

October 21, 2022

Via e-filing)

U.S. Environmental Protection Agency
Office of External Civil Rights
Mail code 2310A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Email information to:
Title_VI_Complaints@epa.gov

Re: Complaint by Individuals and (b)(6) Privacy, (b)(7)(C) Enf. Privacy
pursuant to Title VI of the Civil Rights Act of
1964 and EPA regulations against the Indiana Department of Environmental
Management, Air Quality Branch, and its Office of Environmental Adjudication.

Dear Sir or Madam:

The Complainants, listed at the end of this complaint on their own behalf and on behalf of impacted communities in Gary, Indiana and surrounding environs, submit this Complaint pursuant to Title VI of the Civil Rights Act of 1964, 42 USCA Section 200d and 40 CFR Section 7.10 et. seq. concerning actions by the Indiana Department of Environmental Management (IDEM) in approving air permits for Maya Energy LLC, Permit No.44483, and Fulcrum Counterpoint, Permit No.089-44042-00660, and to end IDEM's longstanding pattern and practice of discrimination on the basis of Race, Color and National Origin. The complainants have all suffered injuries to employment, health,

recreation and other interests which are caused by IDEM. IDEM is a recipient of EPA financial and other assistance 40 CFR Section 7.25.

Parties

Members of [REDACTED], including the current individual Complainants [REDACTED]

[REDACTED] all residents of the City of Gary. They work and recreate in their neighborhoods.

Indiana Department of Environmental Management (IDEM) administers the Air Quality Permit Program in Indiana and its Office of Environmental Appeals hears appeals from those permit decisions. IDEM is a recipient of millions of dollars of EPA funding each year.

Facts

On September 3, 2021 Maya Energy LLC (“Maya”) submitted an application to renew its Federally Enforceable State Operating Permit (originally issued on April 27, 2017 and never acted on) and for a New Source Construction Permit at 2727 West 35th Ave, Gary IN. After IDEM posted notice on its website about the renewal application, various complainants (including those submitting this complaint to EPA) submitted objections.

A virtual hearing was held on March 1, 2022. IDEM issued the renewal on April 26, 2022. A timely appeal was filed with IDEM’s Office of Environmental Adjudication (OEA) alleging various claims, and specifically objecting to IDEM’s refusal to recognize its obligation for non-discrimination on the basis of Race, Color and National Origin under Title VI of the Civil Rights Act of 1964 and EPA’s regulations. IDEM’s response, in part,

was that its only non-discrimination duty is contained in its own non-discrimination policy. For example, in its Appellate Brief in the Maya appeal, (filed Sept 30, 2022) pp 6-7 IDEM explicitly claims

“...neither Indiana Code nor the air permitting regulations authorize IDEM to deny a permit solely upon environmental issues...” .. ”If IDEM lacks the statutory or regulatory authority to address certain issues, then OEA does not have the authority to revoke a permit on the basis that IDEM failed to consider those issues.”

On March 31 2022 Idem posted a notice that Fulcrum Centerpoint LLC (Fulcrum) had applied for a New Source Construction Permit and FESOP to construct a new stationary bio refinery at 6200 Industrial Highway, Gary IN 46404. A Virtual Hearing was held on April 27 2022. Many objectors to the grant of the permit appeared and gave oral testimony and written statements in opposition. IDEM granted the permit on Aug 22, 2022 . A timely appeal was filed with OEA, arguing the grant of the Permit was unlawful on various legal and factual grounds. That appeal contained many of the arguments which form the basis of this ECRCO complaint.

Timeliness

Under Title VI as implemented by EPA, a complaint alleging that a protected class of persons has been discriminated against may file a complaint with EPA in writing within 180 calendar days of the alleged discriminatory act(s) unless this timeframe is waived for good cause. This complaint is timely as it is filed within 180 days of the April 26, 2022 grant of IDEM's permit to Maya LLC and its Aug 22, 2022 grant of a permit to Fulcrum Centerpoint LLC.

IDEM's Pattern and Practice of Discrimination

- A. The regional EPA has determined that the proposed location of both these facilities raises potential environmental justice and racial equity concerns (See EPA Letters of March 11, 2022 and May 16, 2022 from John Mooney, Regional EPA Director, Air and Radiation Division to IDEM, commenting on Maya and Fulcrum applications.)

These concerns remain substantively unaddressed by IDEM in these and other similar cases. Indeed IDEM rejects their applicability to its operations. Data from EPA's Environmental Justice Screening Tool, "EJ Screen," illustrate the severity of pollution and health impacts facing the community in proximity to the Maya and Fulcrum Centerpoint sites. (Data from an EJ Screen Standard Report for tract IDs: 1-808904-1200 and 180-890-1240). For example, the values for all 12 of the 12 environmental justice indexes for the area surrounding the proposed Fulcrum facility exceed the 90th percentile in Indiana. The area includes the eastern portions of East Chicago and Hammond and the western portion of Gary. The population living in the area around the Fulcrum site is significantly comprised of people of color, linguistically isolated households (Spanish language), those with low income, less than high school education, and a high unemployment rate. (Data from an EJScreen for a 3 mile radius ring centered at 6200 Industrial Highway, Gary IN) In addition, there are approximately 50 Title V sources within 5 miles of Fulcrums's street address (Mooney letter, May 16, 2022.) These statistics and facts are replicated in Maya's case, with similar drastic environmental harms to be inflicted by its site and operation.

