ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Responsiveness Summary
June 25, 2020
Construction Permit General III, LLC
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INTRODUCTION

This document is a Responsiveness Summary prepared by the Illinois EPA in conjunction with the issuance of a construction permit to General III, LLC (General III) for a scrap metal recycling facility to be located at 11600 South Burley Avenue in Chicago, IL. This document provides a written response to significant, permit-related comments raised at public hearing and during the related written public comment period.

RECENT EVENTS

The Director and staff of the Illinois EPA share a sincere appreciation and sympathy for the hardships that many residents of Illinois and particularly Chicago's Southeast Side have endured in recent months due to the COVID-19 pandemic. The pandemic dramatically altered daily life for almost everyone in our Nation and in many other countries around the globe. The public health impact of the virus has been felt most severely by several vulnerable segments of our society including the elderly and patients living in long-term healthcare facilities, individuals with certain respiratory or cardiovascular co-morbidities or weakened immune systems, and, as we have learned more recently, communities of color have contracted and died from the disease in disproportionate numbers. The related social and economic impacts caused by the virus, which have ranged from the closures of our schools, governmental offices and religious activities, the shut-down of non-essential businesses, and the fears and isolationism that accompanies social distancing, to the loss of friends and loved ones who succumbed to the contagion, are nothing short of profound. Regrettably, these and other effects of the pandemic are still being felt, even as medical science and public health officials continue to fight and monitor the disease, and our collective efforts turn to restoring some semblance of normalcy to our lives.

The recent protests posed a separate set of physical and emotional difficulties for many residents in Chicago and surrounding communities. National events that ignited the protests are slowly giving way to a renewed sense of commitment to end systemic racism. For the many thousands of peaceful protesters marching in the region, these events have given voice to their frustrations with our institutions, past and present, and sounded a call for not just institutional reforms but for a change in how we interact with each other as human beings. For others, the shadow of violence in the wake of some protests provoked anxieties about the safety of their communities, as suggested by comments received during the public comment period urging a delay in the current proceeding.

The confluence of these events during the current permitting process was unfortunate. However, while various regulatory activities at different levels of government were canceled or delayed, essential activities conducted by state agencies continued without significant interruption as part of Governor J.B. Pritzker's Disaster Proclamations and Executive Orders responding to the COVID-19 crisis. This essential work included activities overseen by the Illinois EPA in the area of environmental permitting.

The Illinois EPA administers its permit programs pursuant to the requirements of the Illinois Environmental Protection Act and implementing regulations, including a decision deadline under which the Illinois EPA must act on a given permit application. These requirements are at the heart of why the current action cannot be delayed. Moreover, permit applications remained pending with the Illinois EPA from before the start of the pandemic, and some applicants, including General III, continued to work with Illinois EPA Permits staff throughout the Spring in anticipation of securing the necessary permits. As more people return to work and businesses reopen, and as broader sectors of our economy become more functional again, applicants are inquiring about their projects and submitting new applications. These signs point to the need for us to continue the administration of permit programs.

Due to the COVID-19 pandemic and subsequent Proclamations and Executive Orders by Governor Pritzker limiting large public gatherings, the Illinois EPA as with all other agencies and governmental bodies in the State, was not able to provide an "in-person" hearing in this matter. In lieu of a traditional hearing venue, the Illinois EPA opted to provide a "virtual" hearing, where participants called in by phone or joined by computer to make comments or listen to the proceedings. A virtual hearing comports with all requirements of 35 IAC Part 166, Subpart A, while also minimizing the threat of COVID-19 exposure to the public. These steps sought to balance the interests of public safety with the need to implement existing programs consistent with legal requirements.[1]

PUBLIC OUTREACH

Pursuant to an IEPA environmental justice notification for the new construction permit, advocacy groups submitted a request for hearing on the project. Recognizing the significant public interest in the facility, IEPA issued a notice of public comment period beginning on March 30, 2020 and two virtual public hearing sessions on May 14, 2020. The purpose of this action was to allow for public participation in the permitting process for a draft construction permit developed by the Illinois EPA's Bureau of Air.

The public outreach associated with the application for construction permit was not required by statute or regulation but, rather, was discretionary on the part of the Illinois EPA's Director. A hearing officer was designated, the notice was issued, and the comment period and the informational permit hearing were all conducted, in accordance with applicable regulations found at 35 Ill. Adm. Code Parts 166 and 252. The notice of the comment period and virtual hearing was posted to the agency website, as well as forwarded to numerous elected officials and persons known to be interested in the matter, including representatives from various environmental advocacy groups. Contemporaneous with the notice, the draft permit and related documents from the administrative record were also posted to the Illinois EPA's website.

Instructions detailing how to participate in the informational hearing, either through oral comments or simply listening in to the proceedings, were also posted. The notice and instructions for hearing participation included numerous references to agency contacts (either the Hearing Officer or the Office of Community Relations) for any questions or concerns (e.g., requests for interpretation, informational or special needs, assistance with WebEx).

The public hearing was held on May 14, 2020. As originally scheduled, the Illinois EPA held two sessions: the first session was held at 1:30 pm and featured seven speakers and approximately 117 participants, and the second session was held at 6:00 pm and featured 14 speakers and approximately 86 participants. All told, over 200 people participated in the public hearing, far exceeding the level of participation shown in recent informational permit hearings concerning projects in EJ areas. A Webex recording of the hearing sessions was later posted to the agency website.
https://www2.illinois.gov/epa/public-notices/boa-notices/Pages/default.aspx

[1] **Even now, public gatherings of uncertain size are still prohibited. A gathering of more than 200 people as participated in the public hearing is not envisioned until the state has reached Level 5 of the Governor's plan. This would only result in the issuance of a permit by default or a permit denial, the latter of which is not supported by the administrative record.**

It can be noted that the Hearing Officer and Office of Community Relations assisted participants in advance of the hearing and several speakers during the two sessions. They also worked assiduously with all commenters who contacted the Illinois EPA to assure timely receipt of comments, including several commenters who sought help with more voluminous comments to avoid the necessity of printing and mailing.

The public comment period ran for 77 days, thus affording the public nearly two and half months to consider the planned permitting action. Approximately 329 people submitted written statements, submissions and exhibits during the comment period, again exceeding the level of past participation in previous projects impacting EJ areas. Oral and written comments generally expressed opposition to the project and the accompanying participation process, with many people urging the Illinois EPA to suspend or deny the application for construction permit. While acknowledging the voiced opposition to the process, the level of participation supports the Illinois EPA's position that the right of the public to voice their concerns about the project was assured.

SPECIAL MENTION

Before the company can begin operations at the Burley Avenue location, it must also receive permits from the City of Chicago, including one pursuant to the City's new rules for large recycling facilities. The new rules, effective June 5, 2020, implement the City's Recycling Facility ordinance and include additional requirements that General Iron meet in order to begin operating at the southeast side location. The City's rules provide minimum standards for what is required in a permit application, including information to demonstrate that the facility will be designed and operated in a manner that prevents public nuisance and protects the public health, safety, and the environment. The rules also contain location, operational, and design standards applicable to large recycling facilities such as General III, including vehicle and traffic requirements, noise monitoring, air quality standards, and air emission monitoring.

DECISION

On June 25, 2020, the Illinois EPA issued a construction permit for General III, LLC. This final permit determination was rendered after consideration of all comments and in accordance with the Illinois Environmental Protection Act.

Significant changes have been made to the draft permit in response to public input and are noted in Attachment A to this Responsiveness Summary.

BACKGROUND

On September 25, 2019, General III, LLC applied for a permit to construct a scrap metal recycling facility to be located at 11600 South Burley Avenue in Chicago, Illinois.

This application for permit arises based on an agreement between the City of Chicago, General Iron Industries, and RMG Investment Group that the existing scrap metal recycling operations of General II, LLC, at 1909 North Clifton Avenue in Chicago, Illinois cease and relocate, matters for which the Illinois EPA had no involvement and for which it has no legal role.

Rather, the Illinois EPA is the state permitting authority charged with permitting Illinois sources consistent with applicable state and federal laws and regulations. General III is required to obtain an air pollution control construction permit from the Illinois EPA Bureau of Air prior to beginning construction because it is a new emission source. For additional background information, please refer to the Project

Summary, which is available on the Illinois EPA Public Notice webpage:
https://www2.Illinois.gov/epa/public-notices/boa-notices/Pages/archive.aspx.

As the scrap metal recycling facility is relocating to a site that the Agency would deem to be within an environmental justice area, the Agency sent an EJ notification on October 1, 2019, consistent with its environmental justice public participation policy. This letter was mailed to 48 persons, including numerous groups and elected officials representing the local community. This environmental justice letter elicited a response sent to Director Kim on October 30, 2019, from Keith Harley, on behalf of Southeast Environmental Task Force, the Chicago South East Side Coalition to Ban Petcoke and the Natural Resources Defense Council, requesting an Environmental Justice Analysis, a hearing and a subsequent written public comment period for the proposed facility. Acknowledging the request for hearing, and in recognizing the public interest in the proposed project, the Agency determined that it was appropriate to hold a public hearing on the permitting transaction.

AVAILABILITY OF DOCUMENTS AND ILLINOIS EPA CONTACT

Copies of the construction permit that has been issued, as well as this Responsiveness Summary, are available for viewing by the public at the Illinois EPA's Headquarters at 1021 North Grand Avenue East in Springfield.

Copies are also available electronically at:
https://www2.illinois.gov/epa/public-notices/boa-notices/Pages/archive.aspx

Printed copies of these documents are also available free of charge by contacting
Brad Frost
Office of Community Relations.
217-782-7027
brad.frost@illinois.gov

QUESTIONS AND COMMENTS WITH RESPONSES BY THE ILLINOIS EPA

Comments are shown in conventional text and responses are shown in boldface. Comments and responses are arranged by subject matter, paraphrasing and grouping similar comments and questions. Numerous comments in this document are depicted in a condensed or paraphrased from, rather than recited in full. In other instances, comments are retained in original form because of their complexity or level of specificity.

All significant comments relating to the draft construction permit or that otherwise fall within the Illinois EPA's scope of permit authority are being addressed in this Responsiveness Summary. This framework necessarily does not answer some of the comments raised at the public meeting or during the comment period but this is appropriate due to the inability to address matters outside of the Illinois EPA's regulatory expertise.

Public Participation

1. The Illinois EPA should take public comment on the proposed issuance of the permit into consideration.

The Illinois EPA held extensive public outreach on its permitting transaction. The outreach included a 77-day written public comment period and a two-session public hearing wherein individuals could make oral comments that were entered into the hearing record. The Agency has reviewed those comments and this document responds to significant comments that are pertinent to the Agency's decision, process and review.

2. The affected community is largely Hispanic yet there was no information in Spanish including the notice.

The Agency frequently interacts with bilingual residents throughout the State on a number of issues. When a need or desire for services is evidenced or expressed, the Agency does everything in its power to provide those services to the best of its ability. The Agency has not been lax in providing translation services where local representatives or persons expressed simply a desire for such services, even while the use of those services at Agency meetings has not been robust; this includes recent outreach for permitting, rulemaking and cleanup programs. The Agency has also been responsive to local groups and representatives that have come forward with suggestions for changes and enhancements to the translation services that it provides. Additionally, the Agency has made strides in providing routine Spanish language services including by the hiring of a bilingual employee in its Office of Community Relations to help with such needs.

The Agency has conducted extensive outreach on the SE side of Chicago going back decades, with established contacts and regular communications with advocacy groups, elected officials and individuals on the SE side of Chicago including the East Side neighborhood, including holding and attending meetings and hearings on numerous projects and subjects. In past Agency meetings and hearings on the SE side of Chicago, neither need or desire for translation services have been requested or evidenced, nor has the Agency received comment previously that these services were not provided at hearings and meetings on the SE side of Chicago. Translation services are a large expense, and while the Agency is happy to provide those services when there is a need or an expressed desire, the Agency policy to this point has been to allow for the request of translation.

In the case of General III, a statement allowing for the request for translation, specifically including American Sign Language services, was included in the public notice. The Agency was in regular communication with local groups and their representatives and did not receive a request for translation either prior to issuance of the notice or subsequently to the notice but prior to the hearing. A simple request, by phone, letter, e-mail or other communication, would have produced from the Agency such notice and translation. No request was forthcoming until comments made at the public hearing and post-hearing and beyond a general complaint, the complainants did not identify individuals that needed the service. The good faith efforts of the Agency are adduced by the fact that although no request was received, the Agency was prepared to provide services during the hearing and had a translator available. No commenters used the services of the translator.

It should be here noted that in keeping with current Agency practice that since a request was received during this transaction, although at too late a point in the process to provide services during this transaction, for future transactions in this area, the Agency will provide translation of notices and other documents and work with community groups to determine the need for translation services at meetings and hearings.

3. This permitting process did not allow for meaningful public participation as the hearing was not

being translated into Spanish—the language of a significant proportion of the affected community—and the notice to ask for Spanish translation was not in Spanish. It seems highly unlikely that people would be able to ask for translation service if the notice is in a language that they do not understand. Thus, interested and affected persons likely missed out on any information shared in the public hearing.

As mentioned in other responses, the Agency had numerous communications with representatives of groups representing neighboring residents. Neither in conversations nor submittals by these groups, although other specific perceived deficiencies were outlined, was a request for translation enumerated.

It should be here noted that in keeping with current Agency practice that since a request was received during this transaction, although at too late a point in the process to provide services during this transaction, for future transactions in this area, the Agency will provide translation of notices and other documents and work with community groups to determine the need for translation services at meetings and hearings.

4. Very few local residents knew about the hearing or how to participate.

   There are also issues with advertising for an online [hearing].

   SETF cannot provide training to remedy this problem because its office is closed and its leadership, members and local residents are required to be distant from one another. As a small non-profit, SETF is experiencing almost insurmountable complications to continue functioning, let alone to mount a major campaign to facilitate public participation in an unfamiliar venue.

The Illinois EPA in performing notification of a hearing must meet certain statutory requirements of 35 IAC 166 Subpart A. In addition to those requirements, the Agency seeks to inform persons and groups that it may be aware have an interest in the project. In no instance does the Agency have complete information on the residents that may be interested in participating in its outreach proceedings and relies to a certain extent on groups and elected officials that are interested in environmental issues in the locality. One such group is the Southeast Environmental Task Force (SETF) who has been a longstanding and reliable partner in helping the Agency provide community outreach to interested residents on the South East side of Chicago.

However, while the Agency appreciates that groups are willing to partner in assistance, in particular SETF, this does not abrogate the Agency's responsibility for community relations. The Agency was thoughtful in establishing the procedures for its first virtual hearing. The Agency established the hearing in such a manner that the only need to participate was a telephone.

5. The Illinois EPA needs to work with elected officials at the city and state level to get information to the community members who will be impacted by this facility.

The Agency has contacts with officials in the City and specifically on the South East side. Notice of the hearing was sent to many elected officials, including Chicago's Mayor and Clerk, the County Board Chair, Clerk and State's Attorney, Chicago City Council's Environmental Protection and Energy Committee, federal Senators and Representatives, the state Senator and Representative, the local Alderman, the Attorney General, and the Cook County Board Environment Committee. Additionally,

various local and state agencies were notified as well as numerous non-profit and local interest groups.

6. A virtual public hearing during a pandemic is not acceptable; it did not provide a meaningful opportunity for public participation.

With respect to holding a public hearing/comment period during a pandemic, state government is still functioning and has responsibilities regardless. Also, the statutory and regulatory provisions associated with the evaluation of permitting requests, such as acting in a timely manner (permit application), are still in place. Illinois EPA is obligated to act in a certain period of time in regard to state construction permits. The initial 90 days set forth in Section 39a of Act was waived by the applicant late last year and two times since. The current decision deadline is June 25, 2020 and the applicant has made clear it will not waive this decision beyond this date. The permit will be issued by default if the Illinois EPA fails to act on the permit by this date. General III would have a legal defense or protection from having to obtain a construction permit; under this scenario, important conditions of the draft permit (e.g. testing, reporting, monitoring, record keeping) would not be put in put in place. Therefore, Illinois EPA makes all manner of attempt to avoid issuing permits by default.

Although this process is a departure from the past with respect to hearing venues, the procedural rules for Agency hearings at 35 IAC 166 accommodate for this type of hearing – the purpose of which is to enable the Agency to receive comments from the public regarding a draft permitting action.

7. The permitting process utilized for the Draft Permit hindered meaningful public participation. Outside of a pandemic, limiting public hearing to an online forum is a deterrent to public participation for those who do not have the broadband width to participate. It impedes the spirit of an actual public hearing—people cannot see any visual aids that would otherwise be present, and both they and the decisionmakers do not see the numbers of people in support of or opposed to a position. Neither body language nor emotion are conveyed as well over the phone or computer. A public hearing also does not usually have people register ahead of time to speak as was the case here, thereby limiting the voices of those who did not receive notice in time.

The online format of the hearing was established in a thoughtful manner to as closely resemble an "in-person" hearing as possible. As noted in other responses, the purpose of a hearing is to accept oral comments accurately into the hearing record for review by the Agency staff as part of a permit review. The Agency at any hearing tries to maximize the amount of time for public comment. The Agency typically minimizes its presentations at a hearing and rarely if ever utilizes visual aids as these tend to make Agency presentations lengthier with detriment to the amount of time available for public comment. In this instance the Agency did provide some visual aids that it believed to be helpful because of the new nature of the "virtual" format without taking extra time away from the amount of time to comment. It is also typical to have commenters register to speak prior to the hearing so that the Agency hearing officer may gauge how much time to allow for each speaker without impeding the opportunity to make comment for those who register later. Further, the hearing officer allowed all commenters that had contacted him prior to the beginning of the hearing a slot to provide comments regardless of whether they had met the deadline established in the notice. As noted in other responses, the Agency's decision-making is not based on opposition or support for a project but instead on the legal and technical merits of the proposal outlined in the application.

8. Illinois EPA has persisted with holding the public hearing and written comment period during the

local, state and national COVID-19 pandemic, coupled with demonstrations around racial injustice that have rocked Chicago and the nation. During this time, it is absurd to expect the residents of this overburdened community – residents who are struggling to protect themselves and their families from disease, layoffs, racial injustice and literally bullets in their streets – to be able meaningfully to participate in a permit process. This non-inclusive process has a clear impact on an environmental justice community and requires Illinois EPA to step back from issuing a permit until true community participation is made possible.

During the pandemic, people didn't have the health, means, or resources to participate, particularly in low income/minority community, already disadvantaged.

This reflects the racism that causes southeast Chicago to be a sacrifice zone.

This process lacked regard for the community and was racist.

While the pandemic has certainly caused changes to the usual or customary proceedings of numerous public bodies, the operation of public business must continue, particularly in light of the uncertainty in the length of time needed to have in place real remedies to COVID-19. Protection of the environment is important enough public business that the legislature has passed numerous laws over the last 50 years directing Agencies to be established, actions to be taken on regulation, and public monies to be expended in this pursuit.

While a public process is not a statutory requirement of the review of projects such as General III, the Agency believes it important to solicit public input on its decisions, particularly in areas it designates as environmental justice, and make such improvements to a permit as may come about as review of public comments allow. The Agency also believed it important to hold a public hearing and the associated process and comment period for this project and to seek the additional time necessary to achieve that end. Changes and improvements have been made to the permit mainly because of its location and the comments received. Due to the proposed location of the facility the Agency took additional considerations in regard to the impact on the community and provided additional outreach.

While the hearing was of necessity different than the usual hearing, the Agency made several enhancements and was thoughtful about the process such that it was inclusive for the public. Any hearing at any time will not allow all members of the public to participate. By the Agency historical standards, the hearing for General III was well attended with significant participation and written comments exceeding all but a few of the actions for which the Agency has held comment periods. In example of this, two recent, pre-pandemic, highly controversial permit hearings in the Chicagoland area, concerning the CAAPP permits for BWAY and Midwest Generation's Waukegan coal-fired power plant, drew attendance of approximately 40 and 35 respectively. Both were "in-person" hearings for controversial sources located in environmental justice areas.

It should also be noted that written comments submitted during the comment period carry the same weight as oral comments made at the hearing, as evidenced by this responsiveness summary.

9. In a pandemic, people are even further limited in their ability to participate—people can have broadband connection limitations, and moreover, people—especially on the East Side—are facing

the health implications of a pandemic and are rightfully more consumed with surviving this global emergency. The public should not be limited in their ability to meaningfully participate.

As noted in other answers, the Agency's intent within the strictures imposed by the pandemic and the requirements of Illinois law is to provide robust and effective outreach. As also noted, the process resulted in a public hearing and lengthy written comment period. Based on the number of comments received, participation in the hearing, and the resulting enhancements made to the permit as a result of the outreach process, the Agency believes that meaningful participation through its community outreach process has been effective in this case.

10. The hearing was inaccessible to community residents many of which are poor and lack technology.

    [I have] received many text messages/phone calls from community members that cannot login or participate or do not have the resources or capability.

    Neither SETF's members nor other local residents have participated in this type of hearing. Many do not have the technology and/or technical capability to participate.

The only technology needed to participate in the hearing was a telephone. Consideration was also give to the fact that people connecting by telephone may be using a cell phone and potentially limited cell phone minutes, thus the Agency established procedures allowing for commenters to have a relatively defined time when they would be called on for comment and allowed for commenters to request a more specific time if they had a need for such. The meeting was also recorded so that those who couldn't otherwise listen to a particular session or to the hearing as a whole could peruse the hearing at their convenience.

Additionally, contact information for the Agency was included in the notice and the Agency responded to all requests for assistance sent to it before and even during the hearing. These included e-mails directly to the Office of Community Relations and chats through the WebEx system. Further, between the two sessions, the Agency proactively contacted persons that had signed up to speak at the first session but that did not come on the line and at the commenters choice either scheduled them to speak at the 2nd session or gave them information on how to submit written comments; Similarly, the one person who did not come on the line to make comment at the second session was contacted after the hearing to inform on how to submit written comments.

For those that did not choose to comment but instead wanted to listen to the hearing, in addition to the live event, a recording was posted such that anyone of the public could listen to the proceedings at a later time.

11. The hearing process was difficult, and people struggled to connect and failed to connect.

The Agency is unaware of any specific persons and was not contacted before, during or after by any persons that were not able to connect and thus missed the opportunity to make oral comments. Additionally, for those who only desired to listen to the hearing, the Agency posted a recording of the hearing. The point of the public comment period and hearing is to afford the public and opportunity to comment. That opportunity to comment in writing or orally existed beginning March 30, 2020 and ending June 15, 2020.

12. People with impairments could not participate.

A statement allowing for the request for translation, specifically including American Sign Language services, was included in the public notice. The Public Notice provided guidance on contacting the Agency for an accommodation in this regard and no requests were made.

13. There should be another hearing so comments from Spanish speaking people are not limited to writing.

While this comment was made at the hearing, as noted in other responses, the Agency had a translator available at the hearing to translate for any person that would have needed such service to make their comment. All commenters that signed up to make oral comments were accommodated in the process.

