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By Email

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Re: Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, regarding discriminatory impacts of the Georgia Environmental Protection Division's permitting process

Dear Administrator Regan and Acting/Deputy Director Hoang:

On behalf of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy or “Complainant”), the Southern Environmental Law Center (“SELC”) submits this complaint against the Environmental Protection Division of the Georgia Department of Natural Resources (“EPD”) for its failure to comply with its obligations not to discriminate when issuing air quality permits, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, the United States Environmental Protection Agency’s (“EPA”) implementing regulations, 40 C.F.R. Part 7, and Georgia’s Rule and Regulation 391-3-1-.02.

EPD is charged with “safeguard[ing] the public health, safety, and welfare of the people of the State of Georgia.”¹ This charge extends to all Georgians. But as currently implemented, EPD’s air quality program is not protecting the most vulnerable Georgians, because as described below, EPD is unwilling to undertake any process or procedure as part of its permitting program to identify these communities or their unique health and welfare needs.² EPD’s air permitting program therefore fails to comply with its nondiscrimination obligations under 40 C.F.R. Part 7, which has the effect of discrimination on people of color throughout Georgia.

EPD interprets its air permitting obligations under state and federal law as requiring nothing more than compliance with statewide and national air quality standards, regardless of the racial and ethnic composition of the surrounding community.³ As demonstrated by recent permitting actions, EPD believes it has no obligation to consider demographics, including the presence of a Title VI protected community, in its permitting decision process.

But this policy is plainly insufficient to protect health or comply with its non-discrimination obligations. It is now well established that “disproportionate levels of pollution experienced by communities with environmental justice concerns result in adverse health outcome disparities directly associated with these exposures.”⁴

EPD demonstrated its disregard for its Title VI obligations in a recent permitting action. On August 5, 2022, EPD issued an air quality permit for the construction and operation of a wood pellet mill (“the Facility”) by Spectrum Energy Georgia, LLC (“Spectrum”),⁵ without considering the demographics of the Facility’s neighbors or the cumulative impact of the pollution to which the community is and will be exposed. The community surrounding the Facility is a historically and currently environmentally overburdened community comprised of 89% Black and Hispanic residents.⁶ Moreover, this permitting action came less than 18 months after EPD permitted another wood pellet mill, Renewable Biomass Group, less than three miles away. EPD’s failure to consider the discriminatory impact of its permit arose despite active opposition and permit comments from the Facility’s neighbors.

Beginning in 2020, residents of Adel began organizing so that their concerns about the community’s systematic and disproportionate exposure to pollution would be considered by EPD when it issued permits for large polluters in their town.⁷ These individuals, who formed [REDACTED] live,

¹ Ga. Comp. R. & Regs. 391-3-1-.02(2)(a)(3)(i)-(ii).

² S. Ganapathy, Ga. Dep’t of Nat. Res. Env’t Prot. Div., Narrative for Spectrum Energy Georgia, LLC at 24 (Feb. 3, 2022) [hereinafter Permit Narrative] (Attachment 1).

³ *Id.* at 24.

⁴ EPA, E.O. 13985 EQUITY ACTION PLAN 3 (Apr. 2022), https://www.epa.gov/system/files/documents/2022-04/epa_equityactionplan_april2022_508.pdf (Attachment 2).

⁵ Ga. Dep’t of Nat. Res. Env’t Prot. Div., Air Quality Permit No. 2499-075-0028-E-01-0 (July 8, 2022) (issuing a permit for the “Construction and operation of a Wood Pellet Manufacturing Facility with two phases” for Spectrum Energy Georgia, LLC at 801 Cook Street in Adel, Georgia) (Attachment 3).

⁶ EJScreen Report (Version 2.1), Blockgroup: 130759604002 (Nov. 28, 2022) [hereinafter EJScreen Report Blockgroup: 130759604002] (Attachment 4).

⁷ Affidavit of [REDACTED] ¶ 9 (Aug. 4, 2022) (Attachment 5).

play, and work in the majority Black and Hispanic west side of town, which has one of the highest poverty rates in the state of Georgia and one of the highest rankings for vulnerability to air pollution in Georgia and the United States.⁸ Their neighborhoods are intermixed with multiple heavy industries, underground storage tanks, and high voltage substations.⁹ Their water is foul, smelling like rotten eggs.¹⁰ Their air often smells amiss, lingering with ethyl mercaptan from a local propane blasting facility.¹¹ These residents share family histories that are rampant with cancer, asthma, and other disease.¹²

The Adel community participated in every available opportunity to communicate its needs to EPD.¹³ And yet, EPD issued permits for two back-to-back wood pellet mills to begin construction and operation in Adel without conducting any localized analysis of the cumulative environmental burden this community has borne, now bears, or will bear because of EPD permits to pollute. Moreover, EPD refused to notify the public, including those who submitted written comments, when it issued the Facility's final permit.

Following the issuance of the second wood pellet permit in Adel, [REDACTED] appealed, challenging the Facility's synthetic minor permit for having insufficient information to support its emissions estimates and for having the effect of discrimination on [REDACTED] and others living near the plant.¹⁴ As described further below, [REDACTED] will dismiss this Permit appeal after reaching a resolution with the

⁸ EJScreen Report Blockgroup: 130759604002 at 1, 3; EJScreen Report (Version 2.1), Blockgroup: 130759604002, 130759602004, 130759602005 (Nov. 28, 2022) (Attachment 6).

⁹ See, e.g., *id.*

¹⁰ See, e.g., Complaint ID 99627 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022) (Attachment 7) (detailing investigation of a March 28, 2022 complaint of “rotten egg smell” and chlorine in water around west Adel).

¹¹ See, e.g., Complaint ID 94492 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022) (detailing investigation into September 23, 2020 complaint which found a “foul odor of ethyl mercaptan was detected during the inspection; however, this is business as usual at the facility”) (Attachment 8); Complaint ID 89174 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2005) (detailing investigation of April 9, 2019 complaint of foul smell from flaring of propane tanks which found that “[t]he odorant added to propane tends to accumulate in the tank and must, from time to time, be agitated and allowed to vent” which “is more than likely the smell that complainant noticed”) (Attachment 9); Complaint ID 78705 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022) (detailing investigation of January 4, 2016 complaint which, during a visit to the facility, found “[p]ropane was being flared and there was a rotten-egg odor” but that “EPD is unable to restrict [the facility]’s flaring operations since they are within VOC limits”) (Attachment 10); Complaint ID 71120 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022) (investigating May 16, 2013 complaint of outdoor sandblasting of propane tanks at facility) (Attachment 11); Complaint ID 68896 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022) (investigating July 30, 2012 complaint of “rotten seafood smell” from propane tank flaring activities at facility) (Attachment 12).