- B. In addition, IDEM likewise refuses to consider disproportionately high and adverse effects that extend beyond the scope of the permitting decisions, ie to use a “whole-of-government” approach to reduce harmful impacts on surrounding areas, again as suggested by the Regional EPA office. The Maya site is also across the street from the Steel City Academy K-12 school with a particularly vulnerable population (again predominantly minority), and near an Artesian well which members of the community use for drinking water.
- C. While there is an immediate need for halting these 2 specific permits, complainants request that ECRCO review and halt IDEM’s pattern and practice of systemic discrimination. IDEM’s nondiscrimination policy can be found at the following website: https://www.in.gov/idem/health/files/idem_policy_A-008-AW-18-P-R5.pdf.

It is the policy of the agency to provide fair treatment and meaningful involvement to all people, regardless of race, color color, gender, national origin, geographic location, or income with respect to the development, implementation and enforcement of environmental law regulations and policies within the agency’s jurisdiction.

IDEM relies on three fundamental principles to implement this policy:

- a) Ensure that all members of the public have equal access to public information pertinent to agency policies and procedures.
- b) Ensure that all members of the public have adequate notice regarding all agency program information and decision making processes; and
- c) Ensure that all members of the public have the opportunity to provide

comments and pertinent information to agency program staff.

Id.

IDEM's policy on discrimination thus imposes only the most limited procedural requirements and no substantive obligations on its permit decisions and appeal legal rules. IDEM explicitly maintains that neither it nor OEA may deny a permit based on racial discrimination or environmental justice issues (See Great Lakes Transfer Station SWFP, 2006 OEA 24, 29; Great Lakes Transfer Station 2011 OEA 73, 81), (See IDEM legal position stated in its brief (filed Sept 30, 2022) in the Maya appeal quoted above in the Fact section of this complaint.

IDEM's constricted interpretation of its duty not to discriminate on the basis of protected classes nullifies federally mandated protections. As illustrated in the Maya and Fulcrum cases, it allows IDEM to refuse to consider the environmental effects upon minority communities. IDEM's rules and practice allow it to engage in intentional and disparate impact discrimination. IDEM has long engaged in this pattern and practice of discriminatory permit granting and appeals decision-making involving poor and minority communities and has created a continuing history of environmental racism and injustice.

Communities like Gary and surrounding areas have thus been turned into dumping grounds for polluting industries with predictable effects. A recent study adds to an ever-

growing body of literature confirming that both polluters and pollution continue to be disproportionately located in low income and minority communities like Gary and Lake County IN where residents lack the political and economic power to fight back. See Mikati, Benson, et al., Disparities in Distribution of Particulate Matter Emission Sources by Race and Policy Status, American Journal of Public Health 108, number four, April 21, 2018) (reporting that Black people are exposed to about 1.5 times more particulate matter than white people, that Hispanics had about 1.2 times the exposure of non-Hispanic whites, and people in poverty had about 1.3 times more exposure than people above poverty). These national statistics reflect the situation in Gary and Northwest Indiana generally. See K. Ferraro, J. Peller, Assessment of Environmental Justice Needs in Northern Lake County Community.

D- Statistics confirm IDEM's discriminatory processes and policies. A search of 102 final orders that OEA issued between 2010 and 2020 (the OEA's decisions are available through a searchable database at www.in.gov/oea/2335.htm) revealed the following: in 48 decisions of administrative appeals of IDEM-issued permits, citizens were successful or partially successful in just two of these cases (4%). On the other hand, of the 28 administrative appeals brought by regulated industries, 11 were successful in overturning IDEM's decisions. IDEM, like many state agencies, is subject to the phenomenon known as "agency capture" Adkins vs VIM Recycling, Inc., 644 F3d 483, 499 (7th circuit 2011), citing Barkow, Insulating Agencies: Avoiding Capture through Institutional Design, 29 Tex. L. Rev. 15, 21–24 (2010). It is thus critical that EPA hold OEA and IDEM to standards which will reflect environmental justice and civil rights

principles. IDEM has ample less discriminatory means to alleviate or eliminate its practice and policy.

Relief

Complainants request ECRCO and EPA provide the following relief:

- 1) Require IDEM to a) pause its permitting process; b) reevaluate the grant of permits to Maya and Fulcrum; c) conduct a thorough Title VI compliance review of IDEM; and d) require that IDEM develop a detailed Title VI implementation plan.
- 2) Investigate the allegations in this complaint regarding discriminatory actions by IDEM affecting the Gary community in its grant of permits and its procedural and substantive rules for adjudicating appeals of those permit grants.
- 3) Require IDEM to incorporate environmental justice and racial equity considerations into all aspects of its work; and
- 4) Provide other relief EPA deems necessary after conducting its investigations to remedy IDEM's discriminatory actions.

Respectfully Submitted,

(s) _____

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

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Valparaiso, Indiana 46383

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(s) _____

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Individually on behalf of (b)(6) Privacy, (b)(7)(C) Enf. Privacy

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Gary, Indiana 46403

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

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(s) _____

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