



February 25, 2021

U.S. EPA Office of General Counsel
External Civil Rights Compliance Office (ECRCO)
Mail Code (2310A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Violation of Title VI of the Civil Rights Act of 1964
In Issuance of Air Permit Approval No: IP17-000009
By Air Management Services, Philadelphia Department of Health

ENVIRONMENTAL JUSTICE COMPLAINT

On behalf of Pennsylvanians Organized to Witness, Empower, and Rebuild (“POWER”), our families, our friends, our co-workers, and our neighbors who live, work, study, pray, and raise children in the Nicetown neighborhood of Philadelphia, Pennsylvania and the surrounding community (“Nicetown”), we respectfully request that your Office (ECRCO) investigate the Environmental Justice Violation committed by the Air Management Services (“AMS”) division of the Department of Health of the City of Philadelphia, Pennsylvania by issuing Air Permit Plan Approval No: IP17-000009 on November 29, 2017 (the “Air Permit”) to the Southeastern Pennsylvania Transportation Authority (“SEPTA”) for building and operating a gas-fueled electricity generation facility (Plant ID: 01573) at its Roberts Complex (Roberts/Liberty/Midvale properties) located at 4301 Wissahickon Avenue, Philadelphia, PA 19140 (the “Plant”). We assert the following:

1. Current SEPTA activities at its Roberts Complex impose adverse and disparate air pollution impacts on the residents of Nicetown, an impoverished, African-American neighborhood. The Nicetown neighborhood is already heavily burdened with toxic air emissions from multiple sources, and sound science reveals that Nicetown residents experience illnesses and deaths caused by diseases related to chronic exposure to toxic emissions at rates among the highest experienced anywhere in Philadelphia or the Commonwealth of Pennsylvania. The Plant authorized by the AMS Air Permit will further exacerbate such adverse and disparate impacts. Prior to issuance of the permit, environmental and social justice organizations raised both the safety, and the Environmental Justice issues, requesting further study to adequately determine the existing and anticipated adverse impacts. Those requests were rejected.
2. Therefore, AMS issuance of the Air Permit violates Title VI of the Civil Rights Act of 1964 (“Title VI”). ECRCO has responsibility for investigating environmental justice violations of Title VI.

3. AMS is a recipient of EPA funding; therefore, ECRCO has authority to investigate this complaint.
4. The Air Permit is an ongoing violation as long as it is outstanding; therefore, no time limit for bringing this complaint is currently applicable.
5. Appeals of the Air Permit issuance (Appeal No. 32866 and 32867) were filed with the City of Philadelphia Board of Licensing and Inspections Review (“BLIR”) by The Center for Returning Citizens (“TCRC”) and Neighbors Against the Gas Plants (“NAGP”) on December 27 and 28, 2017 respectively. These appeals asserted violation of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, among other complaints. The BLIR held nine hearings on the case. On November 26, 2019, the BLIR voted to affirm issuance of the Air Permit. And, on November 29, 2019, AMS issued a plan approval for SEPTA to proceed.
6. On December 27, 2019, NAGP appealed the BLIR decision in The Court of Common Pleas of Philadelphia County, First judicial District of Pennsylvania (December Term, 2019, No. 03556). On January 27, 2021, NAGP withdrew its appeal.
7. To our knowledge and belief, no action is currently before any federal, state, or local agency or court nor is any action other than this ECRCO request contemplated with respect to the Air Permit.
8. Although environmental justice considerations are central to the community’s opposition to issuance of the Air Permit to SEPTA, no action has been taken to date based specifically on the violation of Title VI.
9. Therefore, based on the applicable criteria, we respectfully request that ECRCO conduct an investigation of this environmental justice violation.

The Nicetown neighborhood in which the Plant is located is designated an Environmental Justice Area by the Pennsylvania Department of Environmental Protection (“DEP”). The population of 2010 US Census Tract 205, where the Plant is sited, and surrounding Tracts (201.01, 201.2, 202, 203, 204, 206, 243, 244, 280, 270, and 271) is far more than 30% minority (specifically, African-American) and more than 20% living in poverty. In Zip Code 19140, where the Plant is sited, 71.3% of the individuals are African-American and 34.2% are below the poverty level. And, in adjacent Zip Code 19144, 56% of the individuals are African-American and 44.8% are below the poverty level. (See United States Census Bureau at census.gov.)

- AMS should apply heightened scrutiny to prevent cumulative adverse and disparate impacts on protected populations when making an assessment of an application for an air permit to build and operate a facility such as the Plant that will emit toxic substances in an Environmental Justice Area. AMS has failed to do so.

Multiple community organizations and environmental and social justice groups have repeatedly requested that SEPTA conduct an Analysis of Alternatives (“AOA”) in accordance with best practices identified and promoted by the US Government Accountability Office (“GAO”). An AOA “process entails identifying, analyzing, and

selecting a preferred alternative to best meet the mission need by comparing the operational effectiveness, costs, and risks of potential alternatives” (GAO “DOE and NNSA Project Management” Report GAO-15-37). SEPTA refuses to conduct a full alternatives analysis. AMS has been unwilling to regard consideration of alternatives as an aspect of “heightened scrutiny.”

Analysis by the environmental and social justice community indicates that the Plant is “a solution in search of a problem” in response to political pressure exerted by the fossil fuel industry. SEPTA has neither a currently identified nor reasonably anticipated need for the Plant. The Plant provides private profits for the fossil fuel industry with disregard for protection of the public.