¹² See, e.g., Affidavit of [REDACTED] ¶¶ 3, 9, 12 (Aug. 5, 2022) (Attachment 13); Affidavit of [REDACTED] ¶¶ 4, 7 (Aug. 4, 2022) (Attachment 14).

¹³ Letter from S. Env’t. L. Ctr. & Env’t Integrity Project, to Georgia Env’t Prot. Div. (May 2, 2022) [hereinafter May 2022 Comment Letter] (submitting written comments on behalf of Complainant and other groups to EPD on Spectrum’s draft air permit) (Attachment 15); Letter from S. Env’t. L. Ctr. & Env’t Integrity Project, to Georgia Env’t Prot. Div. (Nov. 19, 2021) (submitting written comments on behalf of Complainant and other groups to EPD on Spectrum’s air permit application) (Attachment 16).

¹⁴ (b)(6) Privacy, (b)(7)(C) Enf. Privacy v. Ga. Dep’t of Nat. Res., Docket No. 2303405, Amended Petition for Hearing (Sept. 7, 2022) (Attachment 17).

Facility, which indicated a willingness to discuss and address the neighborhood concerns and implement additional pollution protections above and beyond those required by the Permit.

But as confirmed in EPD's Permit narrative for the Facility and throughout this recent litigation, **EPD interprets its own regulations as prohibiting EPD from taking any steps to assess or redress the disproportionate burdens of its permitting program on the health and welfare of people of color in Georgia.** EPD has now repeatedly and publicly confirmed that its permitting program is designed to comply with air quality standards and nothing more, regardless of the disproportionate health and welfare burden on people of color that results from EPD's uniform application of those standards.

- EPD does not believe it has any obligation to assess disparate impact as part of its air quality permitting program.

█ commented, in part, on the Facility's draft Permit that "EPD must assess the possible disparate impact that the facility will have on these nearby communities . . . and its results [should be] incorporated into any decision that EPD makes on the permit for the facility."¹⁵ EPD replied in its Permit narrative that its air quality regulations "do not require a report like that requested in the comment."¹⁶

Later, in an affidavit from EPD's Volatile Organic Compounds ("VOC") Unit Manager, █ (b)(6) Privacy, (b)(7)(C) Enf. Privacy additionally admitted that "EPD issued the Permit without conducting an EJ assessment"¹⁷

- EPD does not interpret its State Implementation Plan ("SIP") as creating any obligation to consider the race or ethnicity of the people breathing the pollution it permits.

In briefing, EPD argued that a "demographic makeup" analysis "went beyond the prescribed regulations."¹⁸

In the Facility's Permit narrative, EPD argued that "[c]urrent state and federal air quality requirements do not prohibit the increase of emissions or the installation of a new emission source based on the demographic makeup of the surrounding area."¹⁹

¹⁵ Permit Narrative at 42.

¹⁶ *Id.*

¹⁷ (b)(6) Privacy, (b)(7)(C) Enf. Privacy v. Ga. Dep't Nat. Res., Docket No. 2303405, Aff. of █ (b)(6) Privacy, (b)(7)(C) Enf. Privacy 57 (Sept. 28, 2022) [hereinafter (b)(6) Privacy, (b)(7)(C) Enf. Privacy] (Attachment 18).

¹⁸ (b)(6) Privacy, (b)(7)(C) Enf. Privacy v. Ga. Dep't Nat. Res., Docket No. 2303405, Resp.'s Mot. to Dismiss in Part, Mot. for S. Determination in Part, & Br. in Support at 39 (Sept. 28, 2022) [hereinafter EPD Mot. to Dismiss] (Attachment 19).

¹⁹ Permit Narrative at 42.

In an affidavit from EPD's VOC Unit Manager, (b)(6) Privacy, (b)(7)(C) asserted that "there is nothing in the state or federal regulations which allow EPD to deny the permit based on the demographic makeup of a facility's surrounding area."²⁰

- EPD does not interpret its SIP as creating any obligation to treat particularly vulnerable or susceptible individuals breathing the pollution it permits with any particular care for their health and welfare.

EPD admitted that its approach to non-discrimination compliance is to treat every community the same, despite well-documented evidence that some communities require additional environmental protections to avoid being subjected to disproportionate health and welfare burdens. For example, EPD argued that it treats all air permit applications the same, which EPD (incorrectly) interprets as meaning that individuals who breathe the resulting pollution have not "suffered any adverse impact because of their race"²¹

- EPD incorrectly interprets compliance with the National Ambient Air Quality Standards ("NAAQS") and Georgia's Toxic Impact Assessment Guidelines as the equivalent of compliance with its anti-discrimination obligations.

In briefing, EPD cited EPA's approval of its SIP program as a defense to its failure to consider the discriminatory impact of its permitting program.²² Specifically, EPD alleges that it has no obligation in permitting to consider public health and welfare beyond assuring compliance with the NAAQS and its Toxic Air Pollutants ("TAPs") Toxic Impact Assessment guidelines.²³

EPD is "obligated" to comply with EPA's non-discrimination regulations, because it receives EPA's federal funding.²⁴ And EPD's SIP provides ample authority for EPD's compliance with its federal obligations.²⁵ Georgia regulations expressly authorize "more stringent emissions

²⁰ (b)(6) Privacy Affidavit ¶ 57.

²¹ EPD Mot. to Dismiss at 39–40.

²² *Id.* at 35 ("EPA's approval of Georgia's program undermines Petitioner's contention that Georgia has failed to comply with applicable EPA regulations.").

²³ *Id.*

²⁴ 40 C.F.R. § 7.35, 7.80(a).

²⁵ See Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan, 71 Fed. Reg. 13551 (Mar. 16, 2006), <https://www.govinfo.gov/content/pkg/FR-2006-03-16/pdf/06-2479.pdf> (Attachment 20).

limitations or other requirements” that EPD deems necessary to “meet any existing Federal laws or regulations” or to “safeguard public health, safety and welfare.”²⁶

3. Notwithstanding any other emission limitation or other requirement provided in the regulations, more stringent emission limitations or other requirements may be required of a facility as deemed necessary by the Director to:

(i) meet any existing Federal laws or regulations; or

(ii) safeguard the public health, safety and welfare of the people of the State of Georgia.