14. Was there both translation of Agency statements and the opportunity for commenters to be translated?

Without a request for translation, the Agency did not have a good understanding of what services would be needed or who would need those services and thus how best to provide those services in the virtual hearing format. The Agency had a Spanish language translator available at the hearing if a commenter had come onto the line with a need to speak Spanish to make their comment. Without a request, this may have resulted in a slower or different process than the process that would have been established if a request was received timely before the hearing. No commenters requested or availed themselves of the translation services.

15. The process should provide for more public interaction and different ways to engage.

Since no specifics are provided, the Agency is unclear on the process changes desired. The Agency works with representatives and groups to provide appropriate and effective outreach; however, a hearing is a more structured and defined process both statutorily and in practice. While Agency hearings tend to be more interactive, and therefore the Agency feels, more informative than some similar agencies, notably federal counterparts, the purpose is still primarily to accept public comments into the record through recording or transcription. The Agency's Office of Community Relations is available to work with communities and groups to provide other forms of outreach and tools for public interaction. An OCR contact is listed in this document if further discussions along these lines is desirable.

16. More communication between the Illinois EPA and community is requested.

The Agency also desires to build substantive and lasting connections with communities in the State. This serves to help the Agency better understand the local environmental conditions as experienced by the local community and helps inform Agency decisions. To this end, the Agency has an established Office of Community Relations, whose purpose is to establish and participate in mutual dialogue with communities in the State relative to the authorities of the Agency. The Office of Community Relations has been in existence since the early days of the Agency. Similarly, and more recently, the Agency has established an Office of Environmental Justice. One among other duties is to specifically provide additional services of a similar nature to communities that meet the Agency definition of Environmental Justice.

17. Illinois EPA's website is not user-friendly and time consuming when searching for documents.

While the Agency houses numerous programs and services on its website, the Agency has prioritized certain programs on the front page, including public notices. The webpage provides a direct "Quicklink" easily visible for users of the website. Nonetheless, if difficulty is experienced in finding information on the website, the Agency's Office of Community Relations is always available to provide additional assistance. Most of the contacts on the Agency Contacts page go directly to the Office of Community Relations and the notice itself included contact information for two employees of the Office.

18. Will a hearing transcript be available?

The relevant hearing regulations require a transcript or recording of the hearing to be made available. A recording of the hearing was made and link to the recording posted to the Agency website on May 26, 2020. Interested persons can find the link at https://www2.illinois.gov/epa/public-notices/boa-notices/Pages/archive.aspx

19. How does the Illinois EPA weigh our comments? For example, if 100% of our comments are fully opposed to this permit, will the Illinois EPA not grant the permit?

As mentioned in the hearing officer's opening statement in the General III permitting matter, the Illinois EPA bases its decisions on the governing law and regulations. There is no way for the Illinois EPA to account for general opposition comments in the permit review. However, the Illinois EPA reviews and considers all comments received. And certain comments such as suggestions on enhancements to the permit may be reflected as part of permit decisions.

20. A petition was received with over 5500 signatures opposing General III.

    A petition was received with over 1500 signatures supporting General III.

The Agency must act on substantive issues within its express statutory and regulatory authority, not public opposition or favor for projects. That a project is located in one place or another, or is moving from one place to another, is properly the realm of zoning and land-use decision-making. To this end, the City of Chicago made clear decisions, where those decisions properly rest at the local level. A note here is made that the City must make additional decisions in approval of this project pursuant to its new rules for large recycling facilities.

21. Most of the participants who testified asserted that Illinois EPA's decision was fundamentally unfair and defeated the purpose for a public hearing.

The express intent of a public hearing and the associated process is the solicitation of public comments so that the Agency, within its authority, may contemplate and act on these comments in its permitting transaction. A virtual hearing achieved this end and comports both with the regulations and the practice of numerous other public bodies under similar circumstance. While there may be aspects differing between a "virtual" and "in-person" hearing, the underlying intent of a hearing was served, and even secondary considerations not provided for in regulation or guidance such as answering of questions and explication of the Agency permit were achieved.

22. Polluters request one-year construction permit or a 5-year, 10 year, or lifetime permit, so it is prudent to have more public hearings, more public notice, and more public input so that the community is fully aware of what is coming into their neighborhood.

The Agency has established an Environmental Justice notification process to do just this in areas that meet the Agency definition for environmental justice, such as the SE side of Chicago which includes the East Side neighborhood. As discussed above, this process resulted in the request for hearing and numerous communications with representatives of local groups interested in the proposed facility. Information on the Agency Environmental Justice program and how to sign-up for EJ notifications may be found at https://www2.illinois.gov/epa/topics/environmental-justice/Pages/default.aspx

23. [Due to] COVID-19 and local civil unrest it was not feasible for these aligned organizations to coordinate fully on a single set of comments [and thus] meaningfully participate.

The Agency does not require groups or individuals to coordinate their submissions. The Agency reviews all comments received and from all sources. As noted in other responses, the Agency has received an extraordinary number of comments in this matter. As always, the Agency appreciates the engagement by the public in its process and recognizes the considerable sacrifice in time and energy that the public makes in reviewing documents and commenting on permit transactions. The comments are valuable to the Agency's review and have helped the Agency to provide an enhanced permit that has significant conditions and requirements for the protection of the environment.

24. The agency lawyer did not appropriately respond to a hearing question regarding the consideration of violations by General Iron at its existing facility in the review of the permit application for the new facility.

The Illinois EPA conducts informational permit hearings, such as was done in this instance, to hear concerns from the public with the draft permit and/or proposed project.[2] While questions are sometimes asked of the panel, these questions commonly only elicit brief answers from the panel members. This is by design, as it allows for maximum participation by those in the hearing audience who wish to speak and assure that the hearing can be completed within the allotted time. General questions are usually answered by the hearing panel with a general answer, and a drawn-out answer by a panel member can risk taking away time otherwise best given to members of the public for their presentations. More detailed responses are provided to those hearing questions that are significant or complex, together with similar questions or comments submitted during the comment period, in the Responsiveness Summary.

In this instance, the response to the question raised at hearing was appropriately responsive to the question posed to the panel and was not prejudicial error. A speaker in the first session of the hearing asked two questions at the conclusion of his remarks, including how the Illinois EPA had considered the violations at the existing General II facility in the review of the project. The panel member, answered the question in roughly three parts. First, the panel member stated that the Illinois EPA did not consider alleged violations in its review of the permit application. Second, the

[2] **This general point was evident in the Hearing Officer's opening remarks**.

panel member briefly provided the reasoning for his answer.[3] Lastly, the panel member acknowledged exceptions to the rule that he had briefly described, stating that "there are limited exceptions to that but, by and large, that is the rule that we are controlled by."[4]

25. In the same incident as above, the Agency lawyer did not refer to the three parts of the statute that governed the legal issue, conflating them in a confusing and misleading fashion and did not adequately explain the caselaw authorities and existing law.

As discussed elsewhere, only two of the three cited parts to Section 39(a) are relevant to the consideration of adjudicated noncompliance or a past compliance history. The third part of the statute cited by the comment is a general authority by which the Illinois EPA is guided in developing conditions for a permit, allowing for the inclusion of terms that are "necessary to accomplish the purposes of this Act, and as are not inconsistent with the [Board] regulations…"[5] As mentioned, while this legal authority served as the basis for the inclusion of many of the construction permit's terms, including new conditions added in response to comments, there was no error committed by not mentioning it in relation to matters of prior enforcement history. Written comments and the Illinois EPA's more detailed response to comments are for matters such as this.

Environmental Justice

26. The most important reason to deny this permit is because it epitomizes institutional environmental racism. Racist outcomes do not require racist intent. We do know the intent behind the permit request, nor of the reviewers, and we are not claiming to. But based on the following three components, we are confident of the outcome.

The Illinois EPA strongly rejects any insinuation that racism played any role in the review of this permit application. The Agency's review was performed strictly according to relevant legal and technical requirements.

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[3] "And the reason for that is that our review is pretty much constrained to what is outlined within a permit application and is pretty much just addressing whether or not there are operational or design capabilities that are set out in a project that… whether those will meet applicable requirements. We cannot review or consider violations at another facility as in the case of GIII here having a previous operation at the Clifton Avenue address. The reason for that boils down to caselaw that Illinois courts have developed in the past in interpreting the Environmental Protection Act. That caselaw has directed the Agency to assure that we confine our review to just matters of the application and not to compliance and enforcement considerations."

[4] ***See,*** **Hearing Recording beginning at 36.26. A related written comment regarding the panel member's response to the same question is baseless. The comment states: "[A hearing speaker], a resident living near General Iron, testified about the negative health consequences and a history of violations, prompting an Illinois EPA attorney to immediately intervene to discount this testimony." SETF comments, dated June 15, 2020. The panel member was "prompted" only by a general question asked by the speaker, at the conclusion of his remarks, concerning any review of violations in the permit review. The response by the panel member did not discount any testimony of the speaker.**

[5] ***See,*** **415 ILCS 5/39(a). This authority bears no relation or significance to the consideration of alleged violations, which are addressed by the more specific criteria identified in the two preceding sentences of Section 39(a).**

27. Why was there no EJ analysis as requested?

In order to analyze the environmental justice impacts of the proposed relocation of the source, the Illinois EPA first looked to the demographics and then reviewed discretionary modelling conducted by the permit application. In order to evaluate demographic information, the Illinois EPA utilized the Agency's Geographic Information System (GIS) mapping tool EJ Start. EJ Start identified the area as an "area of EJ concern" pursuant to the Illinois EPA's EJ Public Participation Policy (https://www2.illinois.gov/epa/topics/environmental-justice/Documents/public-participation-policy.pdf). As such, the Illinois EPA sent an environmental justice notification letter early in the application process and which ultimately led to requests for a public hearing, which was not statutorily required, but was granted given significant public outreach. The Illinois EPA therefore conducted enhanced public outreach in accordance with existing policies. In addition, recognizing the concern for the proposed location of the source being located in an area of EJ concern, the Illinois EPA requested and obtained modelling from the permit applicant in order to determine whether there would be significant impacts for emissions from the shredding operation.

28. The public hearing was not consistent with the Agency's EJ policy.

Much of the Agency's Environmental Justice Policy is concerned with enhanced public outreach, which as discussed herein, the Illinois EPA conducted via an environmental justice notification letter and subsequent discretionary public hearing.

On September 25, 2019, the Agency received an application from General III, LLC to construct a new scrap metal recycling facility at 11600 South Burley Avenue in Chicago. The Agency is subject by law to a maximum 90-day review time for an application of this nature unless the applicant waives such restriction. Additionally, for an application of this nature, public notice is not required by law or regulation. As such, to provide an opportunity for the public to become aware and have an opportunity to request information and provided feedback, the Illinois EPA has established an EJ notification process for facilities that will be located in a designated EJ area. It is important in cases such as this where a 90 day decision deadline is in place that the Agency send the EJ notification letter in a timely manner so that the public has as much notification and time as possible to request and review documents and ask questions of the Agency. In keeping with this practice, on October 1, 2019, the Agency issued an Environmental Justice notification letter. This letter was mailed to 48 persons, including numerous groups and elected officials representing the local community. This environmental justice notification letter elicited a response sent to Director Kim on October 30, 2019, from Keith Harley, on behalf of Southeast Environmental Task Force, the Chicago South East Side Coalition to Ban Petcoke and the Natural Resources Defense Council, groups that the Illinois EPA routinely works and has conversations with about projects on the South East side of Chicago; groups that as evidenced by past interactions represent a broad swath of residents in SE Chicago including the East Side neighborhood. The letter expressly requested an Environmental Justice Analysis, a hearing and a subsequent written public comment period for the proposed facility. Acknowledging the request and in recognizing the public interest in the proposed project, the Agency determined that it was appropriate to hold a public hearing on the permitting transaction. The Agency had numerous communications with these groups or their representatives. Additionally, Agency staff had conversations with these same parties to discuss issues and answer questions about the other facilities that are currently on the site and that will be a single source with GIII once the facility has relocated.

As an additional point, the Agency places great importance on its Environmental Justice program and ensuring that minority and low- income persons in Illinois are able to have information about and input into Agency decisions consistent with sound EJ principles. The seriousness of our consideration of the input received leads the Agency frequently, as in the case of the GIII application and permit, to make demands of facilities over and above legal requirements in the submittal and review of application materials and conditions of the permit. Demands made of the applicant are described in other responses in this document and changes to the draft permit may be found in Appendix A of this document.

29. The public hearing was inadequate: (a). it was only in English;

    the Illinois EPA Spanish interpreter did not interpret anything said by Agency officials or English speaking participants so the hearing discriminated against Spanish speaking residents in this community;

    (c) there is no way for Spanish speaking residents to listen to the recorded hearing unless they found their own interpreter; and

    > According to the Illinois EPA's EJ Policy, "The EJ Officer will determine when public notices should be bi- or multi-lingual, where these notices should be published, and when translators should attend hearings. The EJ Officer will also review and approve the proposed response to EJ comments raised at hearing or in written comments, and coordinate this response among the Bureaus, Division of Legal Counsel and the Office of Community Relations.

The Illinois EPA Office of Environmental Justice coordinates with the Office of Community Relations in accordance with the Illinois EPA's Environmental Justice Policy on translation issues, with the EJ Office goal to establish guidelines and Community Relations to implement those within the Agency outreach. As mentioned elsewhere, the public notice requested that anyone needing translation services contact the Illinois EPA and no one did. Notwithstanding, the Illinois EPA had a Spanish speaking employee on hand at all times during the hearing. As discussed elsewhere, the Illinois EPA seeks to work with local communities and representatives to determine appropriate outreach. The Illinois EPA acknowledges the comment and though the Agency believed that it had been having sufficient conversations in the days and months leading up to the notice and hearing, the Agency hopes to work closely with groups in the future to ensure that these types of issues are more fully addressed.

30. Agency did not translate its own comments during hearing (e.g. how to submit written comments)

    Although the Illinois EPA hearing notice mentioned the process to request interpretation, the Illinois EPA should not place the burden of requesting interpretation on an Environmental Justice community, a low-income minority community. Instead, the Illinois EPA should proactively research the basic demographic and linguistic isolation statistics of every Environmental Justice community (available on the US Census website) before every public hearing (whether in-person or virtual) to ensure full public participation in the permitting process.

The Illinois EPA recognizes this concern and, in the future, hopes to work closely with community members and groups to evaluate the need for translation services in addition to the steps mentioned in the comment. As mentioned elsewhere, while the Agency must operate within its statutory constraints, including time constraints, the Agency prides itself on being responsive to communities

and their needs or desires as relate to the outreach the Agency performs and did not believe that its outreach was lacking as it related to the need or desire for translation. The Illinois EPA has in the past and will continue to evaluate issues concerning translation and appreciates the input of local community groups as expressed in these comments and dialogues that the Agency enjoys in its regular outreach.

31. In addition to the problematic public participation process, Illinois EPA's broader permitting action will result in significant, disproportionate impacts on communities of color and other protected classes, in violation of federal and state civil rights laws

There is no information in the record to suggest that issuance of the construction permit will result in significant, disproportionate impacts. The Illinois EPA reviewed modelling conducted by the permit applicant, which did not demonstrate any significant adverse impacts. Furthermore, the Illinois EPA has an air monitor at nearby Washington High School, which will provide information concerning emissions impacts of the shredding operation.

32. The Agency should especially pay attention to the history of this facility because General Iron is moving to an area of environmental justice concern. The Illinois legislature has recognized that the principle of environmental justice requires that no segment of the population, regardless of race, national origin, age, or income, should bear disproportionately high or adverse effects of environmental pollution. 415 Ill. Comp. Stat. Ann. 155/5. Moving this facility to the East Side community does just that.

415 Ill. Comp. Stat. Ann. 155/5 references the Findings in the Illinois Environmental Justice Act. The Act goes on to provide for the formation of the Illinois Environmental Justice Commission to address these Findings. An Illinois EPA representative is designated by the EJ Act to serve as a Commissioner on the Commission and the Agency is further directed to provide administrative support to the Commission. The EJ Act does not place additional authority with the Agency to address permitting, zoning, or otherwise provide regulatory direction to the Agency.

33. The Draft Permit fails to consider the cumulative impacts on the East Side community to which the facility is moving. When there are potential environmental impacts in an area of environmental justice concern, the Agency is supposed to look at the information provided as well as other available information to assess whether there are potentially significant adverse environmental impacts.

As described above, the Illinois EPA looked at the modelled emissions impacts and has an air quality monitor on Washington High School, both of which provide information concerning potential environmental impacts. While the Illinois EPA can and does evaluate environmental impacts from sources during a permit transaction, there is not currently any Illinois or federal law or regulation addressing cumulative impacts in the context of a permitting transaction. Without a legal mandate, the Illinois EPA is limited as to what it do can regarding cumulative impacts (e.g., more stringent permit conditions).

34. [I] oppose yet another heavy industrial facility notorious polluter relocating from the well-off, predominantly white Lincoln Park community, to this environmental justice community. The Mayor's Office behind closed doors facilitated an agreement whereby General Iron would leave the higher income and largely white Northside Lincoln Park neighborhood by 2020 and relocated to the

Southeast Side environmental justice community. Mayor Lightfoot's election in 2019 did not change the overall trajectory.

As noted in this comment, the Agency does not have authority or review over land-use and zoning decisions. For decisions within the boundary of the City, this authority resides with the City.

35. This is not the just and equitable process or outcome that Illinois EPA purports to uphold.

The Agency followed its Environmental Justice Public Participation Policy, a policy that has well served the Agency and the commenters on numerous occasions including the present instance. Notwithstanding, the Illinois EPA has acknowledged and demonstrated in practice that the policy is a living document, one that has and will be revised based on real world experience and input from environmental justice communities. While the commenters may not like the decision at the end of the review process, the Illinois EPA strives to ensure that the public outreach process is as robust as possible. The steps taken in this case, pursuant to the Agency's EJ Public Participation Policy, provided for meaningful input from the public.

The Agency issued an environmental justice notification letter which solicited a hearing request. The Agency held a hearing including written comment period. Additionally, the Agency worked with various local groups to answer questions related to the application. While the hearing was of necessity different than the usual hearing, the Agency made several enhancements and was thoughtful about the process such that it was inclusive for the public.

Information Sharing

36. How may I get access to the readings taken from the air monitoring station at G.W. High School?

The monitoring information is readily available to the public through requests to the Agency under the Freedom of Information Act. For ease, requests of this nature may be submitted to Brad Frost of the Office of Community Relations, who will then forward them to the Agency Records Unit for response. To directly request the documents, the FOIA request form may be found at https://external.epa.illinois.gov/FOIA

37. What is the best way to maintain a direct line of communication with the Illinois EPA if emissions are seen from this facility?

Directions on how to submit complaints and observations are found on the Agency's pollution complaint page, https://www2.illinois.gov/epa/pollution-complaint/Pages/default.aspx There you will find an online form for ease of submittal that includes all of the information that the Agency requests.

All complaints are investigated by the Illinois EPA. Notably, for complaints relating to sources located within the City of Chicago, the Illinois EPA often seeks the assistance of the City of Chicago Department of Public Health. Of course, any violations of City ordinances would be addressed by the City and violations of the Environmental Protection Act would be addressed by the Illinois EPA.

38. Can members of the general public request information directly from the source?

The public is certainly free to communicate with a source regarding requests, questions, comments or concerns. Often, sources welcome the exchange and find it mutually beneficial. For example, some sources afford tours so that the public may see what it is they do. However, the source is not under a statutory obligation to directly provide to the public reports relative to its operations that are regulated by the Agency. Notwithstanding, the information required to be reported to the Agency under the permit is available under the Freedom of Information Act; and, as noted elsewhere herein, the reporting obligations have been expanded under the issued permit.

39. The permit should require notification to the public, in addition to Illinois EPA, of any emissions violations.

The permit contains numerous reporting obligations incumbent upon General III. Notably, a key reporting requirement relates to deviations from the terms of the permit. Information reported to the Illinois EPA by General III is available to the public under the Freedom of Information process. FOIA requests may be made by request to the Agency; the online FOIA request form may be found at https://external.epa.illinois.gov/FOIA For assistance in this regard, please contact the Office of Community Relations contact listed in the introductory section of this responsiveness summary.

40. Page 23 of the draft construction permit says "the owner or operator of a subject VOM source shall collect and record all of the following information each day and maintain the information at the source for a period of three years." The Illinois EPA should require the company to post all monitoring data weekly on a publicly available website, given the company's record of past violations.

The permit contains numerous recordkeeping obligations incumbent upon General III. The records that are to be maintained are voluminous. Reporting all of this information to the Illinois EPA or posting same to a website would not be practical. Rather, key information in ensuring compliance with applicable terms is reported to the Illinois EPA. This information is available to the public.

Cumulative Risk

41. I would hope that the Illinois EPA will consider the cumulative burden on the Southeast Side community when evaluating this new facility.

While not statutorily or regulatorily required to perform any cumulative impact analysis, General III performed air dispersion modeling to address its impacts on ambient air quality. The modeling looked at metallic hazardous air pollutants, with special attention to lead and manganese. The modeling demonstrated that the air impact will not exceed any established standards. A robust inventory of other local sources was included in the modeling inventory and any other potential sources are accounted for through use of the monitoring station at Washington High School for background monitoring values.

42. EPA should consider all emissions (total amount) not just from this location, but other nearby emission sources.

The Illinois EPA has endeavored to address the contributions from other sources in the region to the two hazardous air pollutant metals believed to be of significance – lead (Pb) and manganese (Mn). Not only was there a robust inventory of other sources included in the modeling inventory, but a background monitored concentration was added to the modeled impacts to account for potentially unknown, unpermitted, natural and/or distant sources.

43. The EPA to not just consider the emissions from this one location, but instead add these emissions to the total amount that the neighbors of Eastside and the students of GWHS will be exposed to. If we think of the environment surrounding this facility and the school as a bathtub, the proposed emissions are only adding to a bathtub that is already full of emissions from other sources nearby and there is little to nothing being done to empty the tub. I have already cited the Air Dispersion Modeling Protocol document. In that same section, RK & Associates are asking the EPA to allow them to not count emissions collected at the Washington High School air monitoring station on days when the wind is not blowing from the southwest.

The Illinois EPA has endeavored to address the contributions from other sources in the region to the two hazardous air pollutant metals believed to be of significance – lead (Pb) and manganese (Mn). Not only was there a robust inventory of other sources included in the modeling inventory, but a background monitored concentration was added to the modeled impacts to account for potentially unknown, unpermitted, natural and/or distant sources. The Illinois EPA directed the permit applicant's consultant to use conservative background values obtained from the analysis of total suspended particulate samples from the Washington High School monitor. For lead, this represented the highest three-month rolling average concentration for years 2016-2018. For manganese, the background values represented the maximum 24-hour average and annual average concentrations during those same years. The monitored values did not selectively eliminate emissions collected from any wind direction, including "when the wind is not blowing from the southwest." The Illinois EPA is well aware of air pollutant levels in the Lake Calumet region of Cook County and the need for maintaining health-protective levels.

