

[December 4, 2021 document email message below]

Subject: Comments on CDPH EJ Analysis for proposed Chicago metal shredding operation

Commissioner Arwady and Regional Administrator Shore -

Please see attached comments on the Chicago Department of Public Health's Health Impact Assessment for the proposed RMG/GIII metals operation to relocate from Lincoln Park to the Southeast Side, being conducted as part of the local permitting process in response to USEPA Administrator Regan's call for an environmental justice analysis.

The comments are submitted on behalf of the Southeast Environmental Task Force, Southeast Side Coalition to Ban Petcoke, People for Community Recovery, and Natural Resources Defense Council.

As the comments lay out, **the current record compels CDPH to deny the permit now**, based on the **racial composition of this community** compared to others in Chicago; the **heavy air quality burden borne by this community**; the **heavy cumulative impacts** burden borne by the Southeast Side; the **increase in PM and lead that the facility would bring** to this community, along with many other impacts; and the **discriminatory history of this operation's relocation**.

Were CDPH to correct the many procedural and substantive shortcomings in its HIA to date, also laid out in these comments, the case for denial would be even stronger.

Respectfully submitted,
Meleah Geertsma

p.s. I will be sending a link providing access to exhibit files for these comments to Jennifer Hesse and Alan Walts. Jennifer and Alan, please confirm receipt and that you can access/download the exhibit files.

Table of Contents

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| I. CDPH’s HIA Process to Date Is Marred by Fundamental Errors and Violates Principles of Racial Justice and Health Equity. | 6 |
| A. CDPH Failed to Engage the Community at All in Carrying Out the First Three Steps of the HIA. | 7 |
| B. The Disparity Analysis Used by CDPH Is Indefensibly Narrow and Fails to Set Forth a Framework that Comports with Its Obligations to Protect Public Health and Uphold Civil Rights. | 10 |
| II. Taken on Its Face, CDPH’s Analysis Shows the Permit Must Be Denied, While Correcting the Many Critical Deficiencies Would Make the Case for Denial Even More Compelling. | 12 |
| A. CDPH Failed to Center Cumulative Impacts in Its Data Presentation, Focusing Instead on Individual Factors. | 12 |
| B. USEPA’s and CDPH’s Presentation of Environmental Factors Was Misleading and Otherwise Deficient, Leading to an Under-representation of Disparities. | 13 |
| 1. The Air Quality Data in USEPA’s Report Demonstrates Significant Existing Air Quality Burdens on the Southeast Side, and Adding More Air Pollution Will Increase Burdens and Disparities on the Southeast Side Community. | 14 |
| 2. Other Available Air Data – Not Included in the USEPA Report – Shows the Problem on the Southeast Side Is Even Worse than the USEPA Report Depicts. | 15 |
| 3. CDPH and USEPA Failed to Convey that More Pollution Means More Harm. | 19 |
| 4. USEPA and CDPH Have Omitted Evaluation of Pollutants from Diesel Trucks. | 21 |
| 5. CDPH Has Failed to Include Environmental Factors Other than Air Quality in its Data Gathering and Analysis. | 22 |
| a. The HIA Omits Soil Conditions. | 23 |
| b. Evidence of Contamination Related to Historic Steel Production at the Burley Site Supports that Soil Likely Poses a Significant Threat to the Southeast Side from the proposed RMG/GIII. | 23 |
| c. Evidence of Contamination Related to RMG Operations on S. Burley Supports that Soil Likely Poses a Significant Threat to the Southeast Side from the Proposed RMG/GIII. | 24 |
| d. A Third-Party, Comprehensive Soil Assessment is Needed. | 26 |
| C. CDPH’s Analysis and Presentation of Health Data Are Substantially Flawed and Cannot Support Comparisons or Conclusions About Health Effects or Equity. | 27 |
| 1. CDPH Cannot Rely on a Single Comparison Community. | 28 |
| 2. CDPH’s Analysis Raises Issues with Respect to the Years Included and Covariate Adjustment. | 28 |