Further, EPD’s rules “reserve[] the right to request [a permit] applicant to evaluate additive/synergistic effects from multiple pollutant exposure.”²⁷ Specifically, EPD rules explain that “[i]n cases when two or more pollutants are known to have the same effect (e.g., reproductive effects, kidney toxicity, CNS stimulant, etc.) upon the same organ system of the body, the impacts of simultaneous exposures are considered ‘additive.’”²⁸

EPD has interpreted its own laws and regulations as not allowing compliance with its federal obligations, as described in the bullets above. Complainant asks EPA to require EPD to comply with its legal obligations not to discriminate when issuing air permits. As an illustration for this Complaint, [REDACTED] highlights EPD’s process for issuing a permit to the Spectrum Energy, LLC wood pellet facility in Adel. However, in light of a settlement reached between [REDACTED] and Spectrum on December 24, 2022, which builds in additional protections for the Adel community, [REDACTED] does not ask EPA to invalidate or undermine this particular permit as part of its Complaint.²⁹

I. EPD’s permitting policies have an adverse disparate impact on people of color in Georgia.

EPD’s failure to incorporate any consideration of the racial and ethnic demographics or localized, cumulative harms in its permitting process results in disproportionate adverse harm to Georgia’s protected classes, including the Concerned Citizens of Cook County.

A. Facially Neutral Policy

When issuing air permits, EPD rejects any obligation to conduct location-specific or population-specific analysis of public health and welfare impacts of its permits if EPD has determined that a facility’s projected emissions will comply with federal and state air quality standards. EPD’s policy of analyzing no more than its compliance with national and statewide air quality standards is incompatible with its legal obligations under federal regulations. EPD’s policy is also incompatible with its legal obligations under its SIP to protect public health and welfare.

²⁶ Ga. Comp R. & Regs. 391-3-1-.02(2)(a)3.

²⁷ Ga. Dep’t of Nat. Res. Env’t Prot. Div., Guidelines for Ambient Impact Assessment of Toxic Air Pollutant Emissions at 5 (May 2017) [hereinafter TAP Guidelines] (Attachment 21).

²⁸ *Id.*

²⁹ See Settlement and Cooperation Agreement (Dec. 24, 2022) (Attachment 22).

EPD's interpretation of its permitting obligations is a facially neutral policy that has the effect of adverse disparate impact.

EPD's facially neutral air quality permitting policy includes the following policy interpretations to which it adheres:

- EPD explicitly refuses to consider the racial and income information about the populations its permits will impact.³⁰
- EPD explicitly rejects the fact that a facility's compliance with state and federal air quality standards does not guarantee that the facility will not harm neighboring populations.³¹
- EPD explicitly rejects any consideration of harm from a facility if it does not rise to the national threshold of "significant risk" set by the NAAQS.³²
- EPD explicitly rejects its obligation to consider the cumulative harms to a community from its historical and/or current exposures to pollution, which may make a population particularly vulnerable or susceptible to harm from a permit applicant's proposed pollution.³³
- EPD's permitting policy is to accept and adopt emissions factors from industry consultants to allow for construction and operation of a facility, even when there is a basis to support more conservative factors.³⁴

B. Adversity/Harm

EPD has failed to provide procedural safeguards required under 40 C.F.R. Part 7 that recipients of EPA financial assistance must have in place to comply with their Title VI obligations. EPD's refusal to consider location-specific or community-specific considerations as part of its permitting program causes harm to those communities that are particularly vulnerable or susceptible to harmful effects from air pollution, often as a result of a historically high exposure to pollution sources. It is well understood that air quality regulations are not designed to prevent all harm, and that federal civil rights obligations exist distinctly from obligations under state and

³⁰ *E.g.*, Permit Narrative at 24.

³¹ EPD Mot. to Dismiss at 36 ("Petitioner's contention that 'state and federal standards like NAAQS or Toxic Impact Assessment ("TIA") do no ensure a facility will not cause harm,' [citation omitted], is an opinion, not a legal requirement that binds the Director.").

³² Permit Narrative at 42–43 ("When GA EPD performed [impact assessment] analysis for Spectrum Energy Georgia, it indicated that the emissions from the facility will not pose a significant risk to the community and that emissions from the facility will not cause or contribute to a violation of [NAAQS].").

³³ *Id.* at 42 ("Current state and federal air quality requirements do not prohibit the increase of emissions or the installation of a new emission source based on the demographic makeup of the surrounding area. They also do not require a [disparate impact analysis] report like that requested in the comment.").

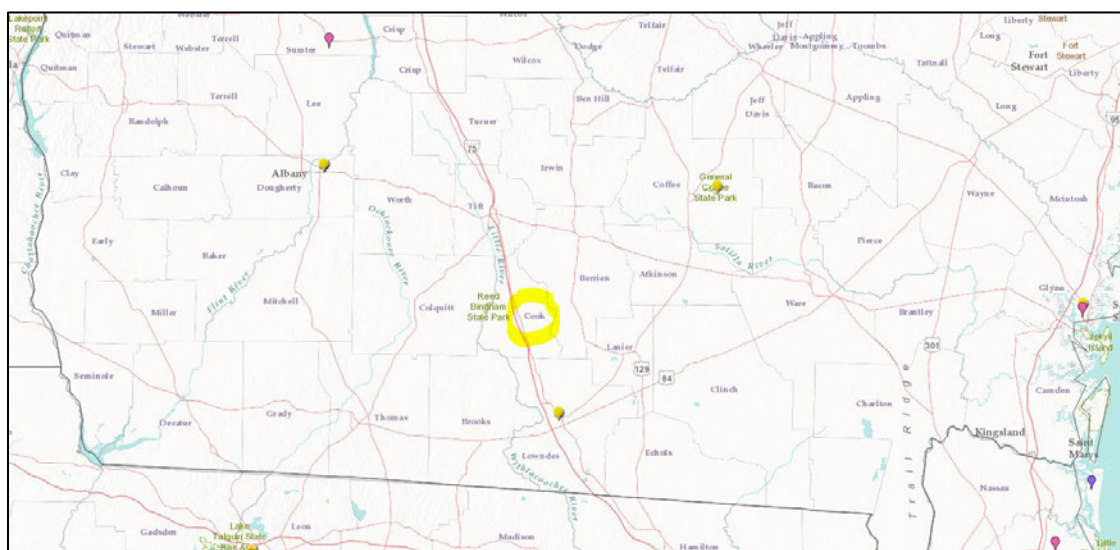
³⁴ Email from (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Jan. 7, 2022) ("Pellet mill emission calculations from different facilities can look very different; their emission factors can be like 1,000 times different. This is why most recent pellet mills, after Renewable Biomass Group, would let the facility use whatever emission factors they find online/from vendor/suggested by consultants in the application.") (Attachment 23).

