



July 23, 2018

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, and pray in the Nicetown neighborhood of Philadelphia, Pennsylvania and the surrounding community, we respectfully request that your Office (ECRCO) investigate the Environmental Justice Violation committed by the Air Management Services ("AMS") of the Department of Health of the City of Philadelphia, Pennsylvania in issuing Air Permit Approval No: IP17-000009 (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 Plant authorized by the AMS Air Permit will further exacerbate such adverse and disparate impacts.
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 ongoing as long as it is outstanding; therefore, no time limit for bringing this complaint is currently applicable.
5. An appeal of the Air Permit issuance (the "Appeal") is currently pending before the Licensing and Inspections Review Board of the City of Philadelphia, asserting violation of Article 1, Section 27 of the Constitution of

the Commonwealth of Pennsylvania, among other complaints. Neither the Appeal nor any other action currently before any federal, state, or local agency or court with respect to the Air Permit is based on the violation of Title VI; therefore, ECRCO should conduct an investigation.

The neighborhood in which the Plant is being located, Nicetown, 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 19144, 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 19140, 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 (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 noxious gases 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 from the Philadelphia Department of Public Health, of which AMS is a division - indicate 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 the City of Philadelphia and the Commonwealth of Pennsylvania. For example, the childhood asthma rate in Nicetown - reportedly 31% - is three times the average for Pennsylvania (which is around 10%, itself higher than the national average of around 8%). Every available scientific study indicates that an ongoing public health crisis in Nicetown is being inflicted on 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 study to understand the existing and anticipated adverse impacts from SEPTA's activities. SEPTA and AMS refuse to conduct a health study. SEPTA asserts that modeling of pollution at its fence line (conducted by Mondre Energy and AEMCO without following federal guidelines for estimating background emission levels) and inferring resulting health impacts is equivalent to a health 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 monitoring of air pollution levels in Nicetown. The Air Permit provisions 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 Henry S. Cole (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:

Peter Winslow

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

Philadelphia, PA 19119-

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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) Enf. Privacy