44. Another failure of the EPA was its failure to consider the George Washington High School air monitoring data when drafting the permit. This data shows that the Southeast Side neighborhood already deals with the state's highest levels of toxic heavy metals, chromium and cadmium, as well as sulfates."

The Illinois EPA required the company to perform ambient air modelling and submit such to the Agency as part of its application, an atypical request for a facility of this size. This modeling used data from the Washington monitor as its background ambient data.

45. The applicant has failed to describe and Illinois EPA has failed to consider cumulative impacts of permitting a new source of heavy metals in an already overburdened EJ community, which has among the highest monitored levels of airborne metals in entire state.

While not statutorily or regulatorily required to perform any modeling in the application, the Agency required General III to perform air dispersion modeling demonstrating that the air impact will not exceed any established standards for the HAP metals. lead and manganese. Notwithstanding that the monitor at Washington High School registers metals as a fraction of the captured PM emissions, the levels do not exceed any health-based ambient air standards for metals.

46. GIII did not consider the impact of the existing operations at the site.

GIII performed air dispersion modeling for metallic HAPs in support of the air construction permit application and demonstrated that the air impact will not exceed any established standards. The Illinois EPA later evaluated the increase in metallic HAPs from the four SCPM facilities in conjunction with the GIII HAP emissions but did not find any increases of potential concern. Metal HAP emissions from the SCPM Entities' ROSS affected sources are less than 0.1 tons annually.

47. The cumulative effects of this pollution are already causing negative health consequences to residents, including asthma and other respiratory illnesses.

The community already has health problems like asthma. The cumulative effects of existing pollution are already causing negative health consequences to residents, including asthma and other respiratory illnesses.

Concern with health issues (e.g. students with asthma, chronic lung problems) in area with citation of data from Respiratory Health Association

The Agency recognizes that low-income and minority communities may struggle with health issues at rates disproportionate to the general population. While certain state and federal environmental regulations are based on health data, e.g National Ambient Air Quality Standards, the Agency's statutory authority rests with the regulation of sources of air pollution. The statutory authority to work toward healthy outcomes for the State's population rests with the federal, state and local Health Departments as health outcomes are resultant from numerous and complex factors of which ambient air quality may be one, but except in rare instances, only as a secondary or aggravating factor to other more systemic issues. The past fifty years of environmental regulation have resulted in large reductions in point source emissions and large improvements to ambient air quality throughout the state.

48. The site is located within the Calumet Industrial Corridor and the greater Calumet region, where multiple industries contribute to poor air quality. Compared to citywide averages and most other industrial corridors in Chicago, there are higher rates of chronic obstructive pulmonary disease and heart disease within this corridor, signaling existing negative health impacts. Residents of the Southeast Side should not be asked to bear yet another health burden.

While the Agency recognizes that the SE side is home to the Calumet Industrial Corridor these designations and the resultant zoning are City of Chicago land use planning decisions. As regards the Illinois EPA's authorities, the area is in attainment for all health-based National Ambient Air Quality Standards with the exception of ozone, a non-attainment area that generally covers six counties and two partial counties in the Chicago metropolitan area.

49. What is the Illinois EPA doing to address environmental health disparities and inequities? How can Illinois EPA continue to allow heavy polluters negatively impact the health of residents on the southeast side?

Within its statutory authority, the Agency provides certain enhancements to its permitting. In this instance, these included requiring ambient air modeling in the application; permit enhancements

including increased recordkeeping; a plan to mitigate fugitive emissions; and an Environmental Justice outreach process by which the public was notified of the application receipt triggering a request for a public hearing. The resulting public comments had an impact on the final content of the issued permit.

50. The neighborhood (East Side) adjacent to the proposed General Iron facility is an Environmental Justice community. According to the US Environmental Protection Agency's EJSCREEN tool, the area within 1 mile of this proposed facility falls in the 93rd percentile for particulate matter (PM2.5)

The whole of the East Side neighborhood is defined an environmental justice area by the Illinois EPA's EJ mapping tool. As such, and described in more detail elsewhere in this document, there were certain enhancements made to the Agency process and ultimately to the permit based on this designation.

51. Concern that this is a residential area with school and parks in vicinity of the proposed location.

The Agency has no role in zoning, neither in the siting of facilities, nor in the emplacement of public or educational facilities, nor in the determination of appropriate barriers, distance or otherwise, between residential and commercial or industrial parcels. More specifically, local land use is the exclusive determination of local units of government, in this instance, the City of Chicago.

52. Potential and likely effects—direct, indirect and cumulative—of the proposed action should be taken into consideration.

Historically, the evolution of environmental regulation is such that the underlying statutes and rules are developed to address and minimize the likely potential emissions and effects from a particular industry and for larger sources to account for the impact of a facility on ambient air quality. Although this facility will not be a major source; nonetheless, the Agency had the company perform certain analysis to evaluate the impact of likely pollutants on ambient air quality.

53. Requests that any new facility be evaluated for its capacity to provide a net reduction in the air pollution burden on the community.

This suggestion is a requirement for new major sources of air pollution in non-attainment areas under the state rules for Major Stationary Source Construction and Modification (35 IAC 203). In this case, the Chicago metropolitan area is non-attainment for ozone. Chicago and indeed the whole of the state has demonstrated attainment for all other NAAQS pollutants. As a non-attainment area for ozone, oxides of nitrogen and volatile organic material are regulated as precursor chemicals. New major sources or major modifications to existing sources of NOx or VOM pollution must obtain reductions over and above the potential amount of new pollution. General III does not meet the definition of a major new source or major modification for either NOx or VOM and thus this requirement does not apply to this permitting transaction.

54. The EPA has already designated the Southeast Side neighborhood as an area that is "environmentally overburdened." (See, https://www.epa.gov/il/environmental-issues-southeast-chicago). The EPA's website boasts that it has "empowered" this community and suggests that it is attempting to "ensure the area's continued progress." Granting the proposed permit makes a mockery of the EPA's environmental justice designation and discredits the EPA's own promise to help this community.

The commenter is pointing to a United States Environmental Protection Agency webpage and verbiage. Nonetheless, the Illinois EPA does not dispute that most if not all of the SE side of Chicago has an environmental justice designation, indeed, it is the Illinois EPA's mapping that designates the area as such; USEPA's EJSCREEN tool does not give such designation. With such designation, the Illinois EPA enhances its review and outreach on projects. As mentioned elsewhere, this does not remove Illinois EPA's responsibility to take action on applications in a timely manner or to make determinations in compliance with state and federal law and rules.

55. The Illinois EPA should deny General Iron a permit based on the on the levels of pollution the new facility is expected to emit, taking into consideration the EPA's own recognition that the Southeast Side neighborhood is already overburdened with environmental hazards.

The USEPA includes this language on its website, and defines overburdened in its EJ 2020 Glossary, https://www.epa.gov/environmentaljustice/ej-2020-glossary Notwithstanding there are no statutory or regulatory authorities assigned to this definition but rather it guides policy. Similarly, there is not a state-level definition of "overburdened communities" either in statute or SIP and no clear state-level activities that should occur for such community except as provided for in the Illinois EPA's Environmental Justice Policy and EJ Public Participation Policy.

The Illinois EPA does define the area as environmental justice[6], and had no statutory bases for denial, but included enhancements to its outreach and permitting process which resulted in a more robust permit.

56. It is time for the Illinois EPA to protect the health of our community for future generations.

The environmental laws as currently written, specifically the Clean Air Act, include mechanisms to reduce air pollution over time including requirements for development of state plans to improve and maintain ambient air quality and reduce emissions from stationary sources, among other emission reductions. This has achieved for the State and nation significant and important reductions in pollutants since the inception of the Clean Air Act in 1970, including improved air quality for ozone, sulfur dioxide, and particulate matter, including lead and other heavy metal emissions. These mechanisms in the Act still apply and continue to drive environmental progress on air quality. That said, the Act does not prohibit new stationary sources; it instead provides for regulation of stationary sources, including a requirement for permitting to provide a legally enforceable document that sets out the relevant and applicable environmental regulations, compliance, recordkeeping and reporting requirements that must be met.

57. It is critical that we don't add another massive polluter on the Southeast side.

While the facility is an addition to several operations currently at the site, it is not a major source of emissions as defined by the Clean Air Act. The source will have emissions that are below major

[6] It should be noted that the Illinois EPA does not define "communities" or municipalities definitionally as environmental justice. The Illinois EPA uses census block groups for demographic analysis, defines each block group and includes a buffer to ensure largely unpopulated industrial or commercial areas do not inadvertently fall out of the definitional area, see Illinois EPA's Environmental Justice Public Participation Policy and EJ Mapping Tool, http://www.epa.illinois.gov/topics/environmental-justice/index

source levels. And in fact, the existing sources at the site, which all currently are ROSS sources will be required to obtain FESOP permits as a single source with these additional operations.

58. The Southeast Side faces among the highest cumulative environmental burdens in the City of Chicago and the state, given these impacts and numerous other environmental threats in combination with sociodemographic factors that make the community more susceptible to environmental impacts. As a matter of environmental justice, the community overall should not be subjected to the additional pollution from the proposed facility.

While it is not within the statutory or regulatory authority of the Agency to determine zoning or deny permits that otherwise would comply with the applicable environmental laws and rules, the Agency has had the company submit additional information, including modeling to assess the impact on local ambient air quality, and added enhancements to the permit because of the recognition that the facility is proposed for an area that meets the Agency definition of environmental justice.

59. The record claims that there is a buffer between the facility and residences, but several residences are within a half-mile radius of the proposed site. There are also a high school and a park about a half-mile away, along with an elementary school and another park within a mile of the proposed site.

It is not within the statutory or regulatory authority of the Agency to determine zoning including the establishment of appropriate setbacks or buffers between residential and commercial or industrial areas. Indeed, the Act does not consider setbacks or buffers as acceptable for sources of air pollution. Instead, the Act determines the property boundary as the only acceptable division between neighboring parcels and provides that visible emissions may not cross the property boundary except under certain limited conditions.

60. There are at least 10 permitted facilities in the area that will continue to negatively impact the health of the residents.

The Illinois EPA is aware of the sources in the area as companies must obtain and keep current either permits or registrations for sources of air emissions. Indeed, this is one of the substantive requirements of the Act to ensure that the Agency has an accurate inventory of sources such that when further reductions are needed to meet State Implementation Plan goals, an inventory is on hand to assess how best to reduce emissions to achieve state and federal air quality goals.

Zoning

61. Why is this plant not acceptable in Lincoln Park, but is acceptable down here?

Zoning and local land use decisions are not the purview of the State. This authority rests with local decision makers, in this instance the City of Chicago and Chicago City Council.

62. Why is it that these companies are coming to the southeast and southwest sides?

Again, the Agency has no role in zoning or siting of facilities. More specifically, where a facility may locate is the exclusive determination of local units of government. In this instance, the determination that General III may locate at Burley Avenue was the decision of the City of Chicago.

63. Why did this company pick this area?

The Illinois EPA does not play a role in determining where a facility may locate. An agreement between the City of Chicago, General Iron Industries, and RMG Investment Group was reached such that the existing scrap metal recycling operations of General II, LLC, at 1909 North Clifton Avenue in Chicago, Illinois cease and relocate, matters for which the Illinois EPA had no involvement and for which it has no legal role.

64. This permit involves racially unjust siting. GIII is proposing to relocate a harmful industrial use from a wealthier, whiter part of the city to one that has more black and brown residents. Again, racist outcomes do not require racist intent. The outcome of this relocation is to remove a health hazard from an affluent white neighborhood and place it in a lower-income Latinx neighborhood. Institutional racism, intentionally or not, produces outcomes that chronically favor or disfavor racial groups. That is exactly what a permit for this would do. This is most assuredly a racist outcome.

    There is environmental racism embedded in this relocation and it represents poor land-use planning.

The Illinois EPA has no role in locating or relocating sources nor in land use planning.

65. The City of Chicago has embarked upon a process of Industrial Corridor Modernization, reviewing and potentially modifying existing land uses within its industrial corridors. Some corridors, such as along the North Branch of the Chicago River, are complete, while others, such as the Calumet River, are not. At best, it is premature to relocate an industrial facility of this magnitude given that this planning process has not yet occurred. At worst, relocating this project would have an outsized influence on any future planning efforts, incentivizing other businesses to similarly move to the Southeast Side. This plant should not be relocated until a planning process is allowed to occur.

As the commenter notes, it is the City of Chicago who has embarked upon this process of industrial corridor modernization. And it is the City of Chicago that is making determinations as to where particular sources may locate. Indeed, the City still has determinations and permits that must be obtained by the company prior to relocation and certainly before construction and or operation of the scrap metal recycling operations at the Burley site.

Such activity is not within the statutory purview of the Illinois EPA. The issuance of the construction permit to General III is independent of and does not bear on the relocation. Indeed, while the permit would authorize the source to construct at the Burley Avenue location, it does not require the source to relocate there.

66. This permit involves racially unjust siting. GIII is proposing to relocate a harmful industrial use from a wealthier, whiter part of the city to one that has more black and brown residents. Again, racist outcomes do not require racist intent. The outcome of this relocation is to remove a health hazard from an affluent white neighborhood and place it in a lower-income Latinx neighborhood. Institutional racism, intentionally or not, produces outcomes that chronically favor or disfavor racial

groups. That is exactly what a permit for this would do. This is most assuredly a racist outcome.

Once again, the Illinois EPA does not make zoning or siting decisions. An agreement between the City of Chicago, General Iron Industries, and RMG Investment Group was reached such that the existing scrap metal recycling operations of General II, LLC, at 1909 North Clifton Avenue in Chicago, Illinois cease and relocate, matters for which the Illinois EPA had no involvement and for which it has no legal role.

Permitting

67. The application was not complete. General Iron's current facility experienced an explosion that caused significant damage to the facility and equipment in use there. The permit application represents that this equipment will be relocated to and used at the 11600 S. Burley Avenue site. The transfer of any equipment that can cause this kind of catastrophic failure requires that the permit application be revised to address risks related the proposed use of any equipment, its control efficiency, and the applicant's ability to operate the equipment safely and effectively. Further, existing emission estimates and air quality models do not account for emissions during periods of catastrophic failure and also must be revised. And, additional permit terms and conditions are clearly necessary to prevent future accidents and to ensure the integrity of the equipment and the applicant's operating systems.

The application contained the necessary information for the Illinois EPA to issue the construction permit. As a rule, permit forms seek information to assist an agency's evaluation of an application, however, the Illinois EPA is not without jurisdiction to base its permit decision on matters outside of the permit forms (e.g. its own institutional knowledge or judgement). In this instance, the application contained enough information to demonstrate that the source would not cause a violation of the Act.

The existing site did experience an incident at the Hammermill Shredder system on May 18th that damaged the control for the shredder system including the RTO. By letter dated May 20th, the Illinois EPA communicated its expectation that GII, LLC, retain a third-party consultant to perform a comprehensive investigation and evaluation of the incident and submit a report of same to Illinois EPA for its review. That evaluation would include a root cause analysis of the incident and of any necessary replacement of or repairs to the control train. Such investigation and evaluation was undertaken and is ongoing. Based on recent communications between Illinois EPA's staff and General III, as well as counsel for same, it appears that the RTO is reparable and that measures can be put in place to ensure that a further incident of this type can be avoided including a safety bypass valve. The Illinois EPA will continue to monitor that situation along with the USEPA and the City including reviewing the reports of the evaluation.

The construction permit is issued to the scrap metal recycling facility on the basis that it can comply with applicable requirements most notably Pollution Control Board Part 218, Subpart TT, which requires an overall reduction in uncontrolled VOM emissions of 81%. With the proposed RTO and enclosure, the requisite demonstration has been made. This demonstration will be verified via post construction emissions testing of the control and enclosure. The permit is for an RTO, not necessarily the RTO from the existing site. In the event, it is determined that the existing RTO cannot be utilized, a like RTO could be constructed. Regardless, the issued permit requires the source to install, operate

and maintain a continuous monitoring device for the inlet gas stream to the control train for the Hammermill Shredder System for the flammability of this gas stream as a percentage of the LEL of this stream. The LEL monitor would ensure that prior to reaching the LEL and potentially causing an explosion, the scrap metal feed to the shredder would be cut and the gaseous emissions stream would bypass the control train. Bypass events cannot be predicted but would be expected to be limited in number and duration. The estimated emissions impact is expected to fit within the established permit limits. Records and reports of such events are required under the issued permit.

68. Is the permit decision being rushed? What is the Illinois EPA's timeframe?

The permit is not being rushed, as the timeframe for permit decisions is governed by the Environmental Protection Act. The relevant provisions of Section 39(a) of the Act provide that if there is no action by the Illinois EPA within 90 days of receipt of the permit application, the applicant may deem the permit issued by operation of law. *See, 415 ILCS 5/39(a).* A permit that issued by operation of law is simply a type of enforcement shield, protecting a permittee from the allegation that source is constructing or operating without a permit. A permit issued by operation of law does not provide for substantive requirements that would ordinarily appear in a permit, such as numerous testing, monitoring, recordkeeping and reporting requirements detailed in the permit. Consequently, the Illinois EPA strives to avoid permit issuance by default.

General III's permit application was received by Illinois EPA on September 25, 2019, and multiple extensions of the statutory decision deadline were obtained to allow sufficient time to review the application, prepare a draft permit, and allow for public input. In fact, the time taken by the Illinois EPA to review the application and allow for public outreach was three times longer than the standard statutory time allowed for this type of permit application.

69. The permit should be denied. It is within the Illinois EPA's discretion.

Under the Environmental Protection Act, the Illinois EPA is required to issue a permit to an applicant upon proof that the proposed facility or equipment will not cause a violation of the Act or promulgated regulations. *See*, *415 ILCS 5/39(a).* This standard is a mandatory one, expressed in the language of the provision as a "duty" that is imposed upon the Illinois EPA. While agency deliberation of certain aspects of the permit may be grounded in the exercise of discretion, the broader legal standard governing permit issuance or denial limits the discretion of the Illinois EPA. The Illinois EPA finds that the legal standard noted above has been met. Nothing in the record, including the public comments on the draft construction permit, adduces otherwise.

70. Will you consider extending this process and making an adjustment to your decisional timeline, to allow equitable and robust participation for the community?

The decisional deadline associated with this construction permitting action is statutorily established – 90 days from receipt of application. That decision has already been waived more than once to accommodate for modeling and public participation, among other. The applicant has indicated an unwillingness to provide a further waiver. To avoid a default decision on the matter, the Agency must take action by June 25, 2020.

71. Please create a moratorium on permitting during a pandemic.

The Illinois EPA is a creature of statute. It does not possess the authority to create a moratorium on permitting.

72. The Illinois EPA cannot ignore public comment and approve the construction permit.

The Illinois EPA reviewed all comments provided at the public hearing and submitted during the public comment period. The Illinois EPA is generally responding to all comments that are significant and, as frequently happens, has made various changes to the permit in response to the comments, as discussed later in this document.

73. No company should be permitted to operate if that company poses a risk of serious health issues to the public.

Permits for the construction or operation of emissions units or control equipment may be acquired under the Environmental Protection Act upon a showing that there is no violation of the Act or applicable regulations. 415 ILCS 5/39(a). Except for some requirements that are developed on a health-based standard (e.g. National Ambient Air Quality Standards), this legal standard for permit issuance may not appear to directly account for risks posed to human health from an activity or exposure to a particular pollutant. This does not mean that the permitting process ignores these risks, only that they are accounted for, indirectly, through an evaluation of the rules and regulations that a stationary source must meet when constructing and operating new emissions units or control devices. The Act contains several enforcement provisions that are available to restrain violations, such as injunctions that can be sought by prosecutorial authorities under Sections 42(e) and 43, and by any persons adversely affected in fact under Section 45. Other statutory or common law remedies exist that complement the enforcement remedies under the Act.

74. Is it fair to say public comments would not prevent the permit's issuance, unless a commenter can somehow prove General Iron would violate said regulations?

Again, permits for the construction or operation of emissions units or control equipment may be acquired under the Environmental Protection Act upon a showing that there is no violation of the Act or applicable regulations. 415 ILCS 5/39(a).

75. How does the permit process work for existing equipment?

To remove emission units or air pollution control equipment from a property, a permit is not required. To relocate or "construct" that same piece of equipment at a new property a permit is required. In this case, General III has indicated that the RTO is being relocated. Thus, a construction permit for that RTO is necessary. However, it must be noted that there is no requirement to relocate any of the equipment from the existing location to the new location. Rather, the requirement is to obtain a permit for the operations that will be conducted at a given site and to demonstrate that the source can operate in compliance with applicable requirements.

76. It was misleading for the hearing panel to state that the Illinois EPA has no choice but to issue a permit to a source if the source will be in compliance with the regulations.

Under the Environmental Protection Act, the Illinois EPA is required to issue an air permit to an applicant upon proof that the proposed facility or equipment will not cause a violation of the

Environmental Protection Act or the Pollution Control Board's Subtitle B regulations. This standard is expressed as a statutory duty, not an exercise of discretion, and it focuses on whether the proposed facility or equipment will possess the design and operational capabilities to comply with environmental requirements.

Public comments frequently question why compliance problems occurring at another facility operated by the applicant (as relevant here), or at the same facility in the case of a new or renewed operating permit, are not factored into the permit review process. In general, and for the reasons described elsewhere, the Illinois EPA's review of an application does not look to past practices at the source (or the same source at another location) but, rather, on the ability of an applicant to comply prospectively with the applicable requirements that govern the emissions source that is being constructed or operated. In the case of air construction permits, this review reflects the required standard of issuance and the application content requirements mentioned above, which focus on prospective compliance and not aspects of enforcement.

77. How did the Illinois EPA consider violations from General II's existing facility in the review of the construction permit application for a new facility on the East Side.

As stated at the public hearing, the Illinois EPA did not consider alleged violations at the existing facility in its review of the construction permit application for the new facility. As a general rule, the Illinois EPA does not consider the enforcement-related history of an applicant as part of the permit review process. This is because the structure of the Environmental Protection Act, as revealed in its provisions, divides permitting and enforcement functions into separate programs, though there are limited exceptions that will be discussed later. The Act provides for a state-wide program that is aided by private remedies, namely, the enforcement provisions found at Titles VIII and XII, to hold polluters responsible for the harm that they cause.[7]

Civil enforcement can be brought through a filing of a complaint in a circuit court or with the Board against any person that violates the Act, Board regulations or a permit. Legal actions can be initiated by state prosecutorial officials or by any person through a citizen's suit. Such cases can involve extensive discovery proceedings, pre-trial procedures, and eventually either a settlement or a trial (or evidentiary hearing) to determine liability and requested relief (civil penalties, injunction, cease and desist, etc.) sought in the complaint. A complainant bears the burden of proof in a civil enforcement action.