| | | |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 3. | CDPH’s Analysis Lacks Local Data. | 29 |
| 4. | CDPH’s Analysis Is Skewed by Misleadingly Narrow Hospitalization/Mortality Data. 29 | |
| 5. | Health Surveys Used by CDPH Likely Underestimate Ill-health. | 29 |
| 6. | CDPH Omitted Lead Level Data, A Key Factor in Southeast Side Health Status. | 30 |
| 7. | CDPH Used Quantitative Health Data Without Acknowledging Its Biases and Limitations, and Without Employing Qualitative Methods for Addressing these Biases and Limitations. | 30 |
| 8. | CDPH’s Presentation of Health Data at the November 4 Webinar Was Visually Misleading and Otherwise Inadequate. | 31 |
| III. | CDPH’s Approach to the HIA Exacerbates – Rather than Relieving – Inequities in the City’s Land Use and Environmental Permitting Processes. | 31 |

We write on behalf of the Southeast Environmental Task Force (SETF), the Southeast Side Coalition to Ban Petcoke (SSCBP), People for Community Recovery (PCR), and the Natural Resources Defense Council (NRDC), to express our grave and pressing concerns with the purported Health Impact Assessment (HIA) for the proposed RMG/GIII large recycling operation being conducted by the Chicago Department of Public Health (CDPH) with assistance by U.S. EPA Region 5 (USEPA). CDPH is conducting the HIA in response to USEPA Administrator Regan’s call for an “environmental justice analysis” in light of civil rights concerns with the proposed RMG/GIII, which is seeking to relocate operations from wealthy and largely white Lincoln Park to the Southeast Side environmental justice community.¹

USEPA and CDPH have taken important steps forward in acknowledging the need for and a commitment to undertake an environmental justice analysis. Indeed, this permitting process is an important early mover under the Biden Administration’s commitment to ensuring environmental and racial justice. It is thus critical that the City and USEPA employ a process that models the steps necessary to conduct a meaningful environmental justice analysis that results in recommendations and decisions reflecting the full effects of a proposed activity on the nearby environmental justice community and that engenders trust in agency decision-making as outcomes of such a process. But the HIA thus far falls woefully short in terms of both process and substance of satisfying even the most basic requirements for an HIA, and much less satisfying environmental justice and related civil rights issues.²

CDPH is not following the HIA Toolkit it is supposedly applying to finally engage with the community at a level that entails full consideration of the deep and pervasive disparities in environmental and related burdens in Chicago. Nor has it examined the increase in burden disparities and specific discriminatory history of the proposed operations here in order to generate a meaningful analysis and outcome. The agency instead appears to be inappropriately narrowing the scope of the HIA inquiry, including public engagement, to arrive at a largely pre-determined decision that will aggravate the very inequities Administrator Regan and CDPH have recognized and that are the basis for an active civil rights investigation of the City by the Department of Housing and Urban Development (HUD).³ It does so despite the record to date

¹ Slides presented by CDPH and USEPA at the November 4, 2021 webinar are available at: <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/HIA/RMG-HIA-Meeting-1-Slides.pdf> (HIA Overview Slides); additional materials from the November 4 webinar, including a video recording, are available at: <https://www.chicago.gov/city/en/sites/rgm-expansion/home/health-impact-assessment.html>. We further note that in a brief discussion of process and terminology with CDPH on September 24, 2021, Megan Cunningham (Managing Deputy Commissioner of CDPH) confirmed for members of SETF and SSCBP and their supporters that CDPH is using the term “HIA” synonymously with “environmental justice analysis” in this proceeding.

² This Comment is formally on the current HIA process, which is itself functionally a part of the permit process for RMG/GIII’s permit application, and thus should be made part of the administrative record in the permit review of RMG/GIII’s application for a Large Recycling Permit. Details of the interests of each of the groups on whose behalf this Comment is submitted are provided in prior comments submitted in CDPH’s review of the RMG/GIII permit application. *See* Comments of NRDC, SSCBP, SETF and PCR, available at: <https://www.chicago.gov/city/en/sites/rgm-expansion/home/public-comments.html>.