- AMS should require that SEPTA conduct an AOA, taking into consideration the health of people in Nicetown. AMS has failed to do so.

The Nicetown neighborhood is already heavily burdened with toxic air emissions from multiple sources, including traffic on the Roosevelt Expressway/Route 1 (estimated by PennDOT to be approximately 100,000 vehicles per day) and the freight railroad lines that traverse the community, along with a school bus depot and a USPS truck depot nearby. The primary existing sources of air pollution in this neighborhood, however, are from SEPTA operations. The Midvale Bus Depot in Nicetown is SEPTA’s largest facility of its type, spewing exhaust from approximately 312 diesel and diesel hybrid buses based there. Nicetown is in the 90th to 95th percentile nationally for exposure to diesel particulate matter. (See EPA’s EJ Screen website at <https://drive.google.com/file/d/0BzCYsivhDfSQUmxd0xPNzEzLWc/view?ths=true>.) The Plant will further insult the health of people in Nicetown by inflicting additional SEPTA toxic emissions.

What are the adverse health impacts of the heavy pollution burden imposed on Nicetown residents? What will be the additional harm inflicted by the Plant?

Multiple reports - including reports published by the Philadelphia Department of Public Health, of which AMS is a division, such as its Community Health Assessment (“CHA”) - indicate that Nicetown residents suffer from chronic diseases and deaths at rates among the highest experienced anywhere in the City of Philadelphia and the Commonwealth of Pennsylvania. Nicetown reported the highest rate for cancer mortality, the second highest rate for childhood asthma hospitalizations, and the third highest rates for mental illness and premature cardio-vascular disease (<https://www.phila.gov/media/20201230141933/HealthOfTheCity-2020.pdf>). These illnesses are considered pre-conditions for COVID-19. The EPA links these illnesses with persistent exposure to the kinds of toxic emissions that would be allowed by the Air Permit.

As reported in the CHA, Nicetown also suffers from several social determinants for disease, including Philadelphia’s highest poverty and unemployment rates, the lowest rate for “Adults Completing Some College by age 25, the highest homicide rate, and the lowest rate for “Access to Nearby Parks and Outdoor Space.” Every available scientific

study indicates that an ongoing public health crisis in Nicetown is being experienced by an impoverished, minority population. SEPTA, and AMS as SEPTA's enabler, bears responsibility for this situation.

Environmental and social justice organizations have repeatedly requested that SEPTA and/or AMS conduct an independent health impact study to understand the existing and anticipated adverse impacts from SEPTA's activities. SEPTA refused to conduct a health study, and AMS would not require one. SEPTA irresponsibly relied on modelling of pollution at its fence line that was conducted by Mondre Energy and AEMCO without following federal guidelines for taking into account existing background emission levels. SEPTA then attempt to pass off the resulting incomplete data set as equivalent to a health and safety study. It is not. AMS has been unwilling to regard consideration of a health study as an aspect of heightened scrutiny.

- AMS should require that SEPTA conduct an independent health study of the impacts from its current and anticipated operations on the health of people in Nicetown or itself conduct such a study. AMS has failed to do so.

SEPTA could reduce the air pollution in Nicetown by, among other actions, curtailing diesel emissions at its Midvale Bus Depot. But, SEPTA has presented no plan to reduce its toxic emissions, despite asserting that it is reducing air pollution. AMS has not required any reductions in SEPTA air pollution to offset the increases that will be inflicted by the Plant.

AMS has not required continuous measurement of emissions by the Plant and, furthermore, has neither conducted nor required any monitoring of air pollution levels in Nicetown. The Air Permit provides that SEPTA keep records of gas usage from which emissions are then inferred; there is no provision for direct measurement of emissions or other direct AMS oversight. The Air Permit provisions thereby allow SEPTA to inflict adverse and disparate impacts on Nicetown unobserved by AMS.

The Plant will emit "criteria" air pollutants. Philadelphia is in a nonattainment area for 8-hour ozone under the National Ambient Air Quality Standards ("NAAQS"). Nevertheless, the air permit for the Plant makes no provisions for identifying when the NAAQS are not being met in Nicetown and for SEPTA to curtail Plant operations when such conditions occur.

- AMS should require that SEPTA conduct all of its operations, in particular its prospective Plant operations, in ways that assure protection of public health. AMS has failed to do so.

A report prepared by (b) (5) - DAP, (b) (7)(C) - Enforcement (a copy of which is attached) describes the adverse impacts allowed by the Air Permit and the deficiencies, rather than heightened scrutiny, of the AMS processes.

The elected officials who represent the people of Nicetown and adjacent communities recognize that the air permit for the Plant is an Environmental Justice Violation by AMS. (See attached letters from Philadelphia City Councilwoman Cindy Bass and from PA State Senators Street and Haywood and PA State Representatives Youngblood, Rabb, Kinsey, and Fitzgerald.) We expect that an investigation by ECRCO will reach the same conclusion.

POWER is an interfaith organization committed to building communities of opportunity that work for all. We represent over 50 congregations throughout Southeastern and Central Pennsylvania. (See <https://powerinterfaith.org>.) POWER unites people of diverse religious traditions with faith that humanity has the potential to protect people and the planet for a just future.

For your point of contact with POWER and to answer whatever questions you may have or to provide whatever additional documents you may require, please address all communications to:

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Thank you for your consideration of our request for an investigation of the Title VI Environmental Justice Violation by AMS.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy



POWER Executive Director

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy



POWER Board Co-Chair

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy



POWER Board Co-Chair