Permitting programs are codified at Title X of the Act and in the Board's implementing regulations, including 35 Ill. Adm. Code Part 201 governing state air construction permits. These requirements assure that the permit review is conducted as a record proceeding, which is part of an intricate administrative continuum between the Illinois EPA and the Pollution Control Board. Under Section 39(a) and Part 201, the Illinois EPA reviews an application for air construction permit according to a formal standard of issuance and permit content requirements, as discussed above, and other rules of procedures.

If an applicant appeals an agency decision to deny or issue the permit, the Board acts as an overseer to determine whether the permit decision, based exclusively on the record prepared by the Illinois EPA, is supported by the relevant standard of administrative review. The burden of proof in a permit

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[7] **415 ILCS 5/2(b).**

appeal is on the applicant and because the review is based only on the record assembled by the Illinois EPA, discovery proceedings are usually limited. Other procedures not addressed by the Act or implementing regulations may also be relevant to the Illinois EPA's permitting role. This includes procedural due process implications outlined by appellate court rulings beginning nearly forty years ago. A seminal case is *Martell v. Mauzy,*[8] which laid the groundwork for later recognition that the programs are separate. The federal district court decision held that the Illinois EPA's denial of an operating permit based on "putative" (or alleged) violations[9] required a pre-denial hearing by the Illinois EPA, as opposed to the usual post-decision appeal procedures before the Board, because it deprived the applicant of recognized liberty interests protected by procedural due process.

Other cases followed, establishing the basic principles that have frequently been cited by the Illinois EPA at informational permit hearings and in responsiveness documents for many years. The Illinois Third District Appellate Court affirmed the Pollution Control Board's decision that a special waste stream permit was improperly denied on the grounds of alleged violations cited from a parallel pre-enforcement action.[10] In citing to the Board's opinion that the Act's procedures for permitting and enforcement are "separate and distinct," the appellate court affirmed the Board and upheld the latter's inference that the permit denial process was "improperly" used in lieu of enforcement.[11] [12]

As mentioned, there are limited exceptions to the general rule described above. Notably, two exceptions originate from statutory amendments by the Illinois General Assembly to the Act in 2003 in P.A. 93-575 (93rd General Assembly). The amendments introducing these exceptions to Section 39(a) of the Act did not eclipse the existing framework of the Act or its implementing regulations, as much of that construct was left untouched. The legislature also did not overrule existing caselaw and, as such, the changes simply memorialized existing caselaw and other provisions of the Act that existed at the time.

The first exception created by the amendments to Section 39(a) allows for agency discretion in considering "prior adjudications of noncompliance" with the Act for environmental releases by an

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8 **511 F. Supp. 729 (N.D. Ill. 1981).**

9 **The purported authority for the permit denial was Section 39(e), later re-codified at 39(i). The grounds for the denial of the operating permit rested with a history of alleged violations involving refuse disposal facilities, including a past enforcement action involving USEPA, two past and one pending state enforcement actions, a pending *quo warranto* action and agency inspection reports.**

10 ***See, EPA v. PCB,* 252 Ill. App. 3d 828 (3rd Dist. App. Ct. 1993).**

11 ***Id.* at 830. The ruling also illustrates the difference between evaluating a source's compliance status (viewed through an enforcement lens) and determining whether a permit application meets the Act's requirements for permit issuance (viewed through the Act's standard for permit review). This is shown by the court citing to application materials showing that the applicant's analyses of compounds used in its special waste streams were below regulatory limits, thus negating the grounds cited for permit denial.**

12 ***See also, ESG Watts, Inc., v. PCB,* 286 Ill. App.3d 325, 334-335 (3rd Dist. App. Ct. 1997)(agency consideration of alleged violations was not proper permit denial was supported for other reasons); *The Grigoleit Co. v. EPA*, PCB No. 89-184 (November 29, 1990)(if IEPA has waste concerns, the proper mechanism to address those concerns is an enforcement action rather than a denial of a permit).**

applicant. The Illinois EPA only uses this authority rarely, in large part, because judicial (or quasi-judicial) rulings based 'on the merits' of an environmental enforcement case are uncommon. The bar set by these criteria is high, as it is perhaps meant to protect against a potential deprivation of the same interests claimed by the applicant in *Martell v. Mauzy.* Based on institutional knowledge, the Illinois EPA has used analogous, but more specific authority found in Section 39(i) in a handful of prior occasions.[13]

The other exception introduced in the 2003 amendments allows for agency discretion in imposing reasonable conditions relating to a "past compliance history" with the Act as is necessary to correct, detect, or prevent "noncompliance." *See,* 415 ILCS 5/39(a). The Illinois EPA does not routinely employ this authority, as it is also prudently viewed to hold a high bar by requiring demonstrated, not merely alleged, noncompliance. However, the Illinois EPA will sometimes incorporate relevant requirements from a final adjudication into a construction or operating permit, often doing so at the request of a respondent who has been directed to undertake a permitting change as a result of a settlement.

78. The Illinois EPA should deny the permit application for a construction permit because of adjudicated violations relating to the General Iron (or General II) facility.

A permit denial of General III's application for a construction permit based on the application before the Illinois EPA is not justified or authorized by the provisions of the Environmental Protection Act. Section 39(a) provides that the Illinois EPA may consider a permit applicant's prior adjudications of noncompliance with the Environmental Protection Act if the noncompliance involved a release of some contaminant to the environment. The Illinois EPA did not consider the entirety of General Iron's past compliance history cited in the comments to this proceeding because nearly all of it fails to satisfy the legal criteria set forth in the provision.

For purposes of this exception to the rule, an adjudication is generally regarded as a judgment by a court (or quasi-judicial body), relating to the Latin term "*judicare*," which means "to judge."[14] The concept of an adjudication consists of a formal determination 'on the merits' of the legal controversy.[15] The federal district court's ruling in *Martell v. Mauzy* is informative in this regard, as

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[13] **Sheridan-Joliet Land Development, LLC, denial letter dated August 14, 2018 (denying a renewal of clean construction and demolition debris development/operating permit due to a PCB enforcement adjudication); City of Morris and Community Landfill Company, denial letter dated May 11, 2001 (denying a request for significant modification to a development permit as a result of a criminal felony conviction); and *ESG Watts Inc. v. PCB,* 286 Ill. App.3rd 325 (3rd Dist. App. Ct. 1997)(denying renewal applications for a landfill's waste-streams based on a circuit court finding of liability and administrative citations).**

[14] ***See, Merriam-Webster On-line Dictionary* (www.merriam-webster.com) ("transitive verb: to make an official decision about who is right in (a dispute)"); Wikipedia (https://en.m.wikipedia.org) ("the legal process by which an arbiter or judge reviews evidence and argumentation, including legal reasoning set forth by opposing parties or litigants, to come to a decision which determines rights and obligations between the parties involved").**

[15] **Some might assert that the term should also include any type of court decree, including a settlement agreement resolving a case short of actual litigation, but such a notion misses the mark. A consent decree approving a settlement does not entail a judicial determination "on the merits."**

the "risk of erroneous deprivation" of the applicant's protected liberty interests was, at least in part, because the alleged violations had not been adjudicated.[16]

In many instances cited in comments, the claimed adjudications stem from administrative citations issued by the City of Chicago. It is not plainly evident that the resolution of those citations constituted a formal adjudication of noncompliance under the Act. The administrative citations issued by the City do not address infractions that arise from the Environmental Protection Act but, rather, are ordinance violations. A municipality's ordinances are entirely separate from the General Assembly's legislative enactments and, in this instance, nothing in the Act signals that the legislature meant for the Illinois EPA's purview to act upon ordinance violations. In this regard, it is not relevant that the facts relating to the citations correspond to matters that might be alleged under the Act, as Section 39(a) speaks to only the State's sovereignty.

79. The Illinois EPA should deny approval of the construction permit application for General III due to both admitted and adjudicated violations historically caused by Reserve Management Group/South Chicago Property Management ("RMG/SCPM") operating at the site of the planned construction of the General III facility.

For clarification of the record, and based on institutional knowledge, there are four manufacturing facilities that conduct metal recycling operations at the existing South Burley Avenue site where the planned construction of the General III facility will occur. The entities consist of Reserve FTL (d/b/a Reserve Marine Terminals), Napuck Salvage of Waupaca, LLC, South Shore Recycling, LLC, and RSR Partners, LLC (d/b/a Regency Technologies) and are collectively known as South Chicago Property Management, Ltd. ("SCPM"). SCPM is a corporate affiliate of two holding companies, RMG Investment Group, LLC, and RMG Investment Group II, LLC, who are doing business as Reserve Management Group ("RMG").

As previously discussed, the administrative citations issued by the City concerning the SCPM-related facilities are not adjudications involving the Environmental Protection Act but, rather, violations of City ordinances. There is also no indication in the record of this proceeding that violations by SCPM, who currently oversees the operations of the four manufacturing facilities at the existing site, would constitute a formal adjudication, or even noncompliance with the Act, relative to GIII's permit application.

Although the permit application indicates that the General III will be a single source together with the SCPM-related facilities, and the construction permit includes a permit condition to that effect, a source designation only addresses the respective roles and responsibilities of facilities recognized as a single source in the context of permit classification, though it can, on rare occasion, affect rule applicability too. However, a source designation used in classifying permitted sources under the Clean Air Act Permit Program ("CAAPP") and the FESOP should not be confused with shared or joint liability amongst related entities under applicable laws. As discussed elsewhere, how General III and the SCPM-related facilities opt to permit their single FESOP source, whether as single or multiple FESOP permits, will be addressed in the operating phase of the project.

[16] **511 F. Supp at 741 (i.e. applicant lacked an "evidentiary hearing of any kind" regarding state settlement order and pre-enforcement orders considered by the Illinois EPA in its denial).**

80. RMG/SCPM has admitted to noncompliance with the Environmental Protection Act in a letter sent to the Illinois EPA in November 2019, such that there is a basis for a past adjudication with the Act for permit denial. The noncompliance relates to the failure of the manufacturing facilities to historically obtain the proper operating permits and the admission(s) addressed in the letter are not paper violations but involve unpermitted releases of pollutants to the environment.

As mentioned in a prior response, the Illinois EPA does not view SCPM to be the same legal entity as the permit applicant involved in this proceeding.[17]

Additionally, the Illinois EPA does not view a voluntary self-disclosure letter submitted under the enforcement provisions of Section 42(i) as evidence of a formal adjudication for purposes of Section 39(a), such that it could be considered in a permit review. Although a pre-enforcement letter could contain admissions, they would not be adjudicative in nature.

81. The noncompliance by the SCPM-related facilities occurred over many years and the discovery of such violations was inevitable given that they are mentioned in the General III permit application. It was grossly unfair and contrary to the Act [for the Illinois EPA] to offer the companies enforcement protections with respect to the noncompliance.

For reasons mentioned above, the Illinois EPA did not consider the pre-enforcement investigation of the SCPM-related facilities, including the self-disclosure letter, as evidence of noncompliance by General III in this permit proceeding.[18]

82. The structure of the Environmental Protection Act should compel the Illinois EPA to recognize the past violations being addressed by the City of Chicago, who acts as a local environmental agency and maintains a close relationship with the Illinois EPA, as adjudications of noncompliance with the Act. Such recognition will promote the goal of encouraging the coordination of environmental protection by local governments.

The Illinois EPA recognizes the strong working relationship with the City of Chicago in the investigation of emissions sources in the region, as well as the significance and value that the relationship provides to the residents and the State of Illinois. However, the reach of Section 39(a), including the Illinois EPA's consideration of a possible permit denial based on adjudicated noncompliance with the Act, depends upon the applicability of facts to the law. In this case, even the most liberal construction of the Act's relevant provisions cannot reconcile the issuance of a permit denial with the absence of a formal adjudication of noncompliance with the Environmental Protection Act. Recognizing and promoting the involvement of local governments in environmental protection efforts is important but not germane to the analysis of this permit application.

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[17] **Because the Illinois EPA declines to consider the SCPM self-disclosure letter to be within the scope of review of the General III application, the notion that the nature of the unpermitted operations should constitute a release of contaminants to the atmosphere for purposes of Section 39(a) is moot.**

[18] **To assist the public's understanding concerning a matter of possible interest, the Illinois EPA notes that any relief (i.e., enforcement protections) in a civil penalty assessment provided by the State of Illinois in response to a voluntary self-disclosure letter does not arise unless or until a formal enforcement action is commenced and resolved through either a negotiated settlement or adjudication.**

83. Nowhere does the Act expressly state that the Illinois EPA cannot consider adjudications of local air ordinances as a basis for denying a permit under Section 39(a).

The Illinois EPA is a creature of state law, which means that its legal authority derives from the laws enacted by the General Assembly and approved by the Governor. Such authority takes the form of expressed powers, as found within the enactment's provisions, or implied powers, to the extent necessary to execute the expressed powers. The absence of specific authority in the law (e.g., "nowhere in the Act does it say") does not create a source of authority for an administrative agency, it simply confirms that no such authority exists. Put another way, the Illinois EPA's powers are defined in relation to the Act, and do not include the vast universe of authorities that are not otherwise specifically prohibited.

In this instance, if the Act does not expressly provide for the consideration of enforcement-related matters that stem from local air ordinances, or are not implied from those expressed powers contained in the Act, the Illinois EPA plainly lacks the authority to consider such things in its permitting capacity. The Act neither expressly provides for, nor otherwise implies, that violations of local air ordinances are within the purview of the Illinois EPA's permit review under Section 39(a).

84. Thirty-three unresolved administrative citations involving General Iron are currently pending with the City of Chicago, delayed in their resolution and rescheduled for hearings due to the COVID-19 pandemic. Because the citations involve repeated and substantive violations that relate to matters addressed by this permitting action, the Illinois EPA should postpone the permit decision to allow for the resolution of the citations so that they may be considered in the permit's review.

The Illinois EPA acknowledges the administrative delays associated with governmental affairs during the COVID-19 pandemic and understands the desire expressed by the comment to account for all relevant information that could support a basis for a permit denial. However, the Illinois EPA is unable to extend the decision deadline and, in any event, could not evaluate the citations even if resolved in favor of the City. This is because the Illinois EPA lacks an ability to unilaterally postpone or extend the current decision deadline and, as mentioned elsewhere, the administrative citations process represents the sovereign power of the City to enforce violations its municipal ordinances, not noncompliance with the Environmental Protection Act.

85. Evidence of noncompliance by the SPCM-related facilities from multiple sources, including prior admissions from a pre-enforcement process overseen by the Illinois EPA, liability findings by the City of Chicago and past City inspection reports, should be considered by the Illinois EPA in imposing more stringent conditions in any issued permit.

As discussed elsewhere, SCPM is not the permit applicant in this proceeding. The fact that the SCPM-related facilities will be treated as a single source for purposes of future FESOP permitting does not now, and will not prospectively, affect issues relating to the liability. As also discussed, the cited allegations from the comments do not relate to noncompliance with the Act.

Separately, the Illinois EPA does not construe Section 39(a) of the Act as authorizing permit conditions based only on allegations of noncompliance with the Environmental Protection Act, as suggested by

the comment. The text of this part of Section 39(a) provision speaks plainly to "noncompliance"[19] and does so without qualifying its meaning as either alleged or adjudicated. In comparison to other provisions of the Act, when the legislature means "alleged violations" it employs the modifier expressly, as in the case of the Act's pre-enforcement process where it is quite sensible. 415 ILCS 5/31(2018).[20] In other contexts, the General Assembly seems to find reliance on mere allegations as antithetical to the Act's history and purpose. For example, the Board is not able to consider past enforcement history of a respondent in its determination of civil penalties unless the noncompliance is adjudicated.[21] It is also incongruous to suggest that the Illinois EPA can permissibly craft permitting conditions from mere allegations under the Section 39(a) when any revocation of a permit by the Board requires a formal enforcement action.[22]

In the recent past, the Illinois EPA asserted that the "noncompliance" language of the statute's text is best thought synonymous with "adjudications," in part, for reasons to avoid constitutional problems.[23] However, the Illinois EPA will allow for the consideration of admitted or uncontested matters in this analysis, to the extent that such proof support a showing of noncompliance. Note that court-approved settlement agreements containing admissions of liability or a clause allowing the Illinois EPA's use of the agreement for purposes of an adjudication under Section 39(a) would signal a court's affirmation of such a finding.

86. Evidence of noncompliance by the General Iron facility from multiple sources, including liability findings by the City of Chicago, pending citations before the City and past City inspection reports, and USEPA enforcement actions against General Iron should be considered by the Illinois EPA in imposing more stringent conditions in any issued permit.

The previous response answers several of the reasons why evidence of many of the alleged violations cited by comments cannot be considered by the Illinois EPA in this proceeding. One issue remaining is the effect of USEPA's consent agreements and administrative settlements on the Illinois EPA's ability to impose permit conditions under Section 39(a).

Based on the comment and its supporting attachments, prior USEPA investigations and resulting lawsuits involving the former owner of the facility, General Iron, occurred on at least three occasions in the last two decades, culminating in lawsuits resolved by way of a consent decree in 2006 and two

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[19] **The language used in the relevant text, as introduced to the Act as an amendment in 2003, essentially refers to "noncompliance" twice: the first time indirectly, as "past compliance history" would seem synonymous with noncompliance, and the second time directly.**

[20] **There are also instances where the term is unqualified but there is no need for a modifier, as the context is one in which the liability for actual noncompliance is being, or already has been, determined. *See,***

[21] **415 ILCS 5/42(h)(5). *See also,* 415 ILCS 5/42(b)(4-5)(2018)(assessing an additional penalty amount for certain administrative citation matters is restricted to a "second or subsequent adjudication violation" of the relevant provision).**

[22] **415 ILCS 5/33(b).**

[23] **See, Illinois EPA Responsiveness Summary for Sterigenics U.S., LLC, Willowbrook I, pages 68-70, dated September 20, 2019.**

administrative settlement agreements in 2012 and 2019. The earlier consent decree from 2006 does not purport to be a fully executed order, as it is not signed by the parties or the presiding judge, and it is not clear whether it is still in effect, as it contains a termination clause that may likely have been executed by now. The decree also only addressed federal matters[24] and therefore does not fall within the scope of the Section 39(a).

The administrative order from 2012 cites a single day of violation by the facility with the Board's fugitive emissions standard[25] and the regulatory equivalent of Section 9(a) of the Act. The 2019 administrative order cites to four inspection dates alleging that the facility failed to control VOM emissions below the applicability thresholds of the Board's Part 218 regulations.[26] The order also alleges that the facility operated as a major source without a requisite Title V operating permit, citing to the Illinois Clean Air Act Operating Permit Program.[27] Both orders required corrective action by the facility, including obtaining the necessary permits from the Illinois EPA.

The two administrative orders are within the scope of the Illinois EPA's authority under Section 39(a) for the consideration of permit conditions, as they reflected noncompliance with the Act through the State's Implementation Plan. The Illinois EPA reads the administrative orders as a fair acknowledgement by General Iron of its agreement with the terms of the orders, including statements asserting the company's failure to meet emission control requirements from the Board's Subtitle B regulations (i.e., fugitive emissions standard and Part 218, Subpart TT.

However, the Illinois EPA will not exercise discretion to apply the administrative orders to impose new conditions in the construction permit, as circumstances do not warrant them. It would also require significant record support, should General III appeal the imposed permit conditions, to support a showing of the *necessity* for conditions to correct or prevent the noncompliance addressed by the administrative orders.[28] It is noted that comment(s) do not allude to specific conditions that are necessary to address noncompliance covered by the orders.

87. Evidence of noncompliance by another facility, Chicago Rail and Port, should be considered for the GII facility because of fugitive dust violations addressed by USEPA in a Notice of Violation letter.

The record of this proceeding does not indicate that the referenced facility currently has any relationship to General III or the SCPM-related facilities such that it should be considered in this permit proceeding.

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[24] **The complaint alleged that the respondent knowingly disposed of appliances containing substances used as a refrigerant pursuant to 40 C.F.R. §82.154(a) and 82.156(f).**

[25] 35 Ill. Adm. Code 212.301.

[26] 35 Ill. Adm. Code 218.980(a)(1) and (b)(1).

[27] 415 ILCS 5/39.5(2)(c)(1).

[28] **At this stage of development, the facility has already installed the controls and performed the necessary emissions testing that were an outgrowth of the allegations, and the related permitting requirements addressed only the existing facility, not a new one at a different location.**

88. The Illinois EPA should ask Governor Pritzker to postpone the statutory deadline or declare the permit application incomplete.

The Illinois EPA is not inclined to seek a postponement of the current decision deadline through use of an executive order or otherwise, as the permit application contains all the requisite information to be deemed complete. To be accurate, the current deadline of June 25th governing the Illinois EPA's review of the construction permit application reflects the applicant's waiver of the decision deadline, not the original timeframe set forth in Section 39(a) of the Act.

89. Another source of authority under Section 39(a), which references the use of conditions "necessary to accomplish the purposes of the Act, and as not inconsistent with" Board regulations," is relevant to this proceeding. It provides broad authority for the imposition of conditions that go beyond the regulations if the two criteria reflected in the text are met.

The Illinois EPA agrees that this authority is relevant to this proceeding and, indeed, it is by far the most common source of authority used in the development of a construction permit for emission sources or equipment required by Section 39(a). Generally speaking, the language reflects a kind of catch-all authority and for many permits issued by the Bureau of Air, the authority is usually cited generically, and usually only once, for a wide range of conditions that are not expressly identified elsewhere in the Act or implementing regulations.

But this authority does not extend beyond its plain wording, as this comment contemplates. In fact, the Illinois EPA's role as a permit authority is tempered as much by the role that the Pollution Control Board shares under the Act as by Section 39(a). The Illinois EPA cannot misappropriate the role of the Board as the State agency charged with setting environmental control standards. The Board may even be guided by this concept when the statute's text comes into focus in permitting appeals, as more often than not, the Board sets a noteworthy bar in judging the "necessity" of operating conditions.[29]

90. The plain language of the [catch-all] authority of Section 39(a) contrasts with a misleading statement by one of the members of the hearing panel, who said that the Illinois EPA had no choice but to issue a construction permit to a source if the source will be in regulatory compliance.

This comparison tries to combine different concepts, leading to an incorrect conclusion. The reference to Section 39(a) relates to the scope of authority in setting permit conditions and the statement regarding permit issuance based on regulatory compliance is a restatement of the standard of permit issuance. Incidentally, because the restatement is a fairly accurate representation, there is nothing misleading about it.

91. The Illinois EPA is in error when it contends that it may only deny a permit a permit under Section 39(a) if there is an adjudicated liability finding by a circuit court or the Board (citing to a previous responsiveness summary discussion and footnote accompanying the Sterigenics permit proceeding).