federal environmental law. EPA’s own guidance reflects the understanding that “compliance with environmental laws does not ensure compliance with Title VI.”³⁵

1. NAAQS do not prevent all harm.

As acknowledged by EPD, environmental health-based thresholds, like NAAQS, are “set at levels intended to be protective of public health.”³⁶ But that does not mean that compliance with NAAQS will “assure in all cases that no adverse impact is created.”³⁷ This is particularly concerning in rural communities, where NAAQS are based on large land masses that do not account well for denser pockets of pollution.

In south Georgia, for example, there are very few monitors testing for NAAQS pollutants, relative to size. The closest monitor to the City of Adel in Cook County is in Valdosta, which is 27 miles away and tests only for Particulate Matter (“PM”) 2.5. This sparsity of testing makes the consideration of local, cumulative pollution even more critical.



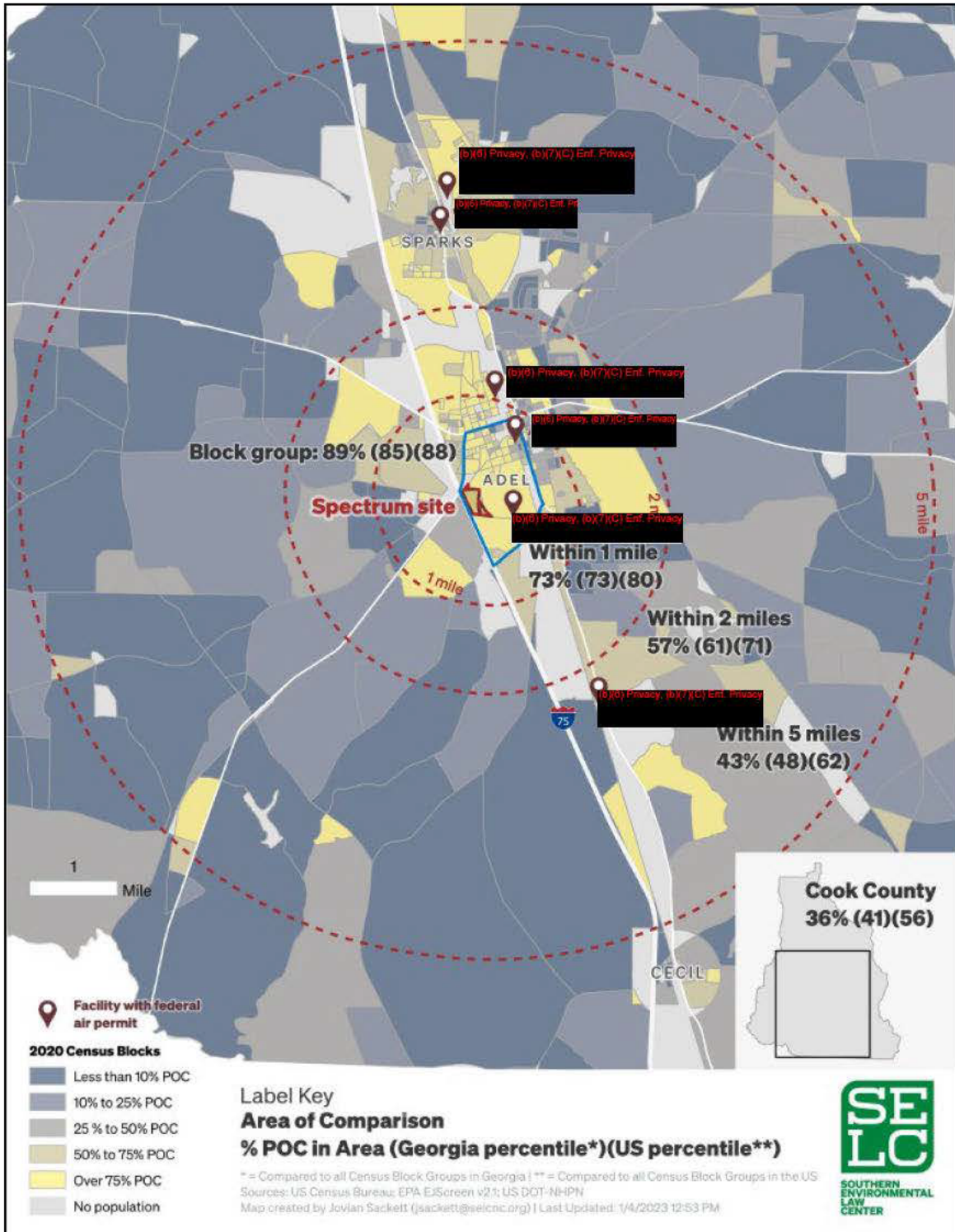
EPA AirData Air Quality Monitors, available at <https://epa.maps.arcgis.com>.

³⁵ Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 71 Fed. Reg. 14207, 142010 (Mar. 21, 2006); EPA, U.S. EPA’S EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE COMPLIANCE TOOLKIT 13 (2017) [hereinafter EPA Title VI Compliance Toolkit], https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf (“[C]ompliance with environmental laws does not necessarily constitute compliance with federal civil rights laws.”); EPA, INTERIM ENVIRONMENTAL JUSTICE AND CIVIL RIGHTS IN PERMITTING FREQUENTLY ASKED QUESTIONS 6 (Aug. 2022) [hereinafter EPA Title VI FAQs], <https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf> (“A recipient’s compliance with the requirements of federal environmental laws with respect to permitting activities and decisions does not necessarily mean that the recipient is complying with federal civil rights laws.”).

³⁶ Draft Policy Papers Released for Public Comment: Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds, and Role of Complainant and Recipients in the Title VI Complaints and Resolution Process, 78 Fed. Reg. 24739, 24742 (Apr. 26, 2013) (Attachment 24).