³ CDPH at the November 4 meeting cited to Human Impact Partners’ handbook or toolkit for conducting Health Impact Assessments as CDPH’s guiding model. *See* HIA Overview Slides, at 9, 22-23. It then walked through the 6 steps of an HIA – screening, scoping, assessment, recommendations, reporting, and monitoring and evaluation – consistent with this handbook/toolkit. *See* HIA Overview Slides, at 9. We therefore throughout these comments cite

which, as set forth below, supports and indeed compels that CDPH deny the permit now. The record demonstrates these bases for denial:

- That the Southeast Side is predominantly composed of protected racial classes, when compared to Lincoln Park and other, whiter communities in Chicago, and that a similar racial pattern exists around other heavy industrial corridors on the City's South and West sides;
- That the Southeast Side is the most burdened community in the city and/or Chicago region looking at available air monitoring for particulate matter (PM) and lead, two pollutants for which science has not identified effects thresholds;
- That the Southeast Side is among the most burdened communities in Chicago employing a cumulative impacts approach; and
- That the proposed RMG/GIII operation will undeniably increase PM and lead air emissions and concentrations in the community – the very contaminants for which the Southeast Side is most burdened based on available monitoring data – along with other sources of environmental contamination and risk to the Southeast Side.

Along with the specific history of discrimination involved in this proposed operation's relocation from Lincoln Park to the Southeast Side, these disparities and impacts mandate that CDPH deny the permit.

Were CDPH to correct the many shortcomings of its process and analysis, the case for permit denial would be even stronger. Specifically, as conducted to date, the HIA fails across a broad range of requirements for conducting a meaningful HIA, including:

- Omitting the community entirely from the critical first three steps of the HIA;
- Using a single community for the disparity analysis, rather than examining disparities using a citywide lens and including additional comparison communities;
- Failing to address critical deficiencies in data collection and analyses that grossly under-represent health and environmental burdens on the Southeast Side;
- Emphasizing individual environmental and health factors in the presentation, while de-emphasizing and failing to explain the significance of a cumulative impacts approach and the cumulative impacts results;
- Totally failing to acknowledge and center racial justice and civil rights in its analysis; and
- Overall failing to explain the possible decision outcomes and standards by which CDPH will be making its decision.

Each of these shortcomings alone is significant and falsely minimizes conclusions about the comparative individual as well as cumulative impacts and effects between the Southeast Side and other parts of the City. Taken together, and in conjunction with the many other deficiencies detailed in this comment, it is clear that CDPH's HIA cannot support approval of a large recycling permit for the proposed RMG/GIII operation.

to portions of the 3rd Edition of this Human Impact Partners' handbook, entitled *A Health Impact Assessment Toolkit: A Handbook to Conducting HIA* (February 2011), available at https://humanimpact.org/wp-content/uploads/2018/10/A-HIA-Toolkit_February-2011_Rev.pdf (HIA Toolkit) (provided as Exhibit (Ex.) 1).

The data presented by CDPH and USEPA on November 4 makes clear that the Southeast Side environmental justice community is already one of the most overburdened communities in Chicago and that its residents already suffer serious health and socioeconomic consequences of decades long and continuing contamination of their environment. The permit record to date, even setting aside continuing inadequacies in the application materials and CDPH’s engineering assessments as well as the applicant’s long history of fires, auto fluff dispersal, poor dust control and explosions, demonstrates that the proposed operation will increase pollutant levels on the Southeast Side – including pollutants for which the Southeast Side ranks as the most burdened in the City and region, and for which there are no known health effects thresholds – in areas accessible by the public. As such, there is more than enough data and information in the November 4 presentations – and in the numerous other comments previously submitted concerning the RMG/GIII application – for CDPH to deny the RMG/GIII operation permit now, pursuant to its duties to protect public health and prevent nuisances and its commitments to address racial justice and health equity.