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[29] ***See, IEPA v. Jersey Sanitation Corp.,*** **784 NE2d 867, 875-875 (4th Dist. Ct. App. 2003)(holding that petitioner was required to show that its [closure/post-closure] plan, which agency found lacking, "would not result in any violation of the Act and the modifications, therefore, were arbitrary and unnecessary").**

The discussion referenced in the cited responsiveness summary responded to a question regarding whether the Illinois EPA could deny a permit on grounds of past violations. The answers outlined in that earlier discussion are generally in accord with responses in this document, including the Illinois EPA's contention that the Act requires an adjudication if a past history of violations is the basis for a permit denial under Section 39(a).[30] The comment is mistaken in the belief that the document cites to a proposition that no other basis for permit denial exists under Section 39(a) than for of an adjudicated liability, as there are numerous other grounds that can form the basis for a permit denial.

92. The Illinois EPA is hypocritical when it claims that permitting is separate from enforcement, especially given the lack of enforcement activities conducted by the Illinois EPA in the last 15 years. The Illinois EPA cannot fail to meet its enforcement and permitting responsibilities and then rely on those failures to justify agency inaction, as it causes a vicious cycle and evidence of a failed agency.

The Illinois EPA appreciates the candor of this and related comments, but its enforcement programs are not at issue here. Certainly, the Illinois EPA is not above criticism in the performance of its responsibilities, and residents of the local community and throughout the State are free to express their displeasure with the Illinois EPA's implementation of its many roles.

The point at issue is about how an organization, a state agency whose authorities are defined by statute, perceives its roles, and performs its responsibilities, under existing laws and regulations. As mentioned, the Illinois EPA's permitting and enforcement programs typically operate independently of one another as a matter of course, as they have for many years. There is no doubt that the caselaw authorities cited in this document, and the principles that informed them, have been an organizing principle in bringing about this separation.

93. Illinois EPA must include permit conditions that provide the community with data about the facility's emissions.

The permit as revised has enhanced recordkeeping and reporting requirements. Notably, records and reports of the results of emissions testing are required under the revised permit. Also, quarterly reports are required under the final permit. These reports would include data about the facility's emissions. All reports required under the permit will be available to the public.

94. I am concerned for what a permit application review is constrained to.

Illinois EPA is generally constrained to what is contained in a permit application, such as whether applicable requirements will be met. The Illinois EPA cannot review/consider violations at another facility, as in this case, due to Illinois case law and interpretation of the permit Environmental Protection Act. As a result, Illinois EPA review is confined to matters of the application and not to compliance or enforcement considerations, with some limited exceptions.

95. The draft permit should require General Iron to keep records of emissions control testing and emissions for a longer period of time and should be made available to the public upon request.

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[30] **In retrospect, footnote 6 could have observed that a liability adjudication might also originate with a federal district court (or body acting in a quasi-judicial capacity) provided that the Act or implementing regulations in Illinois is the basis for the noncompliance addressed in the controversy.**

Generally, the records that are required under the permit have a retention period of five years. This is the customary retention period for FESOP and CAAPP sources. Unlike the records of the State, the records of a facility are not available to the public upon request. However, the records are available to the State upon request, which records would then be available to the public under the Freedom of Information Act.

96. Both Condition 19 and Condition 21 require that records be kept for "at least" a period of time, these two conditions contain inconsistent lower bounds – three years and five years.

Condition 19 merely recites the recordkeeping required by specific rule. Condition 21 addresses recordkeeping that goes beyond that rule. The timeframe for record retention in Condition 21 is consistent with that required of FESOP and CAAPP sources. That there are two discreet record retention periods is not an issue. To reconcile the two would serve to undermine the greater retention requirement.

97. Descriptions of the Ferrous and Non-Ferrous Material Separation Systems on page 1 of the draft permit are inconsistent with the emission limits for these Systems contained on pages 14-16. Illinois EPA must correct all descriptions and ensure that all emissions estimates, modeling based on those estimates, and proposed limits and monitoring, recordkeeping and reporting requirements encompass all proposed emission sources/units associated with their respective Systems.

The Illinois EPA acknowledges the inconsistency and has revised the permit to accurately list emission units. In short, the magnetic separators, box separators, and the stacking conveyors are not in addition to, but are the 70 conveyor transfer points.

98. We note that there appears to be a grammatical error in Cond. 10(b) – it may be that the provision omits an "and" between "unpaved areas" and "shall be treated."

This comment has been addressed.

Single Source

99. As part of its permit review and contrary to its well-established permitting standards, the Illinois EPA failed to address the SCPM-related manufacturing facilities that will be co-located with General III at the new facility.

The Illinois EPA addressed the single source permitting issue relating to this proceeding in accordance with applicable law and consistent with past practices. The permit application acknowledged that the General III facility will comprise a single source for purposes of permitting under the Act with the existing SCPM-related entities located at the site. In view of the relevant single source criteria that is reflected in Section 39.5 of the Act, together with the acknowledgement from the application, the Illinois EPA did not question treating the various facilities as a single permitted source. This is reflected in the draft and final permit at Condition 1e.

100. Despite apparently concluding that the General III and SCPM-facilities are a single stationary source, the Illinois EPA is conducting separate permitting activities of the two, which improperly segments all of the pollutant-emitting activities at the source. The current application provides an incomplete picture of the source and a single application is needed that combines the comprehensive emission-requirements into a single construction permit for the source.

As this permit proceeding involves an application for construction permit, the Illinois EPA is addressing matters relating to the development of the project, including the design and operating capabilities of General III's emissions units and control equipment that will be authorized by the permit. The application does not address activities relating to the SCPM-related activities due to the fact that those sources do not require a construction permit, independently or in conjunction with the project. At present, the SCPM facilities are operating pursuant to an existing Registration of Smaller Source ("ROSS") registered under SCPM's name. Condition 1e of the draft construction permit recognizes that General III is a single source with SCPM. Beyond this recognition, it is not necessary for the draft permit to contain any other requirements relative to the issue.

The Illinois EPA is aware that General III must submit a Federally Enforceable State Operating Permit ("FESOP") application on CAAPP forms in order to avoid major source status under the CAAPP. Based on institutional knowledge, the Illinois EPA is also aware that SCPM will be submitting a FESOP application at the same time. This indicates that the sources anticipate obtaining separate FESOP permits, notwithstanding that the facilities are sharing the same FESOP source status.

This approach is consistent with applicable law and past practices, which is illustrated in a USEPA petition response involving U.S. Steel Corporation issued December 3, 2012 (Petition No. V-2011-2). In denying a petition point addressing similar concerns expressed by the comment, USEPA observed that Title V permit authorities may issue "multiple title V permits to a single Title V source" provided that the compliance obligations for each facility are clear and that all applicable requirements are contained in a Title V permit. *Id.* at page 26. In its decision, USEPA declined to require the Illinois EPA's processing of U.S. Steel's Title V permit to be consolidated with a separate supporting facility, Gateway Energy & Coke Company. Both facilities were treated as a single source. The discretion in the permit authority likely relates to a recognized need to provide flexibility in reporting and other permit obligations in the context of a single source classification, given that different responsible officials or personnel will be overseeing the responsibilities of the respective facilities.

101. General Iron's operating permit application has not been acted on by the Illinois EPA in years. Deferring a single source determination to the operating permit phase of permitting for the source is inadequate.

The Illinois EPA is not deferring any single source determination, as the decision to treat the General III and SCPM-related facilities as a single FESOP source is being memorialized in the construction permit. The processing of the operating permits for the sources will be addressed in the future, in parallel fashion to the extent practicable.

102. The applicant has failed to describe, and the Illinois EPA has failed to consider the proposed new source along with the other sources already located at South Burley as a single source for air permitting purposes.

As elsewhere discussed, the existing SCPM Entities will be a single source with General III and will be

required to obtain a Federally Enforceable State Operating Permit. The other entities will be addressed, along with General III, during that operating permit application process.

103. "The Draft Permit fails to consider all of the RMG facilities in the Potential to Emit or air quality modeling of the proposed GIII."

The SCPM Entities continue to qualify for eligibility under the Registration of Smaller Sources (ROSS) program. Sources are eligible for the ROSS program if combined actual emissions of PM, CO, NOx, VOM and SO2 from non-exempt sources are less than 5.0 tons per year, or less than 10 tons over the two most recent years and total hazardous air pollutant (HAP) emissions are less than 0.50 tons per year. The ROSS program is mandatory meaning that if a source meets the eligibility criteria, it must be registered in the program. Absent changes in operation or new information, the SCPM entities must remain in the ROSS program until General III triggers the requirement to seek an operating permit.

Ambient air impacts from these operations are accounted for in the background monitoring values at the Illinois EPA's monitoring station at Washington High School, which evidences attainment of the NAAQS for PM.

Periodic Monitoring/ Practical Enforceability

104. The Draft Permit is unenforceable. Numerous permit limits, in particular on fugitive sources, are vague, require only weak or nonexistent testing or monitoring, and/or require insufficient recordkeeping, with virtually no mandated reporting.

As is explained elsewhere, this construction permit for this minor source does not require the content associated with permitting of major sources of emissions and specifically that associated with Clean Air Act Permit Program permitting. There is no requirement for periodic monitoring such as testing, monitoring, recordkeeping and reporting in this minor source construction permit. Notwithstanding, in response to comment, the Agency has clarified and enhanced many requirements within the permit.

105. The permit lacks specificity and is not enforceable.

Further specificity is not needed to make the permit enforceable. The applicable regulations and requirements that would apply to the facility are clear. Further, the construction permit requires General III to conduct emission testing, monitoring, and recordkeeping to show compliance with new emission limits and control requirements. The permit also requires GIII to prepare and implement plans for Operation and Maintenance and Feedstock Management as well as a Fugitive Emissions Operating Program.

106. The permit lacks monitoring and recordkeeping/reporting requirements to ensure compliance with and enable enforcement of the limits on the hours of operation. With respect to the shredder, noise monitoring can and should be used to track shredder operations on a continuous basis for purposes of determining compliance with the limit on hours of operations.

The permit as revised now includes a recordkeeping requirement relative to hours of operation per day, month and year for each process area. The draft permit already required deviation reporting from the hours of operation requirement. Illinois has no noise program, and regardless is not inclined to use noise to know whether a source is operating. Hours of operation is a very common consideration in determining and limiting the emissions of a source. Never has noise been the means by which compliance with the hours of operation was assured or determined.

107. Concern with Agency undercounting emissions from metal recyclers; these facilities have been miscategorized as minor emitters of pollution.

It is true that there is limited data on the emissions from scrap metal recyclers and that their emissions impact has not been readily understood. Given its national presence and role, USEPA took the lead on the matter in Illinois seeking emissions testing of select sources. Through that testing it was determined that the scrap metal recycling operation on Clybourn was a major source of VOC emissions. The USEPA entered an administrative order mandating the installation and destruction efficiency testing of an RTO. Under this construction permit, the Illinois EPA is also requiring emissions testing. That testing and the data resulting therefrom will prove instructive relative to the emissions from such operations.

108. The Draft Permit is utterly lacking in any control requirements and monitoring, recordkeeping and reporting requirements sufficient to ensure compliance with these limits by various "fugitive" sources on an ongoing, continuous basis.

The draft permit was not completely devoid of control, recordkeeping and reporting requirements. Fugitive control requirements included enclosure, sweeping and watering, and reporting was required for deviations. However, in response to comment additional the Fugitive Emissions Operating Program has been enhanced as has the recordkeeping and reporting.

109. Illinois Environmental Protection Agency should impose new permit conditions to control emissions and address General Iron's long history of non-compliance.

It is not clear what additional control requirements the commenter seeks to have imposed. The scrap metal operation is only subject to regulatory requirements for visible and particulate matter emissions and for emission of volatile organic material. The sole control requirement to which the source is subject applies to the Hammermill Shredder System and necessitates the reduction of uncontrolled VOM emissions by at least 81%. The Illinois EPA cannot unilaterally create and impose additional control requirements by way of this permit.

110. I am concerned for boilerplate restatements in the permit.

The use of boiler plate restatements of regulatory requirements is a practice of the Agency for efficiency in certain types of permitting as well as to minimize errant restatements of regulatory requirements. This approach creates no legal or technical issues, rather it serves to identify applicable rules and related provisions such as test methods.

111. Condition 10, merely contains vague, general control obligations for storage piles, roadways, vehicle loading and unloading, and other transfer points that simply list available control measures in the alternative and state that control shall be done "in accordance with" a required operating program,

for which Condition 10 lays out minimum requirements, along with incorporation by reference of a December 2019 fugitive particulate operating program and a provision for updating the operating program and incorporating it into the permit.

This approach presents no legal or technical issues. However, in response to comment, requirements addressing fugitive visible emissions have been clarified and enhanced in the permit and fugitive particulate operating program.

112. Condition 13 sets forth a restatement of Section 201.282 that confusingly includes a directive that sources "shall" conduct testing, followed by a permissive clause that Illinois EPA "may" require an owner or operator to conduct testing and a clause that Illinois EPA "shall have the right" to conduct tests at Illinois EPA's request; 13(a) only includes a vague commitment by Illinois EPA to require the facility to test its pollution control equipment when Illinois EPA deems it is a "reasonable time[]" to do so.

The condition does not include a directive that sources shall conduct testing followed by two clauses. Rather, the condition indicates that the source shall be subject to Agency requests for source testing as well as Agency conducted testing. Also, condition 13 is a mere recitation of the regulatorily established obligations for a source to test. Any testing specifically called for in the permit is set forth elsewhere in the permit.

113. Condition 14 sets forth references to the methods for conducting monitoring and testing of various emissions sources set out in Sections 212.107 to 212.110, including methods for visible emissions and opacity;

The condition simply makes clear the appropriate reference methods for testing.

114. Cond. 16(g) includes a statement that satisfactory completion of the initial test is a prerequisite to issuance of an operating permit, which in theory could set an outer boundary on delays. However, given Illinois EPA's practice of sitting on permit applications for extended periods of time we have concerns that testing may be delayed indefinitely.

Initial testing required under the permit is to be conducted within a defined window of time. Subsequent testing addressed in the permit is also to be conducted at a defined point. As drafted, the permit does not provide for delays in testing. As to permitting, the Illinois EPA has never had a practice of sitting on permits. However, there was a period, when for myriad reasons including limited resources, the Illinois EPA fell behind in permitting and a backlog was created. In recent years that backlog has largely been eliminated in the CAAPP and it has been significantly reduced in the FESOP program.

115. Condition 25 sets forth a requirement to submit a report to Illinois EPA "[i]f there is an exceedance of or deviation from the requirements of this permit as determined by the records required by this permit or otherwise."

This condition is one of the most if not the most important permit condition. This condition requires the reporting of any deviation from any requirement in the permit as determined not just by the records required under the permit but by any credible evidence.

116. Section 9(a) on page 8 does not indicate how often the facility should be required to do visual inspections or otherwise inspect or evaluate its pollution controls.

In response to comment, the Illinois EPA is requiring the expansion of the Maintenance Plan required at condition 11(h) in the draft permit to include all maintenance activities required under this issued permit. This plan will address practices and frequency, among other.

117. I have concern for the operating program and maintenance plan. The permit should specify what, at a minimum, must be in those plans to ensure protection of public health.

As is stated on the face of the permit, the terms of the operating program are incorporated into the permit, with the program itself as an attachment. The practices detailed in the program are intended to minimize visible fugitive particulate matter emissions and ensure compliance with the Board's Part 212 regulations. In response to comment the operating program has been enhanced. The maintenance plan, which has been expanded to additional equipment, is now required to be submitted 90 days prior to startup of the covered equipment. The plan will address maintenance activities and frequencies among other.

118. The hazardous air emissions permitted in section 12(b) should be reduced to 0 tons per year. Alternatively, Illinois EPA and General Iron should demonstrate to the public why this cannot be done and demonstrate that the pollution controls selected are those that will reduce hazardous air emissions to the lowest possible amount, i.e. that they are the best available control technologies.

Among its other responsibilities, the Illinois EPA is the permitting authority in Illinois. In that role, pursuant to and consistent with statutory and regulatory requirements, it is the Illinois EPA's duty to ensure sources are appropriately permitted. During the permit review process, the Illinois EPA determines whether a source has demonstrated that it can comply with the Environmental Protection Act and applicable regulations thereunder. The purpose of any issued permit is to memorialize the statutes, regulations and related terms such as recordkeeping and reporting applicable to the permittee and with which the source must comply as it is constructed and operated. In this instance, there is no basis for the imposition of an emission limit of 0 on the hazardous air pollutants.

119. "Emissions limitations in the Draft Permit are based on underestimated emissions of air pollutants, Likewise, the permit is based on artificially high control assumptions and greatly underestimated emissions for a range of fugitive sources including paved roads, vehicle loading/unloading, and piles)."

As has been stated elsewhere, where technically feasible, testing to validate the nature and quantity of emissions and the efficiency of controls has been required in the draft permit and further enhanced in the final permit.

120. The Draft Permit improperly assesses emissions from torch cutting and fails entirely to propose controls for torch cutting.

General III does not perform torch cutting, thus this activity is not addressed in the permit.

121. Conditions are lacking in the permit for emission controls that will achieve compliance with permit limits, and other conditions of the draft permit are unenforceable as being too vague, have no objective sufficiency or have no measures, including monitoring, record-keeping and reporting, by which to ensure compliance with particulate matter source and fugitive emissions.

The comment presumes the Illinois EPA can impose emissions standards and any related means of ensuring that a source will meet the requisite standards through this proceeding. However, the Illinois EPA does not wield a broad, or plenary, authority in its permitting role under the Act. The Act vests rulemaking authority for environmental control standards in the Board, not the Illinois EPA.[31] Analogous to the rule that permitting is no substitute for enforcement, it can be said that the Illinois EPA's permitting function is no substitute for the Board's rulemaking function.

From a legal perspective, it must also be observed that the state construction permit process for minor or synthetic air emission sources does not possess the rigors of major source programs. There is not a clear path to achieving controls and ancillary measures ordinarily reserved for New Source Review permitting. Periodic monitoring, a notion that springs from the Title V program, is similarly out of reach. USEPA has previously approved the relevant parts of the Illinois SIP as it relates the existing legal framework for state construction permits issued pursuant to Section 39(a) of the Act and the Board's Part 201 regulations. Region V staff also routinely reviews draft and final FESOP permits issued under this same regulatory framework, as they did in the case of the draft permit.

In general, a permit issued by the Illinois EPA is merely a vessel containing the relevant requirements that apply to the stationary source. The permitting role required of the Illinois EPA for a state construction permit (and operating permits that do not comprise major sources) is to mirror the basic control standards imposed upon a stationary source by the Act and Board regulations, and to provide basic measures for assuring compliance with the regulations and/or the permit. This approach is supported by the Part 201 regulations in the monitoring and testing provisions (Subpart J) and the records and reports provisions (Subpart K).

As mentioned elsewhere, the final construction permit includes additional monitoring that will be obtained through the development and operation of plans, and additional emissions testing, records and reporting requirements.

122. Many of the requirements of the fugitive particulate operating program ("FPOP") are practically unenforceable because they are overly vague and lack sufficient monitoring, recordkeeping and reporting details, or general sufficiency, to ensure continuous compliance with 35 Ill. Adm. Code Part 212.

The permit contains appropriate conditions for a state construction permit for the proposed emission source and control equipment. The more substantive rules for fugitive emissions (or dust) is commonly addressed by the Board's Subpart K regulations found at Section 212.301 and Sections 212.302-212.310 and 212.312). The former is a narrative standard that prohibits fugitive particulate emissions from any process that is visible beyond the property's boundaries when looking towards the zenith. The latter is the fugitive particular matter operating program requirements, which is designed to identity and implement best management practices to control fugitive dust activities at a site. General III is subject to the narrative visible emissions standard but not the operating program,

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[31] **415 ILCS 5/5(b).**

as the facility's Standard Industrial Classification (SIC) code does not include the two-digit major groups specified in Section 212.302.

In the absence of applicability of the Board's Subpart K regulations, the Illinois EPA could have attempted to impose broad, cut-from-whole-cloth permit conditions, possibly even compelling many of the dictates regarding controls and timing requested by some comments. But given the possibility of an appeal, the Illinois EPA opted to pursue an alternative path for obtaining comprehensive measures for fugitive dust control. Successfully negotiated in other permits under similar circumstances, the FPOP is essentially a product of General III's willingness to commit to voluntary measures for controlling fugitive dust from the site. These voluntary measures, in turn, are incorporated into the construction permit and made enforceable through the most recent version of the plan submitted by General III on June 25, 2020.

123. The draft permit fails to ensure that the 30% opacity limit will be met for the facility's fugitive emissions sources, thus excluding them from a requirement that applies to process units and fugitive sources alike.

In response to comments, the draft permit will be amended to clarify that fugitive sources at the facility are subject to the opacity requirements of 35 Ill. Adm. Code 212.123. In addition, opacity observations are being included in the final permit to assure that the fugitive sources demonstrate an ability to comply with the emissions standard.

124. The draft permit allows for an improper automatic approval of a future revision to the FPOP and, in doing so, disallows the right to public review and comment prior to its approval.

Condition 10(i) of the draft permit provides that in the event a future revision to the FPOP is made during the permit term, the revision is automatically incorporated into the permit subject to the right of the Illinois EPA to approve the revision. The comment is therefore not correct in stating that the revision is automatic. However, the comment does correctly note that in the event that a future revision is incorporated to the permit, it will occur without undergoing public review, as there will be no permitting transaction contemporaneous with the change to the FPOP. In view of the FPOP's relative importance for source compliance with the permit's fugitive emission standards, and the protective requirement that the revisions must be consistent with Condition 10e and 10f, the Illinois EPA believes it is appropriate for FPOP revisions to go into the permit sooner rather than later. In this regard, the benefits obtained from fugitive dust controls through in-term revisions to the FPOP out-weighs the right of public review.

125. The draft permit allows for an improper post-issuance submission of the Contingency Plan required by 35 Ill. Adm. Code Part 212, Subpart U, thus disallowing the right to public review and comment of the document.

The submission of the Contingency Plan is tied to the submittal requirements set forth in Subpart U in Part 212. More specifically, sources subject to the rule after July 1, 1994, must submit contingency measure plans to the Illinois EPA for review and approval within 90 days following of the date that the source becomes subject to the rules. Condition 9b simply mirrors the regulatory requirement governing submission of the plan.

126. The permit allows several conditions of the permit to improperly defer the selection of multiple control options to the source and relegates the specificity of the permit's obligations to the FPOP.

For the reasons described above, the Illinois EPA exercised its discretion to address fugitive particulate emissions from the site through the avenue of a FPOP that the permittee has agreed to implement, and which will be enforceable through the incorporation by reference of the permit.

127. The emissions testing and monitoring under the draft permit is virtually nonexistent and contains conflicting requirements with respect to the Illinois EPA's testing authorities.

Emissions testing from the draft permit obligates the applicant to undertake an initial test with 60 days of the date that raw materials are first processed through the shredder, with an emissions protocol for the emissions testing submitted to the Illinois EPA within 90 days of issuance of the construction permit. *See,* Condition 16. Additional emissions testing and monitoring requirements have been added in response to public comment, as detailed elsewhere in this document. This includes capture efficiency testing as part of the testing evaluation of the RTO, testing of select pollutants from the fines processing system, testing of select pollutants from the Shredder system and opacity observations.