³⁷ *Id.*

And yet, EPD permits industrial polluters to operate along dense corridors comprised of communities of color. The image below, for example, reflects EPD-permitted sources in and around Adel. As reflected in the image, these permitted sources cluster along corridors where people of color comprise the majority of residents.



2. *EPD's Toxic Impact Assessment procedures for Toxic Air Pollutants do not prevent all harm.*

EPD's Toxic Impact Assessment process is designed to identify "significant" health risks from a single pollutant.³⁸ However, it does not require multiple pollutants to be considered simultaneously, even if they are emitted from a single stack or if they will be comingled in the air from multiple sources.

3. *EPD's refusal to conduct any cumulative impact analysis necessarily fails to identify some harms.*

In addition, the national and state air quality standards applied by EPD do not require (although they allow for) accounting for the health impact on a person who is exposed to multiple toxins from nearby sources. **When a person works, lives, or plays near a polluter, they cannot choose to breathe one pollutant at a time.** They are forced, rather, to inhale all the pollutants that linger in their air. Thus, EPD's policy of refusing to consider actual, localized cumulative impacts from a particular polluter necessarily means that it is failing to address some harms.

4. *EPD's policy of a "permit first" and "test later" approach when presented with insufficient pollution data subjects neighbors to unquantifiable harm.*

Furthermore, a review of EPD's permitting of the pellet mill industry in Georgia demonstrates that EPD adheres to their bare-minimum air quality processes even when the actual pollution that will be emitted from a particular facility is speculative. The "permit first" and "test later" approach to new source applicants for untested industries subjects the communities neighboring the construction and initial operation (pre-testing, at least) to unquantifiable pollution.

For example, EPD admits that "[e]mission factors for individual pellet mills vary significantly."³⁹ In the Facility's application, EPD admitted that it was "uncertain about the accuracy of the emission factors provided in the application, [so] the Division is requiring the facility to test emissions"⁴⁰

Despite this tremendous uncertainty, EPD permitted the Facility without any localized consideration of the specific community that would be exposed to its pollution.

C. Disparity

Is the harm from EPD's permitting policies disparate? EPD steadfastly refuses to consider demographics as part of its permitting process, so it would not have a basis to know before issuing any particular permit.

³⁸ See, e.g., TAP Guidelines at 3 (explaining that the process will identify whether a "TAP impact is determined to be insignificant").

³⁹ Permit Narrative at 26–27.

⁴⁰ *Id.*

1. *Communities of color in Georgia have disproportionate health burdens.*

There is considerable evidence that people of color have disproportionate health burdens in the United States and in Georgia, specifically.⁴¹ A 2008 report of health disparities in Georgia reflected significant differences in health outcomes and access to healthcare based on race.⁴² This report found that Black Georgian males are 39% more likely than white Georgian males to die of cancer, and Black Georgian females are 13% more likely than white females to die of cancer.⁴³ The death rate in Georgia from diabetes is two times higher for Black women than for white women.⁴⁴ And Hispanic Georgians are twice as likely to die from heart disease than white Georgians.⁴⁵

As further example, a 2014 study found that, in Atlanta, children born to African American mothers were more susceptible to asthma exacerbations, supporting the hypothesis that children vary in their susceptibility to ambient air pollutants.⁴⁶ And researchers in 2021 found that counties in Georgia with the highest proportion of Black residents showed a 13-fold increase in odds for COVID-19 mortality.⁴⁷

2. *Communities of color in Georgia have disproportionate pollution-exposure burdens.*

“Numerous studies have shown a greater burden of environmental exposures, environmentally linked disease, and adverse impacts on health and well-being experienced by

⁴¹ NAT’L ACAD. OF SCIS., ENG’G, MED., *The State of Health Disparities in the United States* in COMMUNITIES IN ACTION PATHWAYS TO HEALTH EQUITY (James N. Weinstein et al. ed., 2017), <https://www.ncbi.nlm.nih.gov/books/NBK425844/> (Attachment 25); YALE GLOBAL HEALTH JUSTICE PARTNERSHIP, *WHEN THE STATE FAILS: MATERNAL MORTALITY & RACIAL DISPARITY IN GEORGIA* (2018), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/ghjp_2018_when_the_state_fails-maternal_mortality_racial_disparity_in_georgia.pdf (Attachment 26); Grace Porter et al, *Racial Disparities in the Epidemiology of COVID-19 in Georgia: Trends Since State-Wide Reopening*, 5 HEALTH EQUITY 91 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7990566/pdf/heq.2020.0089.pdf> (Attachment 27); Zinzi D. Bailey et al., *Structural Racism and Health Inequities in the USA: Evidence and Interventions*, 389 LANCET 1453 (2017), [https://doi.org/10.1016/S0140-6736\(17\)30569-X](https://doi.org/10.1016/S0140-6736(17)30569-X) (Attachment 28); Garth Graham, *Disparities in Cardiovascular Disease Risk in the United States*, 11 CURRENT CARDIOLOGY REV. 238, 240, 241 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4558355/pdf/CCR-11-238.pdf> (“African Americans are significantly higher risk of suffering from heart failure compared with other ethnic groups. . . . Risk was related to the prevalence of comorbidities with hypertension or diabetes mellitus, which, in combination with environmental factors may largely explain [congestive heart failure] disparity. . . . [T]he prevalence of diagnosed diabetes in subgroups such as Mexican-Americans and Puerto Ricans was over twice that of non-Hispanic whites.”) (Attachment 35).

⁴² GA. DEP’T OF COMMUNITY HEALTH, GEORGIA HEALTH EQUITY INITIATIVE: HEALTH DISPARITIES REPORT 2008: A COUNTY-LEVEL LOOK AT HEALTH OUTCOMES FOR MINORITIES IN GEORGIA (2008), https://dph.georgia.gov/sites/dph.georgia.gov/files/related_files/site_page/Georgia%20Health%20Equity%20Initiative.pdf (Attachment 29).

⁴³ *Id.* at 14.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Matthew J. Strickland et al., *Modification of the Effect of Ambient Air Pollution on Pediatric Asthma Emergency Visits: Susceptible Subpopulations*, 25 EPIDEMIOLOGY 843 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4727963/> (Attachment 30).