Such a denial is not only consistent with and compelled by the HIA record to date, but is necessary to ensure compliance with the City of Chicago and USEPA’s obligations under the civil rights laws of the United States to ensure equal protection of all residents of the City. As the information and data presented on November 4 make clear, the residents of the Southeast Side are not currently enjoying their full civil rights. The City’s land use and environmental policies, historically and continuing today, place environmental burdens and health and socioeconomic consequences unfairly and unequally on low-income communities of color like the Southeast Side. Further, as directly implicated in this case, the City is undertaking an intentional de-industrialization of the North Branch corridor that will further reduce such burdens for whiter, wealthier communities like Lincoln Park, while increasing burdens on communities of color adjacent to other industrial corridors.⁴ Given this analysis to date and context, CDPH must

⁴ We note that CDPH appears to be picking up the false narrative of jobs-versus-the-environment/health, as evident in its November 4 presentation, which claims “jobs” as a potential short-term benefit and “economic security” as a potential long-term benefit of the proposed metals operation. HIA Overview Slides, at slide 29. Neither CDPH nor commenters supporting the proposed metals operation have presented credible data or analysis that continuing to concentrate heavy industry in communities of color is in the Southeast Side’s short-term interest in terms of more immediate job creation or long-term economic security interests. Nor has it explained why, even if it were in Lincoln Park’s economic security interest to remove industrial operations to enable Lincoln Yards while the Southeast Side gets more metal shredding and associated pollution, that such a decision is an acceptable exercise of the City’s municipal authority where, as here, a lower income community of color is being intentionally disadvantaged for the benefit of a wealthier, white community. As we have set forth in the past to the City, it must undertake a city-wide assessment of the benefits and burdens of the industrial corridors, applying an equity lens and asking whether economic opportunity is equitably distributed throughout the City, including with respect to the types of opportunities available to Black, Indigenous and People of Color (BIPOC) communities relative to their white counterparts. Also, as we have pointed out to CDPH, its own map of low child opportunity in Healthy Chicago 2.0 bears a striking resemblance to our cumulative impacts map and CDPH’s air-health map, supporting the fact that heavy industrial development detracts from healthy economic opportunity rather than contributing to it. See Ex. 2, CDPH, *Healthy Chicago 2.0 Partnering to Improve Health Equity 2016-2020*, at 5, available at https://www.chicago.gov/content/dam/city/depts/cdph/CDPH/HC2.0Plan_3252016.pdf; Ex. 3, NRDC, *New Map Shows Chicago Needs Environmental Justice Reforms* (Oct. 25, 2018), available at <https://www.nrdc.org/experts/meleah-geertsma/new-map-shows-chicago-needs-environmental-justice-reforms>; Ex. 4, City of Chicago, *Air Quality and Health Report 2020*, at 7 (Air Quality and Health Report), available at

exercise its permit authority and USEPA must exercise its oversight authority to end this discrimination now. Granting of the RMG/GIII permit in the face of the November 4 presentation and community input on the permit application, including through numerous public comments to date, would be discriminatory on its face and in its impact.⁵ For these reasons as well, the permit must be denied.

We provide further details of the severe shortcomings of the HIA as conducted by CDPH, and other bases for denying the RMG/GIII permit, below.

I. CDPH's HIA Process to Date Is Marred by Fundamental Errors and Violates Principles of Racial Justice and Health Equity.

CDPH's HIA process fails to follow the very HIA Toolkit that CDPH purports to be applying, and is in direct conflict with racial justice and health equity principles in general, as well as commitments that form the basis of the City's overall health improvement plan, Healthy Chicago 2025, which seeks to advance health equity by prioritizing populations experiencing inequities, such as Black, Latinx, and low-income Chicagoans, as well as communities disproportionately burdened by pollution.

