justice community about releases of odors from the proposed General III facility are legally relevant to the Permit. As revealed by the analysis prepared by NRDC, odor concerns are not mere speculation, but rather are identified as a recurrent problem at the existing General Iron facility despite the use of the same pollution control equipment that will be transferred to General III. These odors are not merely unpleasant, they evidence fugitive releases of categories of regulated pollutants including metals, volatile

organic materials and particles. Even in the single Inspection Report included in these comments, the city inspector experienced from an off-site location "a pungent odor of sweet metal that burns my nostrils," an "odor of burning material" and fugitive dust. She was able to attribute these releases to General Iron because she observed the same effects on-site as well.

Because General Iron's existing pollution control equipment – which will be transferred to General III – is inadequate to control these releases, Illinois EPA's approach in the Permit is uninformed and inadequate. General III should have been required to develop an odor management plan proactively that will address the severe, recurrent releases that are constantly reported at the General Iron facility, and which are clearly injurious to human health and the use and enjoyment of property. As a precondition for commencing construction, the permittee must be required to develop and implement a comprehensive odor management plan that identifies changes in material, installation of controls and other measures to control odors, and that mandates a corrective action plan if odors are observed or odor complaints are received by facility operators or regulators. The odor management plan should require General III to identify and implement odor monitoring equipment to detect the characteristic odors that are related to its characteristic metallic, volatile and particulate emissions. Illinois EPA's deferral of this issue in the Permit is to the advantage of the permit applicant, but damaging to the nearby environmental justice community.

Complaint Claim 8: Illinois EPA acted in a discriminatory manner by exercising its discretion to make conflicting decisions regarding air quality modeling — choosing to require and rely on modeling when it supported *granting* the permit, but refusing to do either when faced with other results based on the applicant's own modeling files that weigh towards a *denial or stricter permit terms to protect the community*. Specifically, the agency required the applicant to model impacts of lead on air quality and compare the results to the National Ambient Air Quality Standard ("NAAQS") for lead (with which the area is currently in attainment). Both the applicant and Illinois EPA used this analysis to claim the facility would not cause an issue with lead air quality.

However, as set forth in comments by NRDC to Illinois EPA, air quality modeling of PM10 impacts using the applicant's own modeling files and assumptions adjusted for PM10 shows levels of PM10 above the 24-hour PM10 NAAQS of 150 ug/m3. In response to this comment, Illinois EPA set forth as follows:

> The Lake Calumet region of Cook County (and the entire State of Illinois) are in attainment with the primary and secondary PM10 NAAQS. Since the proposed General III PM10 emission rates would not exceed regulatory thresholds triggering the requirement for modeling, the applicant was not required to do so. Equally relevant, however, is the Agency's firm expectation that Genera [sic] III's proposed PM10 emission rates would not "cause air pollution" as a result of the facility's contribution to existing ambient loadings in the Lake Calumet region. There was not an "omission" of PM10 modeling, there was simply a targeted focus on metallic HAPs.

This text contains no substantive response to NRDC's comment on the high levels of PM10 expected from the facility. Similar levels of PM10 have served as the basis for enforcement actions by U.S. EPA Region 5 against other industrial facilities in Southeast Chicago. These enforcement actions have stated as their basis that the facilities at issue "caused the emission of

PM10 into the air, so as, either alone or in combination with contaminants from other sources, to cause or tend to cause, air pollution in Illinois and/or to prevent the maintenance of the revised NAAQS for PM10 in violation of the Illinois SIP at 35 Ill. Admin. Code § 201.141."[6] In these PM10 Notices of Violation, U.S. EPA describes the many health impacts from such excess levels of particulate matter.[7] In its so-called Responsiveness Summary for the proposed facility, Illinois EPA does not explain the basis for its "firm expectation" that the proposed facility would not "cause air pollution," but merely states it as an unsupported fact in favor of issuing the permit. Illinois EPA also brushed off a comment that modeling for PM10 from the proposed facility should include the PM10 from the four co-located facilities, circularly saying that because the agency didn't require PM10 modeling for the proposed facility, there is no need to look at the PM10 for the four other co-located facilities.

Additionally, Illinois EPA claimed in its Responsiveness Summary that "the modeling demonstrated that the air impact will not exceed *any* established standards" (emphasis added). Yet NRDC pointed out in its comments that the applicant's own metallic air toxics modeling shows exceedances of California's 8-hour Reference Exposure Level ("REL") for neurotoxic manganese. Illinois EPA's only response was to again reject the results flat out, saying that there is no federal agency or *other* state agency employing this level, and failing to respond to the exceedance of the California figure on its merits (i.e., without attempting to find fault with the REL itself), other than to say the figure is a "guidance" level rather than a bright line.

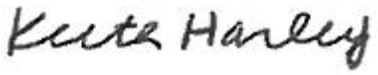
In sum, Illinois EPA attempted to claim it was going above and beyond the minimum required by regulations to protect this environmental justice community by requiring air quality modeling. But when faced with air quality modeling results showing the proposed facility's negative impacts on air quality in this already over- and disproportionately-burdened community, Illinois EPA backpedaled and refused to acknowledge let alone address the air pollution issues identified.

Please contact us if you have any questions or comments or if we can provide additional information regarding this environmental justice complaint.

[6] *See, e.g.*, In the Matter of KCBX Terminals Company, Chicago, Illinois, Notice of Violation, EPA-5-15-IL-08, April 28, 2015, at par. 21 (and NOV as a whole), available at https://www.epa.gov/sites/production/files/2015-04/documents/kcbx-nov-20150428.pdf.

[7] *Id.* at par. 22.

Sincerely,



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