⁴⁷ Porter et al., *supra* note 41, at 91.

people of color and underserved communities.”⁴⁸ A 2019 study found that areas in metropolitan Atlanta with majority Black populations had “significantly higher exposure” to particulate matter and nitrogen oxides and higher prevalence of cardiovascular and respiratory disease.⁴⁹

3. Pellet mills are disproportionately located in environmental justice communities.

Pellet plants in the southeast are more likely to be sited in environmental justice communities. A 2018 study found that pellet plants are 50% more likely to be located in an environmental justice community than not.⁵⁰ The study found that while only 282 out of 793 counties in its nine-state region met its definition of “environmental justice community,” eighteen out of the thirty-two pellet plants were located in one of these communities.⁵¹

In Georgia, pellet mills are most often located with natural buffers of trees and land between them and residential neighborhoods.⁵² But pellet mills sited among the most densely populated neighborhoods are overwhelmingly located among communities of color.

⁴⁸ EPA, E.O. 13985 EQUITY ACTION PLAN at 5 (referring to Rachel Morello-Frosch et al., *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30 HEALTH AFFAIRS 879 (2011), <https://escholarship.org/uc/item/1kq0196d> and STEVE LERNER, SACRIFICE ZONES: THE FRONT LINES OF TOXIC CHEMICAL EXPOSURE IN THE UNITED STATES (2011)). See, e.g., Ihab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 AM. J. PUB. HEALTH 108, 480 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5844406/pdf/AJPH.2017.304297.pdf> (concluding that “non-Whites and those living in poverty face a disproportionate burden from PM-emitting facilities” and that particularly for African Americans the average PM_{2.5} burden “is 1.54 times that of the population overall”) (Attachment 32); Joseph L. Servadio et al., *Demographic Inequities in Health Outcomes and Air Pollution Exposure in the Atlanta Area and its Relationship to Urban Infrastructure*, 96 J. URBAN HEALTH 219, 219 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6458195/pdf/11524_2018_Article_318.pdf (showing “that census tracts [in metro-Atlanta] with predominantly African-American populations have, on average, greater prevalence of [asthma, chronic obstructive pulmonary disease, coronary heart disease, and stroke] as well as greater ambient levels of” PM_{2.5} and nitrogen oxides) (Attachment 33); Christopher W. Tessum et al., *PM_{2.5} Polluters Disproportionately and Systematically Affect People of Color in the United States*, 7 SCI. ADVANCES 1, 1 (2021) (“[People of color] experience greater-than-average [PM_{2.5}] exposures from source types, . . . their overall exposure disparity is 14% (0.90 $\mu\text{g m}^{-3}$). Blacks are exposed to greater-than-average concentrations from source types . . . with an overall exposure disparity of 21% (1.36 $\mu\text{g m}^{-3}$). Hispanics and Asians are disparately exposed to PM_{2.5} . . . and experience 11% (0.72 $\mu\text{g m}^{-3}$) and 18% (1.20 $\mu\text{g m}^{-3}$) overall exposure disparities, respectively.”) (Attachment 31); Christopher W. Tessum et al., *Inequity in Consumption of Goods and Services Adds to Racial-Ethnic Disparities in Air Pollution Exposure*, 116 PROC. OF THE NAT’L ACAD. SCI. OF THE U.S. OF AM. 6001, <https://www.pnas.org/doi/pdf/10.1073/pnas.1818859116> (finding that in the United States “PM_{2.5} exposure is disproportionately caused by consumption of goods and services mainly by the non-Hispanic white majority, but disproportionately inhaled by black and Hispanic minorities”) (Attachment 34).

⁴⁹ Servadio, *supra* note 48, at 219.

⁵⁰ Stefan Koester & Sam Davis, *Siting of Wood Pellet Production Facilities in Environmental Justice Communities in the Southeastern United States*, 11 ENV’T JUST. 64 (2018), <https://www.liebertpub.com/doi/epdf/10.1089/env.2017.0025> (Attachment 36).

⁵¹ *Id.* at 67–68 (defining “environmental justice communities” as “a county that has a nonwhite population over 25%, and an average poverty level for all age groups about the state median”).

⁵² See, e.g., [REDACTED], Wood Pellet Plant Sites Map Series (Sept. 12, 2022) (Attachment 38); Declaration of [REDACTED] ¶ 7 (Sept. 6, 2022) (Attachment 37). Notably, the [REDACTED] analysis includes 11 sites identified as

- Only two of ten pellet plants identified by EPD in Georgia have more than 1,000 people living within a mile. One is the Spectrum Facility in Adel, which has 2,407 people living within a mile, sixty-nine percent of whom are people of color. The other is the [REDACTED] pellet mill (previously “(b)(6) Privacy, (b)(7)(C) Enf. Privacy” in Waycross, which has 2,137 people living within a mile, sixty percent of whom are people of color.
- Only four of ten pellet plants in Georgia have more than 500 people living within a mile. In addition to the two mentioned above, a third is the [REDACTED] facility with 959 people living within a mile, fifty-nine percent of whom are people of color. The fourth is [REDACTED] with 925 people living within a mile, thirty-five percent of whom are people of color.

Proximity to densely populated areas is particularly concerning because pellet mills are known to emit large quantities of harmful pollutants, such as fine particulate matter, nitrogen oxide, volatile organic compounds, carbon monoxide, and hazardous air pollutants including, among others, methanol, acrolein, acetaldehyde, and formaldehyde. Moreover, the pellet industry has had and continues to have compliance issues related to air pollution.⁵³ Specifically, a 2017 report found that “at least a third of the wood pellet plants (7 out of 21) violated their permit limits by releasing illegal amounts of pollution”⁵⁴ This report also identified pellet mills in Georgia that were improperly permitted by the state based on non-representative emission factors. To this day, EPD admits that it does not fully understand the emission profile of wood pellet mills.⁵⁵

II. EPD does not allow appropriate public participation in its air permitting program.

EPD has failed to meaningfully involve impacted communities in its permitting actions and has failed to adopt a policy or process of meaningfully involving impacted communities. EPA guidance states that “[p]ublic involvement should be an integral part of the permit decision-making process. . . . Meaningful public involvement consists of informing, consulting, and working with potentially affected and affected communities at various stages of the permitting process to address their concerns.”⁵⁶ “Effective public participation is also a component of any analysis to determine whether recipients’ programs and activities, including permitting activities, comply with EPA’s nondiscrimination regulations.”⁵⁷

pellet mills in an internal EPD email, but one of the facilities identified, the [REDACTED] site, is not a wood pellet biomass mill.