Contrary to the comment, there is no contradictions in the conditions relating to the testing authorities, as found in Condition 13. These requirements merely restate the testing requirements set forth in Part 201, Subpart J.

128. The permit does not contain any references to Section 9(a) of the Act and 35 Ill. Adm. Code 201.141, which are an on-going compliance requirement and was addressed by the Illinois EPA through its evaluation of air quality impacts in its air quality modeling.

The comment misapprehends the nature of the Section 9(a) prohibition and the similar standard found at 35 Ill. Adm. Code 201.141 in the Board's Part 201 regulations. The prohibitions contained in both requirements are narrative standards designed for implementing the Act's broad enforcement remedies.[32] Prohibitions are enforceable but only on a relative basis, as when evidence is adduced to show that conduct does not comport with the standard. The relativity of prohibitions make them meaningful in the enforcement realm, where they provide a broad outline with which to allege elements of a violation, as in the case of a polluter who is alleged to have caused air pollution or a violation of the Board's standards. But they are less relevant in permitting, where emission standards or limitations must be quantitatively certain.

Generally speaking, the use of statutory or regulatory prohibitions urged by comments are not included to air construction or operating permits. In addition, it is not clear how the cited prohibitions would have been factored into the air quality modeling of the project, in contrast perhaps to noncompliant sources. Efforts to gauge the impacts of general prohibitions would be futile.

129. The FPOP states that certain emission sources located within the Shredder system are potential sources of fugitive emissions.

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[32] **Similar statutory prohibitions are found in close proximity to Section 9(a) that include the prohibition against constructing or operating any equipment or facility without a permit and the open burning of refuse. *See,* 415 ILCS 5/9(b) and (c).**

In response to comments, the draft permit will be amended to clarify that the three conveyors associated with the Shredder system and referenced in the FPOP are not potential sources of fugitive sources.

130. The FPOP contains repeated usage of "as needed" in describing when controls will be applied and is in need for elaboration of objectivity. Similarly, the FSOP fails to specify which sources or areas are subject to the different controls.

In response to comments, some changes to the FPOP will be made to enhance the specificity of its provisions. However, neither the FPOP or draft permit is the appropriate venue for dictating the time, place and manner of fugitive dusts controls, as that venue is more appropriately addressed by the Board in its rulemaking role. In the absence of a type of operating program that applies to a source under Subpart K, which similarly does not dictate the requirements suggested by the comments, the Illinois EPA's broader approach to employing the use of the FPOP is not unreasonable and reflects considered judgment.

Stack Testing

131. What is emissions testing or stack testing and why is it not performed before the permit is issued and before the controls are used at the source to confirm that the controls will work and should be permitted?

Stack testing is a tool used to determine a source's compliance status with applicable control efficiencies. General III is subject to a control efficiency. Compliance with this efficiency will be determined by an initial stack test, and thereafter periodic stack testing.

Stack testing appropriately and necessarily is to be conducted after construction or installation of emission units and air pollution control equipment. Testing before construction is not an option as the units would not yet exist nor be in operation at a location. The purpose of the testing is to assess the efficiency of the control systems when in use at the source. As such, the testing necessarily must occur after issuance of the construction permit and when in use at the source.

132. Why are the details of the emissions testing to be performed not set forth in the permit?

Certain details of the testing will be set forth in an emissions test protocol. This protocol shall be prepared by an independent third-party consultant and submitted by General III and, after review and approval by the Illinois EPA, will serve as the guide for testing. However, the requirement for testing, the frequency of that testing and the methods to be used for testing are all set forth in the issued permit.

133. With respect to testing, are there standards of how frequent testing results would be available. Testing every week is requested.

For the scrap metal recycling operations addressed by this permit, there are no standards addressing the frequency of testing beyond the initial testing required by rule or permit. That lack of standards in

not unique to this sort of operation Given this is a construction permitting action for what will be a minor source of emissions falling within the Federally Enforceable State Operating Permit program, periodic monitoring in the form of testing (beyond the initial testing) is neither necessary nor the norm. The draft construction permit did require initial testing to demonstrate compliance with applicable rules and emissions and permitted emissions limits. And, in response to comments, the Illinois EPA has expanded emissions testing. For example, the RTO is now subject to periodic testing as frequently as annually under certain circumstances.

134. The draft construction permit lists emission limits based on stack tests conducted in May/June 2018 and November 2019 at General Iron II, LLC (ID#031600BTB), located at 1909 N Clifton Ave, Chicago. These emission limits are improper as they rely on tests conducted at the company's current location and not at the proposed location. The Illinois EPA should require stack tests during the 1-year construction phase at the proposed facility location (11600 South Burley Avenue, Chicago).

The limited reliance on the earlier testing of the RTO is not improper. Indeed, that earlier testing evidences the destruction efficiency of the RTO that may be constructed at the Burley site. In the absence of such testing information, the Illinois EPA would be forced to rely upon information from the manufacturer, information from similar units in similar operations, estimations, institutional knowledge and reasoned engineering judgement. As a practical matter, testing necessarily occurs after the construction of an emission unit and or air pollution control equipment. It simply cannot occur prior. Thus, in making construction permitting decisions, unit or control-specific test data is often not available. As to post construction, the draft permit required initial emissions testing and the final issued permit has expanded the requisite testing. With this site-specific testing, compliance with applicable regulatory requirements and emissions limits under the permit can be assessed for the General III operations at the Burley site.

135. The permit should contain measures that require General Iron III LLC to more frequently check and publicly report the current destruction efficiencies of the RTO and other pollution control technology.

As previously noted, the source will be conducting initial and periodic testing of the RTO and balance of the control train. The information from the testing will be available to the public.

136. With respect to pollution mitigations, what is being done at the new facility compared to current facility to give residents peace of mind?

Notably, the Hammermill Shredder System is new and there will be improved capture at the enclosure. And, in contrast to the existing site, there will be Method 204 capture testing of the enclosure that will definitively establish the extent of the capture. There will also be a Feedstock Management Plan and an Operations and Maintenance Plan, as well as an enhanced Fugitive Emissions Operating Program. There will be differential pressure monitoring of the roll media filter. And there will also be limits on hours of operation for purposes of limiting emissions.

137. Condition 6-2(c)(iii). If the control devices are not run with the same parameters during testing as they are for normal operations, then the test would not address normal operation and therefore could not verify compliance.

The cited condition does not exist in the draft permit, however the comment seems to relate to testing conditions. Emissions testing is to be performed under conditions that are representative of

how the source normally operates. How a source operates during successful testing establishes parameters on future operations until the next test event.

138. The Draft Permit is based on artificially high control assumptions and underestimated emissions from the Hammermill Shredder. There is substantial evidence of uncontrolled emissions from the shredder in its current location, including with the hood/RTO set-up. These shortcomings are exacerbated by weak testing and monitoring requirements that omit continuous monitoring, FLIR and other options.

    The application describes the shredder as being located within a "partial enclosure with… a vented metal roof," outfitted with a "capture hood" for routing shredder emissions to the RTO and scrubber.

The Hammermill Shredder will be located in a partial enclosure with acoustic roof and wall panels. The majority of one side of the enclosure, adjacent to the shredder, is a solid wall extending to ground level. The remainder of that wall and the other three walls consist of acoustic panels that extend to approximately 18 feet from ground level. Rubber belts extend downward covering a portion of the lower 18 feet. There will be an open area at the bottom to allow access to the interior of the enclosure for equipment maintenance. Shredder emissions are captured by a hood located over the top of the shredder and are routed to the shredder emission control system. The capture of the enclosure will be determined by testing. Short of testing, there is no definitive way to establish the actual capture efficiency and thus to quantify any uncontrolled emissions. Destruction efficiency testing will also be performed. After testing, compliance with Subpart TT of the Pollution Control Boards' regulations and with emission limits will be confirmed. The destruction efficiency set forth in the application is technically reasonable and has been demonstrated previously with the RTO at the Clifton location. The capture efficiency presented in the application was 95%. It is reasonable that with the proposed air flow and the improved enclosure the capture could achieve 100%. The permit as drafted aggressively addresses both destruction efficiency and capture.

139. The capture efficiency of the rubber-lined conceptual enclosure (in combination with wet suppression for PM) is unlikely to exceed 50% as an engineering judgement. It could be even lower given the high degree of wear of this type of enclosure over time, which makes the effectiveness over the long-term even more questionable, and the potential for irregular use of wet suppression (see below with respect to General Iron's and RMG's track record with wet suppression). 81% control.

As noted above, the capture efficiency set forth in the application is not unreasonable as a technical matter. Regardless, the capture efficiency will be established by way of initial emissions testing. Thereafter periodic testing will ensure the level of capture at the time of testing and at which the source can demonstrate compliance with Subpart TT and emissions limitations set forth in the permit. In keeping with its historical practice, the Agency did not factor in any degradation of emission units or controls. Rather, periodic emissions testing is the primary means by which the Illinois EPA ensures the continuing integrity of emission units and air pollution control equipment.

140. To the extent that such shredders require a cleaner, more specific feedstock on the front end, Illinois EPA should require enforceable feedstock sorting and cleaning.

The Illinois EPA has revised the construction permit to require a Feedstock Management Plan. This plan will address the materials that the facility receives, cleans, sorts and processes. This plan is to be submitted for Illinois EPA review and approval 90 days prior to General III receiving any materials at the Burley site.

141. The hood structure at the current General Iron location has been reported as allowing emissions to escape before the control devices. CDPH inspectors have observed "untreated emissions" and sometimes smoke escaping the top and sides of the shredder. Indeed, CDPH inspectors have noted that the emission controls do not appear to be working, and that the shredder has a hood but is not fully enclosed, causing emissions to escape the shredder before the treatment process and rendering the RTO and scrubber ineffective for those escaped emissions. As one inspector stated in January 2020, "being able to observe emissions escaping the shredder leads me to believe that the equipment capturing the emissions is insufficient."

The Illinois EPA is aware of the observations of the City of Chicago Department of Public Health. Indeed, these observations have been the subject of discussions with USEPA as well as the City. Learning of the observations by the City and knowing that the USEPA had brought and technically resolved an administrative action against General Iron for noncompliance with Subpart TT, requiring that the RTO be installed and subjected to emissions testing, had witnessed the testing, and had reviewed and approved the test report, the Illinois EPA reached out to the USEPA inquiring of any requirement for full enclosure or 100% capture, any concern for the destruction efficiency of the RTO, and any concern for noncompliance with Subpart TT, indicating that any concerns would most appropriately be addressed by the USEPA given the earlier order. Also, the Illinois EPA not only discussed the matter with the City but accompanied City inspectors to the facility where the Illinois EPA and City observed the Hammermill Shredder, enclosure and control system, and discussed the nature and function of same.

The Illinois EPA is not aware of information that suggests that the RTO is not achieving the destruction efficiency of 98% demonstrated during the most recent testing. Thus, there is no basis to conclude that "the controls are not working or are ineffective." The Illinois EPA is likewise not aware of any information that suggests that the capture efficiency is not what is was on the day of the most recent testing. The hooding is not a full enclosure, nor does it need to be as a regulatory matter nor pursuant to the federal administrative order. As it is not fully enclosed it should be understood that some quantity of emissions will be uncontrolled as they will not reach the RTO, whereas the emissions that do reach the RTO will be reduced by 98%. (And one must ensure that the steam that is often present at the enclosure is not confused for emissions.) This does not evidence that the "enclosure or capture is insufficient." Rather, the enclosure is a partial enclosure, and it achieves whatever capture such partial enclosure can achieve. The capture and control together shall provide for an overall control of 81% as is required under Subpart TT.

However, any issues with the Hammermill Shredder System at the Clifton site are not being formally considered as part of this permit proceeding. Rather, what is being considered is the application that delineates a new Hammermill Shredder and an enhanced enclosure with control train and contains a demonstration of compliance with applicable regulatory requirements.

142. Illinois EPA must require GIII to employ a fully enclosed shredder design with no openings.

The shredder is subject to Subpart TT, which requires 81% overall control of emissions. Subpart TT does not establish a floor for capture nor a floor for control. It does not require 100% capture nor full enclosure nor does it require 100% control nor specify the control equipment to be utilized. As such, the Illinois EPA has no basis to require General III nor any other source subject to Subpart TT to install a total enclosure.

143. If the applicant and Illinois EPA determine such a fully enclosed design is infeasible, they must fully explain this determination on the record and provide further measures to continuously and stringently control the emissions that will escape the shredder, the enclosure, and the hood capture setup as proposed. Additional VOM measures may be needed in order to meet Subpart TT's 81% control requirement (additional feedstock cleaning measures are one additional front end VOM control that may significantly reduce VOM from the shredder and so that should be considered). Such measures must be accompanied by robust recordkeeping and mandated reporting obligations.

As explained elsewhere, full enclosure is not in the first instance a matter of feasibility. Rather, it is a matter of statutory and regulatory authority and applicability. The Illinois is obligated to permit units that emit that are not otherwise exempt and air pollution control equipment. In doing so it is obligated to apply applicable regulatory provisions. It may add conditions to permits to further the purposes of the Act, but not without limitation. In a situation such as this, where there is an applicable regulation that quite clearly establishes the regulatory requirement, the Illinois EPA is not at liberty to utilize its permitting process to create a different more onerous requirement. That would be a matter for rulemaking.

The permit makes clear the applicability of Subpart TT. The permit establishes an initial test to demonstrate compliance with Subpart TT. The permit as enhanced also provides for testing thereafter to ensure ongoing compliance between test events. Based on the application, compliance with TT has been demonstrated. The Agency has required a Feedstock Management Plan in the final permit.

144. Monitoring of uncontrolled emissions must be included and consist of ground-based continuous VOM monitoring, such as AERARAE monitors and ground-based continuous PM monitoring as well as FLIR monitoring. The Draft Permit should require at least monthly, and preferably real-time, reporting of this monitoring data to be made public on Illinois EPA's website, The Draft Permit should require upfront provision of "stack" testing protocols for the Hammermill Shredder, and mandatory repeat testing on a quarterly, with requirements to do regular feedstock characterization testing and conduct emissions testing with significant changes in the feedstock. Such mandatory repeat testing is also needed given the likely deterioration of the hood over time.

The initial VOC emissions testing will assess the nature of the enclosure and definitively determine its capture efficiency. The revised permit now calls for subsequent emissions testing. The frequency of testing is either annually or every 5 years depending on the nature of the enclosure. It is not more frequent as these test events will be time involved; there will be protocol submittals and reviews, testing, and test result submittals and reviews. These activities associated with testing cannot reasonably be completed within any one quarter. The suggestion for testing quarterly is impractical as it would have the effect of the source and the Agency being in a never-ending testing mode – never establishing the compliance status from one test before the chain of activities commenced for the next test. And, periodic monitoring will be established based on testing. The monitoring will not consist of ambient monitoring nor will is consist of FLIR monitoring as neither can determine the quantity of emissions escaping from a unit at the facility nor the facility as a whole. The testing will be pursuant to protocol submitted before conduct of the testing as has been the long-standing practice of the state and federal government. As always, the testing will be representative and will establish the operating parameters for the tested units until the next test event. And, the feedstock concern is now addressed via a Feed Stock Management Plan and will also be addressed as part of any emissions testing protocol.

145. The November 2019 stack test conducted at the existing facility, and upon which the permit's emission limits are based, was performed with 50 percent ELVs in the feed. However, the permit does not include permit conditions that take into account this operating condition at the time of the stack test. EPA's experience with hammermill metal shredders indicates that, in general, the higher the proportion of ELVs in the feed the higher the VOM and organic hazardous air pollutant (HAP) emissions from the shredder. EPA has also observed that draining of fluids from ELVs before they are fed to the shredder will generally reduce actual VOM and organic HAP emissions from hammermill shredders. EPA requests that ILLINOIS EPA consider incorporating into the permit terms and conditions that address the maximum percentage of ELVs allowed in the feed, and whether or not fluids are drained from ELVs before they are fed to the shredder, consistent with the operating conditions at the time of the relevant stack test. Alternatively, Illinois EPA may clarify in the permit record how such permit provisions are unnecessary for this facility.

As addressed elsewhere herein, the Illinois EPA is requiring capture and control efficiency testing. The conditions under which testing will occur will form the basis for conditions relating to later operations. The Illinois EPA is inclined to limit conditions in this construction permit based on prior test events. Rather, it will create conditions based on test events at the new location that are reflective of the conditions during those test events including feed. The test events will seek to ensure the destruction efficiency under representative worst case conditions, which may or may not be the 50% ELV feed. As to the fluid draining, the Illinois EPA has required the development and implementation of a Feed Stock Management Plan, which plan is to be submitted to and approved by the Illinois EPA well before the testing. Fluid draining would be addressed in this Plan. Prior to testing, an emissions testing protocol is to be submitted to the Illinois EPA for approval. This protocol will address the particulars of the testing including test methods and procedures and feed among other.

146. Condition 5d requires the Permittee to operate emission capture and control equipment which achieves an overall reduction in uncontrolled VOM emissions of at least 81 percent from each emission unit. Based on the emission estimates included in the permit record, it appears Illinois EPA assumed the hood capture efficiency to be 100 percent. EPA requests Illinois EPA to supplement the permit record to provide support for the 100 percent hood capture efficiency used for calculating emissions and setting emission limits. If Illinois EPA's analysis shows that the proposed facility would not continuously achieve 100 percent capture in practice, please consider adjusting the emission factor in Condition 12b(i) to account for potential uncaptured VOM emissions. In this regard, it may be necessary to incorporate into the permit additional provisions for estimating the capture efficiency that would be used to calculate actual emissions. EPA is available to assist Illinois EPA with developing appropriate procedures for this purpose, which may include the use of EPA Test Methods 204 through 204F, computational fluid dynamics modeling, or visible emissions observations, as appropriate.

The Illinois EPA did assume a hood capture efficiency of 100 percent. This is not unreasonable based on the application which set forth a capture efficiency of 95%, high air flow, and an enhanced enclosure relative to the existing site (where the assumed capture seemingly approximated 83%). In addition to destruction efficiency testing, the permit calls for capture testing. After compliance with regulatory provisions and permitted emissions, limits can be evaluated.

147. We note as discussed with respect to conveyors within the shredder enclosure, that sources that can in fact be enclosed are not properly considered sources of fugitive emissions and their emissions count towards major source thresholds for facilities like GIII.

Correct, the Hammermill Shredder System in the entirety is a process emission unit. No part of the system including the conveyors is considered a fugitive emission source. All emissions from the Hammermill Shredder System count toward major source thresholds.

Fugitive Particulate Operating Program

148. Fugitive Particulate Operating Program fails to acknowledge applicable legal requirements.

The Fugitive Emissions Operating Program identifies 35 IAC 212.301 as the rule for which the program is designed to ensure compliance. This rule prohibits visible fugitive emissions beyond the property line.

149. The FPOP characterizes itself as a "voluntary" program because the source is not otherwise covered by the express requirement to prepare such a plan contained in Section 212.302.

Notwithstanding that the source is not subject to the regulatory requirement to develop and implement a FPOP, the permit requires such a program and the measures set forth within. Identified as a Fugitive Emissions Operating Program, neither the Program nor the measures set forth in the Program are voluntary.

150. FPOP is otherwise unenforceable as a practical matter.

The Fugitive Emissions Operating Program addresses the operations and best management practices that will serve to minimize fugitive emissions. It also sets forth record keeping and reporting. The program is not required to satisfy the letter of practical enforceability given that this is a state construction permit transaction for a minor source of emissions who is not even subject to the regulatory requirement for such program.

151. The applicant can include specificity on the operations that are expected to generate more fugitive emissions, and specificity on the controls to be deployed to these areas and specifics on how they will be deployed, control can be built into the front-end design.

The Ferrous Separation System, Non-Ferrous Separation System, and the Miscellaneous Fugitive sources are the categorical operations that generate fugitive emissions. The June 25th version of the Fugitive Emissions Operating Program more clearly delineates the best management practices to be utilized in these areas.

152. There is little to no discussion of controls to be used for truck, rail or barge unloading or even confirmation that rail and/or barge loading occurs on the GIII property.

The Fugitive Emissions Operating Program has been revised to clarify that General III will conduct loading of rail and barge. Additionally, the location of these activities and the measures that will be used to address fugitive emissions from truck, barge and rail loading have been clarified.

153. As noted above loading of at least trucks and rail cars should occur in enclosures.

There is no regulatory requirement applicable to the source that requires an enclosure for truck or rail car loading. However, measures to minimize fugitive emissions from these activities are addressed in the Fugitive Emissions Operating Program. For example, tarping, sweeping and watering address visible emissions from truck travel. For rail car loading, watering and minimization of drop distances are employed.

154. Illinois EPA must impose objective, stringent measures to control fugitive dust from piles, transfer points, and roadways.

Again, the scrap recycling facility is not subject to the regulatory requirement for a fugitive emissions operating program. However, to ensure compliance with 35 IAC 212.301 which prohibits visible emissions from crossing the property line, the Illinois EPA has required the development of a Fugitive Emissions Operating Program. This program addresses the best management practices for piles, transfer points and roadways.

155. Illinois EPA should require evaluation and deployment of full enclosure for conveyors, vehicle loading/unloading, piles and other transfer points associated with all three Systems.

There is no regulatory requirement applicable to the source that requires full enclosures for conveyors, vehicle loading and unloading, piles or other transfer points. Notwithstanding, the Fugitive Emissions Operating Program addresses the measure that will be taken to minimize fugitive emissions from these areas.

156. Must specify where specifically the Dust Bosses will be deployed and under what operating and weather conditions Illinois EPA should require that Dust Bosses "shall" be used at all times during active working of piles and vehicle loading, as opposed to allowing for use of this equipment "as needed" or only after the fact if visible emissions are identified.

The Fugitive Emissions Operating Program contains diagrams indicating where the Dust Bosses will be located. The Program as revised in response to comments is more robust in terms of specific commitments.

157. Illinois EPA also should require use of dry fogging systems at low temperatures when regular wetting procedures cannot be deployed effectively.

The Illinois EPA could see minimal distinction between the use of the Dust Bosses and the dry fogging system. Further, there is no legal basis for such technical requirement.

158. Chicago's Department of Public Health June 2020 large recycling facility regulations require substantial control of ASR, Section4.4.2. That ASR can reasonably be stored in a full enclosure also renders emissions from ASR piles point source emissions, not fugitive emissions.

As addressed in the fugitive plan incorporated by reference into this permit, that subset of ASR that is fluff will be stored in a 3-walled, covered enclosure. It is not a full enclosure as the source needs to access the pile with material moving equipment such as end loaders. There are no applicable state or federal regulations that specifically call for enclosure much less a full enclosure of ASR. However, in looking at the ordinance as a point of reference, and while the Illinois is not in the habit of interpreting City ordinances, it notes that in the cited provision the enclosure requirement applies to post processed ASR, which is seemingly the fluff. Further, the ordinance does not expressly call for a full enclosure. Moreover, there is nothing that suggests that the ASR can reasonably be stored in a full enclosure. It is true that the ASR piles are point sources.

