

# CHICAGO LEGAL CLINIC, INC.

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August 25, 2015

Samuel Peterson  
Office of Civil Rights  
United States Environmental Protection Agency  
Mail Code 1201A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Formal Complaint - Illinois Environmental Protection Agency, A Recipient of EPA Assistance, EPA File No: 18R-15-R5

Dear Mr. Peterson:

Please be advised that I represent the Southeast Environmental Task Force (SETF).

On June 29, 2015, SETF submitted a Complaint asserting that the Illinois Environmental Protection Agency engaged in discriminatory activity by failing 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. SETF asserted Illinois EPA violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 United States Code (U.S.C.) §§ 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7. SETF also asserted the Illinois Environmental Protection Agency failed to adhere to its commitments pursuant to the resolution of a previous OCR Complaint, No. 13R-10-R5.

U.S. EPA formally acknowledged receipt of this Complaint on July 23, 2015. U.S. EPA subsequently conducted phone conferences regarding this Complaint on August 6<sup>th</sup> and August 20<sup>th</sup>.

Following the submission of the Complaint to OCR, Illinois EPA concluded its own investigation of this matter in response to a grievance filed by SETF pursuant to the Illinois Environmental Justice Grievance process. Illinois EPA issued its EJ Grievance Investigative Report and Resolution on July 2, 2015. A true and accurate copy of this document is attached to this letter, and is also available on-line:

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<http://www.epa.illinois.gov/Assets/iepa/environmental-justice/fines/agri-fine/response.pdf>.

Based on the findings, responsive measures and commitments contained in the Illinois EPA's July 2, 2015 EJ Grievance Investigative Report and Resolution, SETF is now voluntarily withdrawing Complaint No. 18R-15-R5, which is pending before U.S. EPA's Office of Civil Rights.

Please contact me if you would like to discuss this matter.

Sincerely,

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

Keith Harley  
Attorney for the Southeast Environmental Task Force

Enc

cc:

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

Kenneth Page, Environmental Justice Officer  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829

BRUCE RAUNER, GOVERNOR

LISA BONNETT, DIRECTOR

July 2, 2015

217/524-1284

TDD 217/782-9143

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

**Re: Agri-Fine, Inc., Chicago - - EJ Grievance Investigative Report and Resolution**

Dear Mr. Harley:

This correspondence is the Illinois Environmental Protection Agency's ("Illinois EPA") response to the formal complaint filed on April 28, 2015<sup>1</sup>, pursuant to the Illinois EPA's Environmental Justice ("EJ") Grievance Procedure. Specifically, the Southeast Environmental Task Force's ("SETF") complaint ("Complaint") states that the Illinois EPA failed to engage in public participation as part of its decision to issue a Revised Lifetime Operating Permit to Agri-Fine, Inc. ("Agri-Fine") on or about January 2, 2015. On April 29, 2015, the Illinois EPA responded with an Acknowledgement of Receipt of Complaint.

On May 28, 2015, the Illinois EPA held a teleconference with you and your client to discuss an informal resolution of the Complaint pursuant to Section 2.2 of the Grievance Procedure. During the teleconference, the parties discussed the timeline and procedure for resolution of the Complaint. SETF expressed a desire for an investigative report and actions to address such situations in the future so as to avoid similar occurrences. In addition, the parties discussed placing the materials associated with the Complaint and Illinois EPA's response on the Illinois EPA EJ webpage.

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<sup>1</sup> The Illinois EPA EJ Grievance Process contemplates that complaints will be filed within 60 days of the alleged discriminatory act (in this matter, the issuance of the Revised Lifetime Operating Permit on January 2, 2015). The Complaint here was not filed until after the 60 day timeframe had expired. However, the EJ Grievance Process does provide for a waiver of the 60 day requirement for good cause. The Illinois EPA has agreed to waive the 60 day requirement in order to continue working with SETF toward a resolution.

## **INVESTIGATIVE REPORT**

The Illinois EPA initially received an application for joint construction and operating permit on January 13, 2014, as part of Agri-Fine's response to an Illinois EPA Violation Notice ("VN"). The equipment (24 reactor vessels and two natural gas fired steam generators) had already been constructed and the application was submitted to resolve the outstanding permitting violations. The two natural gas fired steam generators replaced two previously permitted natural gas fired steam generators and the 24 reactor vessels replaced 12 previously permitted reactor vessels.

On January 29, 2014, the Illinois EPA denied the request for a construction permit as the equipment was already constructed. The Illinois EPA also issued a Notice of Incompleteness ("NOI") as the permit application lacked detailed information on all emission units and lacked an adequate demonstration of potential to emit ("PTE"). The issuance of the NOI tolled further permitting activities pending the receipt of additional information.

On September 30, 2014, pursuant to the NOI, Agri-Fine resubmitted its application for a joint construction and operating permit. The resubmittal triggered the statutorily established 90-day period for Illinois EPA review of the application. The Illinois EPA's Office of Community Relations ("OCR") was made aware of the pending permit application, but did not initiate public outreach pending further notification from the Illinois EPA's Bureau of Air Permit Section ("Permit Section") that this resubmittal was complete and pending preparation of a draft permit for public review.

On December 22, 2014, the Permit Section denied the construction permit, again due to the emission units having been already constructed. On January 2, 2015, the Illinois EPA issued the Revised Lifetime Operating Permit without conducting public outreach.

The above-detailed timeline of the permit process contributed to a lack of coordination between OCR and the Permit Section in terms of following through with EJ outreach. Illinois EPA staff did not effectively communicate with each other during this period of time. OCR was waiting for confirmation that a permit application was complete and that public outreach could be conducted, but this confirmation was never received. Further, the permit reviewer issued the permit without actually confirming that public outreach had happened. In short, the two affected offices within the Illinois EPA did not communicate with each other in a clear and timely manner.

Although procedures used to date have been effective in conducting public outreach for hundreds of permitting transactions over the period the Illinois EPA has been implementing our EJ Policy, the Illinois EPA is now making changes to ensure the oversight experienced here does not happen again.

## **ILLINOIS EPA'S RESPONSE**

The Illinois EPA was and is aware of the community concerns regarding operation of the Agri-Fine facility. In recognition and furtherance of its public outreach commitments, on May 4, 2015, Illinois EPA participated in a public meeting concerning Agri-Fine's operations. During

that meeting, the Illinois EPA explained the nature of the permitting transaction and the State of Illinois provided an update concerning the violations referred by the Illinois EPA to the Illinois Attorney General's Office.

The Illinois EPA is implementing two safeguards to assist us in meeting our commitment to public outreach in EJ communities. For the Permit Section, procedures have been revised to provide for a "hard stop" before issuance of a permit to confirm documentation that the EJ review and outreach activities have been conducted prior to permit issuance.

As to OCR, the Illinois EPA is enhancing its EJ tracking database to track public outreach activities in conjunction with the permitting timeline. The Illinois EPA is also implementing an electronic system to better facilitate communication among and between various offices of the Illinois EPA.

The Illinois EPA appreciates SETF's willingness to work with the Illinois EPA to resolve the Complaint. As requested, the Complaint and this response will be posted on the EJ page of the Illinois EPA's website. Importantly, the Illinois EPA is committed to holding a public outreach meeting prior to the issuance of a subsequent Revised Lifetime Operating Permit.

Should you have questions or comments with regard to this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken L. Page", written over a horizontal line.

Kenneth L. Page  
Environmental Justice Officer

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
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