⁵³ Environmental Integrity Project, “Dirty Deception: How the Wood Biomass Industry Skirts the Clean Air Act” (Apr. 26, 2018), <https://environmentalintegrity.org/wp-content/uploads/2017/02/Biomass-Report.pdf> (Attachment 39).

⁵⁴ *Id.* at 1.

⁵⁵ *See supra* notes 40-41.

⁵⁶ Recipient Guidance, 71 Fed. Reg. at 14211.

⁵⁷ EPA, EJ in Air Permitting: Principles for Addressing Environmental Justice Concerns in Air Permitting (Dec. 2022) [hereinafter EJ in Air Permitting], <https://www.epa.gov/system/files/documents/2022-12/Attachment%20-%20EJ%20in%20Air%20Permitting%20Principles%20.pdf>.

EPD does not have a policy for engaging with the public during permitting activities, beyond accepting comments and issuing a written response. EPD does not notify members of the public that submitted written comments when it issues final permits. EPD does not even post notice of the permit issuance on its website or social media. Instead, to find out whether EPD has issued a permit, impacted community members must monitor EPD's Permit Search Engine.⁵⁸

When EPD issued Spectrum's final air quality permit, EPD did not immediately notify the public of its issuance. Days after the permit was dated, EPD eventually posted the Permit to its website, accessible by searching the Permit number.⁵⁹ Complainant and the other commenters were not notified that EPD had issued the Permit. The timeliness of public notice is critical in Georgia because the issuance of the Permit begins a thirty-day deadline for appealing the permit with the Georgia Office of Administrative Hearings. This timeline is short for any organizer, no matter how powerful. But EPD's failure to notify commenters creates a meaningful access problem for community groups with more limited resources.

Moreover, EPD does not generally host formal public hearings or informal public meetings, even when the impacted community has formally notified EPD of potential Title VI violations.

Further, EPD's existing Title VI nondiscrimination program is insufficient to address the concerns raised here by Complainant. While EPD has recently published a Title VI grievance procedure, that process falls short due to EPD's failure to understand its Title VI obligations, as described above. Therefore, there is no reasonable basis to believe that EPD's Title VI grievance procedures would provide relief to a community who must bear a disparate environmental impact arising from EPD's policies.

III. EPD has not articulated a substantial justification for not taking steps to address the impacts of its discriminatory permitting practices and lack of public participation.

During the public comment period for Spectrum, Complainant raised concerns about the disproportionate, adverse harm that would result from EPD's permitting decision. Complainant articulated EPD obligations to comply with Title VI and consider these harms during the permitting process.⁶⁰ However, in blatant disregard of its Title VI obligations, EPD stated that it has neither an obligation to consider the demographics of the impacted community in its permitting decisions nor the authority to deny a permit based on the demographic makeup of the impacted community.⁶¹ EPD attempted to justify its failure to consider the discriminatory impact of its actions by taking the approach that treating everyone the same—i.e., striving for minimal compliance with the state and federal air pollution rules, and no more—is as much as it can do to

⁵⁸ See *Georgia Air Protection Branch Permit Search Engine*, ENV'T PROT. DIV., <https://permitsearch.gaepd.org/> (last visited Dec. 30, 2022).

⁵⁹ Email from [REDACTED] EPD, to [REDACTED] EPD (July 11, 2022) (Attachment 40).

⁶⁰ May 2022 Comment Letter at 18–19.

⁶¹ Permit Narrative at 24.

prevent discriminatory impact. These statements are directly contrary to 40 C.F.R. Part 7 and numerous EPA guidance documents and publications.⁶² As explained by the Department of Justice, “[m]ere compliance with rules unrelated to civil rights prohibitions does not legitimize a justification that would otherwise be insufficient under Title VI to justify adverse disparate impacts.”⁶³

EPD provided no justification for the lack of public engagement during the permitting process, including its policy of not informing the public of its final permitting decision. EPD seemingly takes the position that it has no obligation to notify the public, or parties that submitted public comments, of any final permit issuance and therefore, has no intention to do so. This stance is directly contrary to EPA’s public participation guidance.⁶⁴

EPD could take several steps to address its role in causing and exacerbating the discriminatory impact of pollution in Georgia. EPD could apply the principles provided in EPA’s EJ in Air Permitting document.⁶⁵ As the document recommends, EPD could use EJScreen or other data and mapping tools “to identify communities with potential environmental justice concerns to encourage proactive community engagement and promote the fair treatment and meaningful involvement of the affected community in air permitting actions.”⁶⁶ EPD could provide impacted communities “with meaningful opportunities to provide input into the” permitting process by making the permitting materials, record and data easily and publicly available, holding public hearings and meetings in the impacted communities, and notifying the community of the final permitting decision.⁶⁷ When EPD is notified, as it was during the permitting of Spectrum in Adel, that its permitting decision may result in disproportionate adverse impacts on a community, EPD could conduct an environmental justice analysis. The analysis would vary according to the specific circumstances of the permitting decisions, but it could evaluate the demographic makeup in the affected community, existing public health data, and the potential health and non-health impacts.⁶⁸

⁶² See, e.g., EPA Title VI Compliance Toolkit at 12–13 (“EPA will examine whether site-specific information demonstrates the presence of adverse health effects. . . . compliance with environmental laws does not necessarily constitute compliance with federal civil rights laws”); EPA Title VI FAQs at 7; EJ in Air Permitting at 2.

⁶³ U.S. DEP’T OF JUST., TITLE VI LEGAL MANUAL 35, <https://www.justice.gov/crt/book/file/1364106/download>.

⁶⁴ See EJ in Air Permitting at 3 (“Effective public participation is also a component of any analysis to determine whether recipients’ programs and activities, including permitting activities, comply with EPA’s nondiscrimination regulations.”).

⁶⁵ *Id.*

⁶⁶ *Id.* at 2.

⁶⁷ *Id.* at 2–3.

⁶⁸ *Id.* at 3.

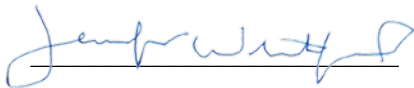
IV. Relief Requested

EPD must create and enforce a permit review policy that considers and evaluates the potential for disproportionate adverse impacts on communities protected by Title VI. EPD must change its current policy of refusing to engage in analysis to determine whether its decisions have discriminatory effects. EPA should advise EPD on how to develop criteria and methods for its permitting program that are fair, equitable, and compliant with Title VI.