159. Illinois EPA must impose conditions to prevent auto fluff from migrating offsite.

Auto fluff is a subset of ASR. The conveyor to the fluff storage is covered. The fluff will be stored in a 3-walled, covered enclosure. Also, trucks hauling the fluff from the site will be tarped. This and other mitigative measures such as visual observations, watering and sweeping will ensure that the fluff does not migrate offsite.

160. Regular (at least monthly) testing of ASR should be required to characterize the content of the material, which may vary significantly with feedstock.

Illinois EPA is requiring a Feedstock Management Plan to address material screening and sorting and related issues.

161. The Illinois EPA should require regular moisture content testing for ASR.

The ASR comes off the shredder sufficiently wet (having been wetted by the spray system on the shredder) so as to make moisture content testing unnecessary.

162. The application mischaracterizes Section 212.123 as follows: "Section 212.123(a) prohibits the emission of smoke or other particulate matter from any process source to exceed 30% opacity." The FPOP repeats this misstatement of Section 212.123 by recognizing only the applicability of the prohibition on visible emissions beyond the fence line contained in Section 212.301 to fugitive sources. Nor does the FPOP include any mention of opacity limits as applicable to fugitive sources, let alone actual monitoring of opacity using Method 22 at each source of fugitive emissions to ensure compliance with this applicable provision. Indeed, the word "opacity" is only used three times in the operating program, in each case to explain that certain point sources that do have opacity limits are not in fact fugitive sources.[89] This omission/mischaracterization creates a conflict with the Draft Permit, which as discussed above appears to recognize the applicability of 212.123 to fugitive emission units.

The revised permit makes clear the applicability of 35 IAC 212.123 to all emission units encompassed within the Hammermill Shredder System, Ferrous Separation System, Non-Ferrous Separation System, Fines Building, and Miscellaneous Fugitive Emissions. The Fugitive Emissions Operating Program is the means of ensuring compliance with 35 IAC 212.301. Separate compliance assurance measures are included in the permit for 35 IAC 212.123.

163. The FPOP creates a conflict with the Draft Permit with respect to the applicable legal requirements.

The final permit has attempted to address any confusion or conflict.

The practically enforceable constraints on fugitive emissions are those found in the Pollution Control Board's Part 212 regulations. The measures in the FPOP are intended to assure compliance with the applicable provisions of the Part 212 regulations. There is no obligation for periodic monitoring in this construction permit much less periodic monitoring to assure compliance with a prohibition against air pollution.

164. The FPOP mysteriously claims that the three conveyors located within the shredder enclosure and uncaptured emissions from the shredder itself constitute "potential sources of fugitive emissions," in contrast to shredder emissions within the enclosure that in fact end up captured by the hood setup.

The FPOP has been revised to exclude the shredding operation. Indeed, as the permit makes clear, the shredding operation in the entirety is not a fugitive source. Rather it is a point source with emissions capture and control, with the extent of capture and control to be established by way of destruction efficiency and capture testing.

165. The FPOP fails to objectively describe the specific conditions under which the limited visible emissions testing will occur. See e.g., FPOP at p8, stating that visual observations will be conducted "three times per day," without specifying when, under what operating and weather/atmospheric conditions, and for what duration such observations will occur.

The revised Fugitive Emissions Operating Program now specifies that visible emissions observations will be taken from one to three times daily at raw material unloading/handling, material transfer points, intermediate and product stockpiles, fluff storage and loadout, material loadout, traffic areas, employee parking, barge, rail and truck loading, and the plant boundary. The precise time of the readings is not mandated, however, records of the date, time, location, observation and any response are to be kept.

166. The fugitive particulate operating program also contains a puzzling provision that describes additional visible emissions identification by "other employees" who are "trained to identify Visible Emissions," but whose observations will NOT be recorded in the same format as the visible emissions monitoring by "designated trained personnel."

This provision has been deleted within the latest revision to the program.

167. How will pollution from the roads be addressed?

Roads within property will be addressed by way of visible observation, sweeping and watering. The fugitive plan also includes vehicle speed limitations. Lastly, the permit limits the hours of operation of General III including truck operations.

Ambient Air Monitoring

168. What will the ambient monitoring tell us?

It will tell us the amount of a particular pollutant in the ambient air. While it is sometimes possible, under certain conditions, to determine the approximate direction from which pollution is originating, it will not directly identify the contributing source or sources of the pollutant.

169. More ambient monitoring stations are needed.

The Illinois EPA has designed its ambient air monitoring network to provide timely air pollution data to the public, to meet federal requirements, to support compliance with ambient air quality standards and emissions strategy development, and support air pollution research studies. This network satisfies or exceeds all relevant criteria. Regardless, the expansion of the network would not occur in the context of a permitting action.

170. Continuous ambient air monitoring is necessary to ensure that facilities are not causing or contributing to levels of PM and/or air toxics that exceed the NAAQS or other health-based thresholds, in particular with respect to fugitive emissions.

Again, ambient monitoring will only tell us the amount of a particular pollutant in the ambient air. It will not directly identify the contributing source or sources of the pollutant. Further, the existing monitoring network is sufficient to address the emissions from General III. Lastly, the existing monitoring data evidences compliance with the NAAQS for PM.

171. Illinois EPA must require fence line continuous monitoring of PM and metals to ensure compliance with the prohibition of air pollution.

The existing monitors in the vicinity, including those at Washington High School, evidence compliance with the NAAQS for PM. In the context of this construction permit for a minor source, there is no statutory or regulatory requirement for and the Illinois EPA is not inclined to attempt to stretch its authority to insert a requirement for the installation of fence line monitors.

172. The Illinois EPA should require fence line particulate monitoring surrounding the perimeter of the facility to ensure compliance with Illinois fugitive dust regulations. A combination of fence line monitoring and video surveillance can help ensure the facility is following Illinois pollution regulations and would represent a step forward in Illinois EPA requiring state-of-the-art technology to protect the health and wellbeing of Illinois residents.

As noted, the Illinois EPA is not inclined to require fence line PM monitoring at the perimeter of General III, nor video surveillance. The existing monitors in the vicinity, including those at Washington High School, evidence compliance with the NAAQS for PM.

173. Recent resident observations have frequently contended that General Iron facility in Lincoln Park frequently operates beyond their permitted hours of operation. If the Illinois EPA is to issue this permit, the Illinois EPA should require the installation of a 24/7 surveillance camera to ensure hours of operations restrictions are being followed.

Hours of operation is a common constraint found in a permit, the purpose of which is generally to limit emissions. The typical practice for ensuring compliance with such requirement is the inclusion of recordkeeping and reporting requirements. There is no legal or technical basis for surveillance

monitoring to ensure compliance with this limitation on hours of operation. It is believed that the hours of operation referred by the commenter relates to the relocation agreement with the City.

174. The federal monitors are not near the current site of General Iron. The data gathered around the existing General Iron location shows concentrations of air quality that are unhealthy (or "show unhealthy levels of fine particulates"). See Exhibit A, Maps of Air Quality Monitoring Data Around General Iron Facility.

These concentrations are from personal, small sensors. These monitors measure very short timeframe concentrations – down to the second in some cases. While these sensors can provide useful indicator information, they are not federally approved for comparison to any NAAQS and are not subject to the same rigorous standards of quality control and quality assurance as Illinois EPA monitors. Additionally, the reported concentrations, often listed as "brief" or for only a few seconds, have no direct comparison to PM2.5 standards. The current standards for PM2.5 are measured on an annual basis and a 24-hour basis. For the small sensor concentrations to be compared to an Air Quality Index value, a 24-hour concentration needs to be established. Exceedances of the 24-hour standard are rare. The Illinois EPA monitoring data at monitors nearest to the current site do not show unhealthy levels of fine particulates and, in fact, that area, along with the entire State of Illinois, is in attainment with the PM2.5 National Ambient Air Quality Standard.

175. Given that much of the pollution control equipment will be moving to the South Burley Avenue location, which is in a frontline community, the Agency should first consider the monitoring data from the existing facility. David, relate that the monitoring data on Clifton and monitoring data for Burley say the same thing.

As noted above, the monitoring data from the monitors nearest to the existing facility demonstrate that the area is in attainment of the particulate matter standards, as is the case for the new location and the entire State of Illinois. One benefit of the new location is that the prevailing winds will typically carry emissions toward nearby Illinois EPA monitors, which will provide good information about the nearby ambient air.

176. In General II, LLC's initial submission of repository documents, the introduction states: "There are no Illinois EPA or USEPA regulations limiting emissions of specific metals or requiring an ambient impact analysis." Can this truly be the case and if so, has it always been the case?

Yes, it is true that there are no regulations limiting specific metals that apply to this scrap metal recycling facility. Rather, the scrap metal recycling facility it is subject to the Pollution Control Board's rules applicable to visible and particulate matter emissions and to volatile organic material emissions. Further, it is true that there is no requirement for an ambient impact analysis for a facility of this type and size. And this has always been the case.

177. Have any of the applicable standards currently being applied to this proposed permit changed over the course of the last 3 ½ years and if so, in what way.

It is not clear whether the commenter is referring to the standards that govern the permitting process or the source itself. Regardless, the answer is the same – no, there have not been any changes in the last 3 ½ years. The requirements applicable to construction permitting and the public process are long

established. Likewise, the Pollution Control Board's air pollution control regulatory requirements that are applicable to this source are long established.

178. In October 2019, ELPC air quality monitoring data showed concentrations of poor air quality close to existing General Iron facility, which creates doubts about the adequacy of the pollution controls to protect the community. Of great concern are the intersections at Clifton and Kingsbury, and the intersection at Kingsbury and Wisconsin which have had PM 2.5 readings greater than 35 ug/m^3. See Attachment A.

As noted above, while these sensors can provide useful indicator information, they are not federally approved for comparison to any NAAQS and are not subject to the same rigorous standards of quality control and quality assurance as Illinois EPA monitors. Additionally, the reported concentrations, often listed as "brief" or for only a few seconds, have no direct comparison to PM2.5 standards. The current standards for PM2.5 are measured on an annual basis and a 24-hour basis. For the small sensor concentrations to be compared to an Air Quality Index value, a 24-hour concentration needs to be established. Exceedances of the 24-hour standard are rare. The Illinois EPA monitoring data at monitors nearest to the current site do not show unhealthy levels of fine particulates and, in fact, that area, along with the entire State of Illinois, is in attainment with the PM2.5 National Ambient Air Quality Standard. Based on a review of the application, the source has demonstrated that it can comply with the Pollution Control Board's regulations for organic material and visible emissions.

Modeling

179. Why was the modeling performed?

The Illinois EPA requested air quality modeling of hazardous air pollutant (HAP) metal emissions from General III in support of the construction permit application.

180. Who performed the modeling?

A third-party consultant for General III performed the modeling which was then audited by the Illinois EPA.

181. What does the modeling conclude?

Predicted modeled concentrations were compared against the National Ambient Air Quality Standard for lead, and for other metals against the Agency for Toxic Substances and Disease Registry (ATSDR) risk levels and Wisconsin Department of Natural Resources (WDNR) air toxics rule. Predicted concentrations were well below the identified limits. For carcinogenic substances, the inhalation risk was calculated using USEPA or California Air Resource Board unit risk factors. Estimated risk levels for all carcinogenic substances were less than 1 in 1,000,000.

182. The prevailing wind direction of the proposed new site (from SW to NE) means that majority of emissions will be blown toward G.W. High School and G.W. Elementary School and students will be exposed to PM and other emissions, such as manganese.

It is true that prevailing wind direction in the Chicago area is generally from the southwest. In such a situation, the prevailing winds would typically carry emissions toward the George Washington schools and thus the monitors that are located there. There are three types of monitors at George Washington High School – PM10, PM2.5, and lead/metals/TSP. The Illinois EPA would consider the Washington High School monitors to be very well situated to measure the air that may be impacted by emissions from this source. And, the monitors are measuring attainment with the National Ambient Air Quality Standard for PM10, which is designed to be protective of human health and the environment.

183. "The Draft Permit is based on deficient air quality modeling. The modeling assumes exceptionally high and artificial levels of control from the Hammermill Shredder; omits the co-located, unpermitted sources already operating at Burley as well as other known nearby sources of fugitive air toxics; fails to justify employing Wisconsin's air toxics rules versus other available state approaches; and omits PM10 modeling altogether."

Since the proposed General III PM10 emission rates would not exceed regulatory thresholds triggering the requirement for modeling, the applicant was not required to do so. Rather, the modeling was performed at the request of the Illinois EPA. The Illinois EPA was aware that Wisconsin had promulgated a rulemaking that had resulted in a relatively comprehensive set of toxic air contaminant air quality standards. Many of them comparable to or identical with values issued or used by other entities that may be regarded as more appropriate for off-site health risk evaluation. Capture and control of emissions is discussed elsewhere herein. Importantly, the actual capture and control will be definitively determined through emissions testing required under the issued construction permit. As to the other operations at the Burley site, they will be addressed along with General III during the operating permit phase of review.

184. The Illinois EPA cannot issue permit as the modeling demonstrates General III will violate the prohibition on air pollution.

The Lake Calumet region of Cook County (and the entire State of Illinois) are in attainment with the primary and secondary PM10 NAAQS. Since the proposed General III PM10 emission rates would not exceed regulatory thresholds triggering the requirement for modeling, the applicant was not required to do so. Equally relevant, however, is the Agency's firm expectation that Genera III's proposed PM10 emission rates would not "cause air pollution" as a result of the facility's contribution to existing ambient loadings in the Lake Calumet region. There was not an "omission" of PM10 modeling, there was simply a targeted focus on metallic HAPs. Manganese concentrations were modeled that represent 24-hour average and annual average concentrations. The 24-hour average concentrations are considered short-term average impact predictions. Though California has an 8-hour average Reference Exposure Level for manganese, the Agency is unaware of any federal agency or any other states issuing or using an 8-hour exposure level. The modeling analysis reflects conservative assumptions about facility operations and emissions-generating activities. These are believed to be consistent with the language of the draft permit and therefore lend support to the permit decision.

185. Emissions estimates in the air quality modeling are unsupported and otherwise inappropriate. The proposed hammermill shredder will not be completely enclosed. Therefore, any assumption that 100% of the particulate matter generated will be captured and controlled is not correct. Unless and until the shredder fugitive emissions are quantified and included in the metals and particulate matter modeling, the application materials before the agency cannot be relied upon for permit issuance.

The Agency stands by the permit and modeling. Notwithstanding, the actual capture and control will be addressed through emissions testing as set forth in the permit. With the results of that testing, additional modeling will be performed.

186. The conveyor emission factors are of concern. The applicant provided detailed particulate matter emission calculations regarding the ferrous material processing emissions, that largely rely upon AP-42, Section 11.19.2 Crushed Stone Processing and Pulverized Mineral Processing. The emission factor tables in AP-42, Section 11.19.2 provide two factors (controlled and uncontrolled) with controlled factors applicable to operations utilizing wet suppression. The controlled factors reflect an approximate 95% reduction in emissions due to wet suppression. The applicant assumes that a natural moisture content above 1.5% allows the use of the controlled factors without wet suppression equipment in operation. There is nothing magical about a 1.5% moisture content that immediately affords 95% reduction in fugitive dust emission generating potential equivalent to wet suppression. Depending on the material involved, significant fugitive dust emission generating potential can exist at moisture contents significantly in excess of 1.5%. Unless and until the conveyor emission calculations are corrected and the revised estimates included in the metals and particulate matter modeling, the application materials before the agency cannot be relied upon for permit issuance.

It is acknowledged that there are shortcomings in attempting to apply some AP-42 emission factors and associated emission suppression assumptions to scrap metal processing operations. Despite that, the Agency believes that the applicant adopted a reasonable approach in developing the conveyor emission estimates. And again, the modeling was not statutorily or regulatorily required to be performed as part of the application nor review process for this construction permit.

187. The non-ferrous material processing system includes a fines processing system controlled by four dust collectors. Three of the dust collectors vent indoors with the fourth venting to atmosphere. The applicant estimates particulate matter emissions from the fourth dust collector (DC-01) utilizing the potential airflow and an assumed exit loading of 0.005 grains per cubic foot (gr/cf). A more appropriate grain loading to estimate particulate matter emissions from DC-01 is in the range of 0.04 gr/cf. The applicant's proposed factor is simply not tenable given the type of collection systems in use at these types of operations nationwide. The applicant's proposed 0.005 gr/cf factor represents the pinnacle of particulate control from a state of the art, brand new baghouse equipped with polyester filter bags and reverse jet pulse cleaning. Absent substantial justification and documentation, the usual and customary factor of 0.04 gr/cf should be used. Unless and until the DC-01 emission calculations are corrected and the revised estimates included in the metals and particulate matter modeling, the application materials before the agency cannot be relied upon for permit issuance.

Regulatorily, the factor would need to be at least 0.03 gr/cf for PM10, thus the suggested factor could not be utilized. The permit requires testing of the DC-01 dust collector, to demonstrate compliance with the expected grain loading performance of this control device.

188. The modeling approach relative to roadways is not appropriate. A more robust and appropriate approach given general engineering knowledge/experience, the history of failed paving at General Iron and the RMGSCPM facilities and the vagueness of pavement-related requirements in the Draft Permit and FPOP is to use a simplified fugitive dust estimate, taken from AP-42 Section 13.2.3 Heavy Construction Operations. The recommended emission factor is 1.2 tons/acre/month. Annual

emissions can be therefore estimated using estimates of potentially erodible acreage. To allow for a portion of the area which might be paved (assumed to be 20%), we suggest that this emission factor be applied to the rest (i.e., 80%) of the total GII acreage at the rate of 1.2 tons/acre/month. Unless and until the vehicle traffic emission calculations are provided for review and comment, the application materials before the agency cannot be relied upon for permit issuance.

Ideally, estimates of re-entrained roadway particulate emissions should be based upon site-specific (road segment-specific) characteristics and established (generally accepted) emission factors. Speculation regarding pavement degradation as the basis for applying an alternative emission factor that is based only upon a single set of field studies (AP-42, p.13.2.3-1), rather that the applicant's use of an emission factor that "is based on a regression analysis of 83 tests" (AP-42, Section 3.2.1), should be considered suspect and potentially without merit. The commenter's proposed emission factor choice would potentially grossly overstate paved roadway fugitive emissions, certainly for a newly constructed operation. If the City of Chicago requires that all roadways at the GIII facility be paved, then the modeling analysis becomes more conservative, since it includes unpaved roadway emission estimates, which are typically higher.

189. Modeling Inputs/Assumptions Used by the Applicant and Illinois EPA are Unsupported and Otherwise Inappropriate particularly as to meteorological datasets. Two National Weather Service meteorological datasets were used. Surface data was taken from the Midway Airport in conjunction with coincident air sounding data from Davenport, Iowa for the years 2012 through 2016. In general, use of one year of onsite meteorological data is the preferred approach in U.S. EPA modeling guidance. Use of five years of "off-site" meteorological datasets may be used unless (1) specific terrain, coastal proximity, or other unique geographical issues make such data unsuitable and/or (2) "on-site" meteorological datasets are available. In this case, given the proximity of the site to Lake Michigan and the Calumet River and the availability of surface data from three meteorological stations in close proximity to the site (KCBX, S.H. Bell, and Watco Terminal), use of the surface data from the Midway Airport cannot be supported. Unless and until the modeling is revised to include the surface data from the local meteorological stations, the application materials before the agency cannot be relied upon for permit issuance.

The Agency acknowledges that the use of "on-site" meteorological data is preferred in regulatory modeling applications. Unfortunately, the commenter's three recommended "meteorological stations near the site" do not actually represent "on-site" locations for the proposed General III facility. Furthermore, it hasn't been demonstrated that those datasets are sufficiently robust for a refined modeling application. The Midway International Airport surface observations were chosen because of the proximity of this National Weather Service site to the GIII site and because the data is representative of the complex circulation patterns and other meteorological factors that influence the GIII site.

190. With the exception of the regenerative thermal oxidizer (RTO) and DC-01, all of the proposed emission generating activities are treated as a volume source. Volume source representation for air dispersion modeling purposes is a complex combination of location, release height, initial lateral dimensions, and initial vertical dimensions. However, because the applicant redacted the process flow diagrams from the original modeling submittal with a claim of Trade Secret, this reviewer cannot vet the volume source representations. And while the applicant does provide some information about the location of the haul roads, the depiction is spartan. Unless and until all volume source

representations can be fully vetted, the application materials before the agency cannot be relied upon for permit issuance.

The applicant did indeed redact the diagrams showing the volume source groupings of emission sources from the original modeling submittal. However, these diagrams, though pictorially useful, did not actually show the precise location and dimensions of the volume sources modeled. That information is found in the model input files and the supporting documentation.

191. Unless and until all particulate matter emissions from the co-located operations are included in the modeling, the application materials before the agency cannot be relied upon for permit issuance.

Since analyzing for total PM, PM10, and/or PM2.5 was outside the scope of the modeling analysis for General III (which focused exclusively on metallic HAPs), any extension of that modeling analysis would not have included evaluating particulate matter (PM, PM10, PM2.5) for the four SCPM facilities. The Illinois EPA did evaluate the increase in metallic HAPs from the four SCPM facilities in conjunction with the General III HAP emissions but did not find any increases of potential concern.

192. Based on the applicant's own emissions estimates and modeling, the proposed General III will result in exceedances of the PM10 NAAQS and unacceptable short-term manganese impacts. Impacts of manganese exceed the 8-hour Reference Exposure Level of 0.17 micrograms per cubic meter (ug/m3) established by the California Office of Environmental Health Hazard Assessment OEHHA. Unless and until impacts (including regional sources such as the significant known sources of fugitive manganese along the Calumet River that are not reflected in Illinois EPA's inventory can be shown to reside below 0.17 ug/m3, the application materials before the agency cannot be relied upon for permit issuance. This is especially true given the history of manganese issues in this environmental justice community.

The manganese modeling conducted by the applicant and reviewed by the Agency simulated 24-hour and annual averaging periods. A Wisconsin air quality standard and an ATSDR Minimal Risk Level (MRL), respectively, represented the human health standards against which the 24-hour and annual modeling results were compared. Modeling was not conducted for an 8-hour averaging period. The California Environmental Protection Agency Office of Environmental Health Hazard Assessment (OEHHA) 8-hour inhalation Reference Exposure Level of 0.17 ug/m3 can be viewed as a guideline level rather than as a bright line standard. As indicated in OEHHA's Air Toxics Hot Spots Program Technical Support Document for the Derivation of Noncancer Reference Levels, "a reference exposure level (REL) is an airborne level of a chemical that is not anticipated to present a significant risk of an adverse non-cancer health effect."

193. PM air quality modeling was not conducted, without explanation, despite the prohibition on air pollution, which encompasses causing or tending to cause air pollution in violation of the National Ambient Air Quality Standards. Based on the applicant's own emission calculations and modeling approach, impacts of particulate matter less than 10 microns in aerodynamic diameter (PM10) (added to background) exceed the 24-hour National Ambient Air Quality Standard (NAAQS) of 150 ug/m3. Unless and until PM10 impacts (including background) can be shown to reside below 150 ug/mg (24-hour average), the application materials before the agency cannot be relied upon for permit issuance.

As indicated previously, an expansion of the modeling analysis to address total PM10 was considered unnecessary by the Agency in a minor source construction permit transaction particularly when the Lake Calumet region of Cook County (and the entire State of Illinois) are in attainment with the primary and secondary PM10 NAAQS.

194. The applicant proposes to control emissions from the hammermill shredder with a control train including a regenerative thermal oxidizer (RTO). The presence of the RTO indicates high levels of volatile organic compounds (VOC), organic hazardous air pollutants (HAP), and other air toxics. Unless and until all reasonably identified HAP and air toxics are identified, quantified, and modeled, the application materials before the agency cannot be relied upon for permit issuance.

Organic hazardous air pollutants were not modeled because Table 3-1C of the permit application and Table 3-1C in the Updated Emissions Estimate document (January 27, 2020) indicated that the quantity of emissions would be quite small. The presence of an RTO does not at all automatically suggest that organic HAPs will be present, as many facilities use RTOs to control non-HAP VOCs. Further, there was no requirement to do modeling in the first instance.

195. We support Illinois EPA's investigation into the air toxics impacts of this facility on air quality and health, however, the following short list identifies high-level issues identified in the health analysis:
    - •Failure to assess PM10
    - •Failure to fully justify use of the Wisconsin approach for air toxics, versus other available approaches for assessing air toxics in states such as Michigan, Minnesota, Ohio, California, and Texas
    - •Failure to assess the combined impacts of multiple metals and other hazardous air pollutants ("HAPs") from the proposed GIII, and in the context of the overburdened Southeast Side
    - •Failure to take into account non-cancer impacts of HAPs
    - •Failure to assess the impacts of VOCs along with metallic HAPs
    - •Failure to account for the toxicity of hexavalent chromium
    - •Failure to evaluate available short-term health thresholds for certain HAPs, such as the 8-hour manganese threshold of 0.17 ug/m3
    - •Failure to accurately account for fugitive emissions from nearby facilities, given shortcomings in the state's emissions inventory for such sources
    - •Failure to take into account the mobile source-related emissions from the trucks, trains and barges that will accompany the proposed GIII and related sources
    - •Failure to evaluate other proposed and/or in-construction nearby sources of air pollution, such as a proposed new SCPM recycling facility immediately to the East of GIII200 and large warehousing facilities by developer NorthPoint
    - •Failure to take into account the multiple pollutant exposures via air, water and soil; historic and existing health burdens; and sociodemographic characteristics of the impacted population, as pertain to the overall cumulative vulnerability to impacts from air pollution that would be emitted from the proposed GIII Illinois EPA must address at least these shortcomings in a revised assessment of whether the proposed GIII will run afoul of the prohibition on air pollution.

The Illinois EPA was aware that Wisconsin had promulgated a rulemaking that had resulted in a relatively comprehensive set of toxic air contaminant air quality standards. Though many of the standards are apparently based on Threshold Limit Values established by the American Conference of Governmental Industrial Hygienists (ACGIH), and may be thought of by some as insufficiently protective of the general public and the environment, they are clearly comparable to or identical with

values issued or used by other entities that may be regarded as more appropriate for off-site health risk evaluation. The Illinois EPA had no obligation to perform the modeling much less to fully research what other state regulatory agencies are using, and how those standards were developed. The Illinois EPA does prefer using ATSDR Minimal Risk Levels, however, many of these may not be available for specific toxic air contaminants and specific averaging periods. The other "high-level issues" identified by the commenter above are either simply beyond the scope of the analysis, were known but considered insignificant, have already been addressed, and/or are excessively difficult to quantify or incorporate into the Agency's analysis.

196. The modeling seems to include approximate rather than precise locations for emissions sources. Do these sources need to remain at these locations? If so, what guarantees they will be so located.

There are no specific guarantees or express requirements that these sources will be precisely located at their identified locations; however, any significant deviation from the proposed locations could give rise to concern or even a violation of the issued construction permit. This is a matter that would be addressed in the compliance or enforcement process as would other deviations at this or any other source.

197. In the modeling GIII did not consider the impact of all sources of pollutants and assumed control levels that it cannot meet**.**

General III modeling accounted for emissions from the Hammermill Shredder system, conveyors, separators, storage piles and roadway traffic. Manufacturer-guaranteed control efficiencies are used to estimate emissions from point sources, which is standard practice particularly prior to or in the absence of facility specific emissions testing which is not possible during the construction permitting phase.

Published USEPA emission factors for material handling operations at metal shredding facilities do not exist. Therefore, surrogate emission factors from crushed stone processing were utilized. These surrogate emission factors may overstate particulate matter emissions because the material processed through a hammermill has a high moisture content, thereby reducing the potential for particulate matter emissions from the ferrous material processing operations.

198. GIII did not consider the cumulative impact in the community and the impact of the existing operations at the site.

While not statutorily or regulatorily required to perform any cumulative impact analysis, General III performed air dispersion modeling demonstrating that the air impact will not exceed any established standards for lead or manganese. Modeling of the existing SCPM entities was not performed. However, ambient impacts from these operations are accounted for in the background monitoring values at the monitoring station at Washington High School. The monitors have identified no NAAQS concerns.

199. I am concerned that diesel trucks were not included in the pollution assessment and that truck traffic will increase additionally because of the seven warehouses that are coming to the area.

The construction permit application includes emissions from roadways within site boundaries. There is no requirement to address off-site emissions from mobile sources. The warehouses that may be

added in the area are not relevant to this permitting action.

Inspections/Oversight/Compliance/Enforcement/Penalties

200. An additional concern is the lack of Illinois EPA inspections of and enforcement actions against pollution law violations at General Iron.

Inspections and compliance and enforcement actions are important statutory functions. However, any concerns in that regard are not germane to this permitting decision. Notwithstanding, federal air program guidance addresses the frequency of inspection. For a minor source of emissions such as this scrap metal recycling facility, that inspection frequency would be every five years. In addition, the source is the subject of periodic report reviews. Additionally, as discussed elsewhere, the Illinois EPA utilizes its partnership with the local unit of government, requesting assistance from them regarding complaint response. And, in a further measure to most effectively utilize the available resources, the Illinois EPA coordinates its efforts with the USEPA.

201. There has been issues at the existing site, what will you do about issues at the new site.

As a general matter, permits address applicable requirements and the means to assure compliance with such requirements, rather than the actions or consequences that would ensue from issues encountered in attempts to implement or comply with an issued permit. This is, in part, because one cannot anticipate all issues that might later develop, much less how those might be appropriately addressed in the permitting context. Further, some issues that may develop may not be permitting considerations but compliance or enforcement considerations. However, the Illinois EPA will be overseeing GIII operations in a myriad of ways and will appropriately address any identified issues.

202. Illinois EPA's statutory mandates not only include permitting but monitoring and enforcement of compliance of permits. By issuing this construction permit while refusing to acknowledge a well-documented negative track record of this company, the Illinois EPA is burdening the city and passing its mandate to a city government as opposed to taking responsibility for monitoring the permits issued by the agency.

The Illinois EPA is aware of its statutory mandates and takes them seriously. In making this permitting decision, the Illinois EPA is not ignoring its mandates but rather following them. Specifically, it is making this permitting decision as directed by statute. By no means does the issuance of this permit pass any state mandates to the City. Further, the City is not responsible for ensuring compliance with Illinois EPA issued permits nor state or federal regulations. Rather, the City is responsible for ensuring compliance with its ordinances and regulations.

203. IIllinois EPA has chosen not to conduct inspections or commence enforcement proceedings against General Iron or RMG, at most they have conducted limited investigations that have failed to remedy the ongoing problems.

The inspection, compliance and enforcement history at the existing scrap metal operations on Clifton is not relevant to this permitting action. Notwithstanding, the Illinois EPA did not make a choice to

not inspect the Clifton operations. It has been to the Clifton site twice in the last six months. In addition, the Illinois EPA utilized its local partner to respond to complaints relative to the source. Also, it coordinated with the USEPA in its efforts. Additionally, records received from the source were reviewed.

204. Staffer Eric Jones recommended that a voluntary self-disclosure be submitted.

Mr. Jones is an employee of the Bureau of Air Permit Section. In response to a phone call from the source informing the Agency of noncompliance, he simply conveyed that the information needed to be disclosed to the Compliance Section, and that disclosure indeed occurred. That disclosure formed the basis for a VN that is pending resolution. Irrespective of his message, a source can follow the state or federal self-disclosure provisions. Whether the disclosure satisfies the criteria of these provisions is a separate consideration.

205. Illinois EPA has dramatically downsized its staff in recent years, causing reductions in inspection and enforcement. Inspections of air-polluting facilities have declined 80 percent since 2003. Enforcement cases referred to the Attorney General have also declined. The community, City and USEPA have been left to police pollution on the Southeast Side, addressing pet coke, manganese and identifying multiple facilities operating without state permits, due to Illinois EPA's absence in its role of primary environmental regulator and enforcer.

There have not been any staffing cuts in recent years, rather staff losses through retirements or attrition that are the subject of very aggressive hiring efforts. Since the time Gov. Pritzker took office, the IEPA has made a renewed emphasis on both hiring and enforcement. In fact, in the first year of Gov. Pritzker's administration the IEPA issued the most violation notices since 2011 and issued the most referrals to the Attorney General's Office since 2015.

206. Illinois EPA has a delegation agreement with the City of Chicago, Department of Public Health essentially deputizing them as an enforcement partner carrying out the Act and to assist with the state Agency's enforcement actions, conduct inspections, note violations of state law, respond to citizen complaints, and keep records of inspections and violations.

The Illinois EPA has an agreement with the City; however, it is an IGA or Intergovernmental Agreement, not a delegation agreement. As such, the City is not delegated any of the authorities under the Environmental Protection Act and is not "deputized" in any regard. It does not carry out the Act nor does it have the authority to do so. The agreement does seek inspection services by the City, most notably in response to citizen complaints. In investigating these complaints under the IGA, the City is accessing the facilities via its own rights of access. In identifying any potential violations of state law or regulation, the City reports such information to the Agency. Any actions by the City relate to violation of local ordinance or regulation.

207. Chicago's Department of Public Health enforcement activities are a critical part of the state-local partnership, and recognition of this important role warrants treating the violations of local ordinances and rules in this case as constituting "non-compliance" with the Illinois Environmental Protection Act. Chicago's Department of Public Health actions as the primary air regulator and enforcer in Chicago, including under an express delegation agreement with the Illinois EPA.

The inspections under the IGA and particularly the complaint response are an important aspect of the state-local partnership. However, inspections by the local unit of government are not inspections by the State. Such inspections may serve to inform the Illinois EPA and may serve to address or resolve a citizen complaint. But, the City is not delegated inspection authority. It is not delegated compliance or enforcement authority. It is not delegated the authority to implement state regulations. Thus, observations of the City and any tickets issued for ordinance violations do not translate to a violation of the Environmental Protection Act. And while it plays a significant role in environmental protection, the City is not the primary regulator and enforcer of the Environmental Protection Act.

208. When these provisions are not met, General Iron III LLC must face severe enforcement penalties, these penalties should be acknowledged within the permit.

The Illinois Environmental Protection Act provides for the imposition of civil penalties for violation of the Act. It is not necessary to recite the provisions of the Act in this regard in a permit.

Explosion

209. That explosion renders the current permit application incomplete.

The explosion does not render the application incomplete. The application sets forth information that demonstrates that the source can comply with the applicable provisions of the Act and regulations thereunder.

210. I am concerned for the recent explosion at current facility and ask that the construction permit be delayed until a complete investigation can be done. The failed equipment is not reliable to control emissions at new facility.

Proximate to the explosion the Illinois EPA sent a letter that among other things sought both a report of any damage to the RTO and root cause of the explosion. The letter has been acknowledged and there exists a commitment to provide the reports when final. In the meantime, in the context of the pending application, General III has represented that it remains committed to the use of an RTO at the new site and believes that the use of the existing RTO remains a viable option. It further represents that measures have been identified to prevent explosions in the RTO. Those measures including the installation, operation, and maintenance of a continuous monitoring device for the inlet gas stream to the control train to the Hammermill Shredder System for the flammability of this gas stream as a percentage of the lower explosive limit of this stream, have been added to the issued permit.

211. "The transfer of any equipment that can cause this kind of catastrophic failure requires that the permit application be revised to address risks related the proposed use of any equipment, its control efficiency, and the applicant's ability to operate the equipment safely and effectively. Further, existing emission estimates and air quality models do not account for emissions during periods of catastrophic failure and also must be revised. And, additional permit terms and conditions are clearly necessary to prevent future accidents and to ensure the integrity of the equipment and the applicant's operating systems."

The incident at the RTO was not a failure of the control device, nor does is render the device unreliable at reducing the organic emissions from the shredder. The destruction efficiency of the RTO will be tested at the new location. As noted above measures have been added to the permit to guard against future incidents of this type. Emissions from events of this type will be included in the calculation of total VOM emissions from the shredder. However, an event of this type is likely of limited duration and impact. Information provided by General III estimates an impact of approximately 3 pounds of VOM per event. The Operations and Maintenance Plan and the Feedstock Management Plan will also serve to improve operations.

212. Illinois EPA must impose additional permit conditions to prevent explosions.

The draft permit has been revised to include a Lower Explosive Level monitor and set point. It has also been revised to include a bypass safety vent to ensure the release of VOM-rich materials that would otherwise threaten an explosion. This bypass safety vent will be equipped with a device that ensures and monitors its use. The emissions from the vent will be included in the determinations of compliance with Subpart TT and the permit emission limits.

213. Measures that ensure that General Iron III LLC will employ a sufficient amount of qualified operators that are highly trained in operating applicable pollution control technologies such as the Regenerative Thermal Oxidizer (RTO). As demonstrated by the recent explosion at General Iron's current location in the Lincoln Park neighborhood, General Iron III LLC does not currently have the capability to operate these technologies safely.

The Illinois EPA does not have the authority to dictate who a regulated or permitted entity employs nor their credentials with limited exception. An RTO is a well-established and common means of controlling volatile organic compounds and hazardous air pollutants. There are no operator or training requirements for an RTO under the Environmental Protection Act or the Clean Air Act.

214. The record for the Draft Permit also fails to take into consideration a recent explosion at the Clifton Ave. site. On May 18, 2020, General Iron was shut down due to two explosions there. Subsequently, Chicago Department of Public Health issued two citations totaling up to $6000 to General Iron for violation of Illinois state pollution standards. See Chicago Dept of Public Health, "Statement from CDPH on Citations to General Iron on Explosions at the Facility," Public Health (May 21, 2020), available at https://www.chicago.gov/city/en/depts/cdph/provdrs/healthy_communities/news/2020/may/statement-from-cdph-on-citations-to-general-iron-on-explosions-a.html. The City's investigation is still ongoing. Given that much of the equipment is supposed to be transferred to the South Burley Ave site on the East Side, the Agency should (or "at a minimum") reassess the permit to determine if the pollution control equipment and other operating equipment at the Clifton Avenue site still meets the parameters of the Draft Permit without resulting in noncompliance.

The City, the Illinois EPA and the USEPA are all aware of, involved with, and in communication on the explosion. The Illinois EPA has added provisions in the permit to minimize the risk of explosions in the RTO at the Burley site.

215. The permit should be denied because the EPA did not consider the George Washington air monitoring data or consider the likelihood and effect of failures of the Hammermill Shredder System.

The Illinois EPA did consider the data. There are three types of monitors at George Washington High School – PM10, PM2.5, and lead/metals/TSP. These monitors are very well situated to measure the air that may be impacted by emissions from this source. And, the monitors are measuring attainment with the National Ambient Air Quality Standard for PM10, which is designed to be protective of human health and the environment.

216. They require a lot of maintenance to ensure the controls are effective.

It is unclear what controls are being referenced. Regardless, the permit addresses maintenance of equipment with the requirement for an Operations and Maintenance Plan.

217. This permit must have provisions in place that require General Iron III to regularly prove that it operates the pollution control technologies to the highest standard.

The permit includes periodic monitoring including testing to ensure compliance with applicable regulatory requirements and the terms of the permit.

Miscellaneous

218. Can a third-party auditor be in charge of reporting and report to community?

General III, as owner or operator of the scrap metal facility bears responsibility for the obligations under the Environmental Protection Act and regulations thereunder. It is General III that is required to comply with the requirements to obtain a permit and to comply with the terms of the permit. As with all permits, the construction permit issued to General III includes record keeping and reporting requirements. Records and reports are subject to review by the Illinois EPA, among other. Reports and other information within the possession of the Illinois EPA constitute state records and are generally available to the public. Access to the information occurs by way of requests under the Freedom of Information Act. Failure to maintain the requisite records or to submit the requisite reports subjects a source to compliance and enforcement actions as provided for under the Environmental Protection Act. In this instance, there is no basis for the inclusion of a condition requiring the retention and use of a third-party auditor by General Iron. Notwithstanding, the permit has been revised to require that the testing required under this permit will be performed by independent-third party contractors. Also, the protocols and plans required under this permit will be prepared by third-party contractors.

219. How do we know that you can't be influenced by this economic powerhouse?

The Illinois EPA is a creature of statute and its responsibilities and authorities are dictated by same. Employees of the Illinois EPA are individually subject to ethical constraints. The permitting program affords structure, by which facilities must operate consistent with governing rules and regulations. Reporting, record keeping, and monitoring is also required. The records within the Illinois EPA are generally readily available to the public.

220. The facility has not proposed any "community benefits agreement" or made efforts to reach out to community.

Community benefits agreements are often executed between community groups and the developer of a project and delineate measures that the developer will afford the community that are not otherwise required. These agreements are often used in low-income and communities of color. Such agreements are not a requirement under the Environmental Protection Act.

221. Why can't the Illinois EPA mandate that GIII employees live within 5-10 miles of the source?

State laws and regulations concerning environmental protection generally address sources of pollution and not ancillary issues related to the residency of employees.

222. Nowhere does the FPOP attempt to demonstrate how the proposed measures in fact will ensure that fugitive sources will not cause levels of air contaminants that are injurious to human, plant, or animal life. The program solely focuses on the prohibition of visible emissions beyond the fence line, which is at best a very rough proxy for PM or air toxics particles in the air.

As discussed elsewhere, the prohibitions reflected in the Act and Board regulations are an enforcement tool separate from the FPOP's implementation of measures designed to assure compliance with Part 212. There is no direct means of measuring enforcement with the prohibitions through a permit evaluation.

223. Illinois EPA must impose conditions that prevent odors. Illinois EPA should include specific odor management provisions in the Draft Permit, including use of available odor monitoring systems.

General III is subject to the statutory prohibition against air pollution. In simplest terms, the statute prohibits General III from causing, threatening or allowing air pollution that would cause a violation of a Pollution Control Board regulation or create a nuisance.

224. Neither the Draft Permit nor the fugitive particulate operating program nor the yet-to-be- submitted Contingency Plan contain any practicably enforceable limits on fugitive emissions that demonstrate compliance with the prohibitions on air pollution.

The fugitive emissions from sources such as General III are addressed by state standards. Specifically, they are addressed by provisions within Part 212 Visible and Particulate Matter Emissions of the Pollution Control Board's regulations. These regulations address fugitive emissions by way of limitation on opacity from material handling and processing activities and by way of a prohibition on visible fugitive emissions beyond the plant property line. These regulations also address fugitive emissions through a fugitive particulate operating program, however, General III is not subject to same. Notwithstanding, the Illinois EPA has required General III to develop and implement a fugitive emissions operating program, that was submitted for Agency review, the current version of which is incorporated into the permit. This is the means by which the source ensures compliance with 212.301.

The Contingency Plan that is regulatorily required to be submitted but not at this time, will later be reviewed by the Agency and available to the public. However, it is of limited relevance as it is only activated in the event of a violation of the National Ambient Air Quality Standard for PM10.

The Board's Part 212 regulations were developed with an eye toward the protection of human health and the environment, and the goal of ensuring compliance with the National Ambient Air Quality Standard for Particulate Matter. Indeed, the entire state of Illinois is in compliance with this standard.

Attachment 1: Listing of Significant Changes Between the Draft Construction Permit and the Issued Construction Permit

1. Added a Miscellaneous Fugitive Sources category in the equipment listing to clarify these units are part of the permit.
2. Clarified the requirements for VOM emissions capture from the Hammermill Shredder System.
3. Clarified that the Miscellaneous Fugitive Sources are subject to 35 Ill. Adm. Code 212.123.
4. Clarified that the Ferrous Material Separation System, Non-Ferrous Material Separation System, and Miscellaneous Fugitive Sources are to be operated under the provisions of a Fugitive Emissions Operating Program.
5. Clarified the emission sources in the Ferrous and Non-Ferrous Material Separation equipment listing.
6. Clarified emission testing for Fine Processing Building and Hammermill Shredder System.
7. Added a requirement for the development of and operation under a Feedstock Management Plan for the Hammermill Shredder System.
8. Added a requirement for the development of and operation under an Operation and Maintenance Plan for the control systems.
9. Added a condition to monitor the pressure differential for the Roll-media filter associated with the Hammermill Shredder System and recordkeeping for the differential pressure to ensure proper operation of the control.
10. Added a condition to monitor the pressure differential for Dust Collector (DC-01) associated with the Fines Processing Building to ensure proper operation of the control.
11. Added a requirement for opacity observations from the Hammermill Shredder System stack, each emission unit in the Ferrous Material Separation System, the Fines Processing Building (DC-01), each emission unit in the Non-Ferrous Material Separation System, and Miscellaneous Fugitive Sources.
12. Added recordkeeping for Scrubber differential pressure, scrubbant flow rate, and scrubbant PH monitoring data to ensure proper operation of the control.
13. Added recordkeeping requirement for hours of operation.
14. Added recordkeeping requirement for material receipts.
15. Added recordkeeping requirement for type and amount of material processed by the Hammermill Shredder System.
16. Added recordkeeping requirement for amount of fluff shipped offsite.
17. Added LEL Monitoring system to the exhaust from the capture system associated with the Hammermill Shredder System and associated recordkeeping, and reporting requirements.
18. Added reporting requirement for initial startup for Hammermill Shredder System
19. Added quarterly reporting requirement for type and amount of material received, type and amount of material processed by the Hammermill Shredder System, throughput for the Ferrous Material Separation Process, Non-Ferrous Material Process, and Fines Processing Building, PM, PM_{10}, and HAPs emissions from the Hammermill Shredder System, Ferrous Material Separation System, and Non-Ferrous Material Separation System with supporting calculations, VOM emissions from the Hammermill Shredder System, Ferrous Material Separation System, and Non-Ferrous Material Separation System with supporting calculations, and amount of non-metallic materials (fluff) shipped offsite.
20. Reconciled the records retention requirements for all records required by the permit requiring retention for at least 5 years.