V. Conclusion

For all the reasons outlined above, Complainant requests that the Office of External Civil Rights Compliance bring EPD into compliance with Title VI of the Civil Rights Act of 1964 and EPA's implementing regulations.

Sincerely,



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Table of Attachments

Number	Title
1	(b)(6) Privacy, (b)(7)(C) Enf. Privacy, Ga. Dep't of Nat. Res. Env't Prot. Div., Narrative for Spectrum Energy Georgia, LLC (Feb. 3, 2022) [Permit Narrative]
2	EPA, E.O. 13985 Equity Action Plan 3 (Apr. 2022)
3	Ga. Dep't of Nat. Res. Env't Prot. Div., Air Quality Permit No. 2499-075-0028-E-01-0 (July 8, 2022)
4	EJScreen Report (Version 2.1), Blockgroup: 130759604002 (Nov. 28, 2022) [EJScreen Report Blockgroup: 130759604002]
5	Affidavit of Dr. (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Aug. 4, 2022)
6	EJScreen Report Blockgroup: 130759604002, 130759602004, 130759602005 (Nov. 28, 2022)
7	Complaint ID 99627 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022)
8	Complaint ID 94492 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022)
9	Complaint ID 89174 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2005)
10	Complaint ID 78705 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022)
11	Complaint ID 71120 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022)
12	Complaint ID 68896 – Public Copy, EPD Complaint Tracking System Public Portal (generated Dec. 5, 2022)
13	Affidavit of (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Aug. 5, 2022)
14	Affidavit of (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Aug. 4, 2022)
15	Letter from S. Env't. L. Ctr. & Env't Integrity Project, to Georgia Env't Prot. Div. (May 2, 2022) [May 2022 Comment Letter]
16	Letter from S. Env't. L. Ctr. & Env't Integrity Project, to Georgia Env't Prot. Div. (Nov. 19, 2021)
17	(b)(6) Privacy, (b)(7)(C) Enf. Privacy v. Ga. Dep't of Nat. Res., Docket No. 2303405, Amended Petition for Hearing (Sept. 7, 2022)
18	(b)(6) Privacy, (b)(7)(C) Enf. Privacy v. Ga. Dep't Nat. Res., Docket No. 2303405, Aff. of (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Sept. 28, 2022) [Affidavit]
19	(b)(6) Privacy, (b)(7)(C) Enf. Privacy v. Ga. Dep't Nat. Res., Docket No. 2303405, Resp.'s Mot. to Dismiss in Part, Mot. for S. Determination in Part, & Br. in Support (Sept. 28, 2022) [EPD Mot. to Dismiss]
20	Georgia: Approval of Revisions to the State Implementation Plan, 71 Fed. Reg. 13551 (Mar. 16, 2006)
21	Ga. Dep't of Nat. Res. Env't Prot. Div., Guidelines for Ambient Impact Assessment of Toxic Air Pollutant Emissions (May 2017) [TAP Guidelines]
22	Settlement and Cooperation Agreement (Dec. 24, 2022)
23	Email from (b)(6) Privacy, (b)(7)(C) Enf. Privacy to (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Jan. 7, 2022)
24	Draft Policy Papers Released for Public Comment: Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds, and Role of Complainant and Recipients in the Title VI Complaints and Resolution Process, 78 Fed. Reg. 24739, 24742 (Apr. 26, 2013)

25	Nat'l Acad. of Scis., Eng'g, Med., <i>The State of Health Disparities in the United States in Communities in Action Pathways to Health Equity</i> (James N. Weinstein et al. ed., 2017)
26	Yale Global Health Justice Partnership, <i>When the State Fails: Maternal Mortality & Racial Disparity in Georgia</i> (2018)
27	Grace Porter et al, <i>Racial Disparities in the Epidemiology of COVID-19 in Georgia: Trends Since State-Wide Reopening</i> , 5 <i>Health Equity</i> 91 (2021)
28	Zinzi D. Bailey et al., <i>Structural Racism and Health Inequities in the USA: Evidence and Interventions</i> , 389 <i>Lancet</i> 1453 (2017)
29	Ga. Dep't of Community Health, <i>Georgia Health Equity Initiative: Health Disparities Report 2008: A County-Level Look at Health Outcomes for Minorities in Georgia</i> (2008)
30	Matthew J. Strickland et al., <i>Modification of the Effect of Ambient Air Pollution on Pediatric Asthma Emergency Visits; Susceptible Subpopulations</i> , 25 <i>Epidemiology</i> 843 (2014)
31	Christopher W. Tessum et al., <i>PM2.5 Polluters Disproportionately and Systematically Affect People of Color in the United States</i> , 7 <i>Sci. Advances</i> 1, 1 (2021)
32	Ihab Mikati et al., <i>Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status</i> , 108 <i>Am. J. Pub. Health</i> 108, 480 (2018)
33	Joseph L. Servadio et al., <i>Demographic Inequities in Health Outcomes and Air Pollution Exposure in the Atlanta Area and its Relationship to Urban Infrastructure</i> , 96 <i>J. Urban Health</i> 219, 219 (2018)
34	Christopher W. Tessum et al., <i>Inequity in Consumption of Goods and Services Adds to Racial-Ethnic Disparities in Air Pollution Exposure</i> , 116 <i>Proc. of the Nat'l Acad. Sci. of the U.S. of Am.</i> 6001
35	Garth Graham, <i>Disparities in Cardiovascular Disease Risk in the United States</i> , 11 <i>Current Cardiology Rev.</i> 238, 240, 241 (2015)
36	Stefan Koester & Sam Davis, <i>Siting of Wood Pellet Production Facilities in Environmental Justice Communities in the Southeastern United States</i> , 11 <i>Env't Just.</i> 64 (2018)
37	Declaration of (b)(6) Privacy, (b)(7)(C) Enf. Privacy (Sept. 6, 2022)
38	(b)(6) Privacy, (b)(7)(C) Enf. Privacy Wood Pellet Plant Sites Map Series (Sept. 12, 2022)
39	Environmental Integrity Project, "Dirty Deception: How the Wood Biomass Industry Skirts the Clean Air Act" (Apr. 26, 2018)
40	Email from (b)(6) Privacy, (b)(7)(C) Enf. Privacy EPD, to (b)(6) Privacy, (b)(7)(C) Enf. Privacy EPD (July 11, 2022)