There is no real question that the Southeast Side is an environmental justice community whose residents are made up largely of the specific communities that CDPH purports to be centering here and that Healthy Chicago 2025 is intended to address. As USEPA Administrator Regan summarized in his May 7, 2021 letter to Mayor Lightfoot recommending that CDPH conduct an "environmental justice analysis" before making a decision on the RMG/GIII permit application because:

Substantial data indicate the current conditions facing Chicago's southeast side epitomize the problem of environmental injustice, resulting from more than a half century of prior actions. This neighborhood currently ranks at the highest levels for many pollution indicators used by U.S. EPA's EJSCREEN tool, including fine particulate matter, air toxics cancer risk, respiratory hazard, traffic proximity, lead paint, Superfund site proximity, hazardous waste proximity, and wastewater discharges. Almost 250 facilities in the southeast area of Chicago are actively monitored by state and federal enforcement authorities under federal environmental laws. Since 2014, more than 75 facilities in the southeast area have been investigated by U.S. EPA, Illinois EPA, and the City for noncompliance with the Clean Air Act.⁶

https://www.chicago.gov/content/dam/city/depts/cdph/statistics_and_reports/Air_Quality_Health_doc_FINALv4.pdf. This false narrative must be rejected if the City is to meet its civil rights obligations.

⁵ As a matter of law, a decision to grant a permit to the RMG/GIII operation based on the record established here would be arbitrary and capricious and unlikely to be sustained under review.

⁶ Ex. 5, Letter from USEPA Administrator Michael Regan to Mayor Lightfoot (May 7, 2021), available at https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/USEPA_Letter_RMG_5.7.21.pdf.

These are precisely the inequities that led Administrator Regan to recommend that the City conduct an environmental justice analysis, potentially using an HIA framework. How CDPH conducts this HIA is at the core of whether the HIA can serve as a meaningful environmental justice analysis for the RMG/GIII permit review process. As Administrator Regan laid out, a “meaningful[]” environmental justice analysis involves “[a] thorough, transparent, and properly scoped assessment [that] provide[s] the public and all parties with assurance that the City is taking serious account of environmental justice concerns in its deliberations.”⁷

The HIA as presented at the November 4 webinar grossly fails to follow CDPH’s own 6-step process and otherwise fails to satisfy this directive and to support basic principles of racial justice and health equity that CDPH and the City purport to advance. Two key failings of CDPH’s process that underscore that gross extent to which CDPH has violated recognized HIA processes and ignored equity in its HIA process – total failure to engage the affected community and a meaningful basis for the disparity analysis – are discussed below. We also incorporate by reference additional critiques of CDPH’s HIA process prepared by our partners at the University of Illinois School of Public Health and other members of Chicago’s public health community.

A. CDPH Failed to Engage the Community at All in Carrying Out the First Three Steps of the HIA.

According to CDPH’s own presentation at the November 4 webinar, by the end of the first HIA meeting CDPH had *completed* three out of the six steps in the HIA process – scoping, screening, and assessment. *At no time during CDPH’s conduct of these steps did CDPH actually engage the stakeholder community for input or consultation.*⁸ CDPH instead used the November 4 meeting to pronounce its findings to date on the first three steps and then fast forwarded to Step 4, Recommendations, for its proposed next and final public meeting on December 2, 2021. The exclusion of impacted community members disregards technical standards of conducting HIAs

⁷ *Id.* (emphasis added).

⁸ It appears that CDPH is taking the position that it sufficiently engaged the public for purposes of HIA steps 1-3 in the prior rounds of public comment on the application for a Large Recycling Facility permit, along with the November 4 meeting. This proposition is absurd: CDPH cannot claim to have “engaged” the public via a comment process that itself did not recognize the need for the very environmental justice analysis CDPH is conducting through the HIA until May 2021, after essentially all such comments had been submitted. Moreover, CDPH has not even presented the public with a response to the many comments it received during the prior permit comment period, nor has it explained to the public whether and how those comments have impacted the scope of its decision-making and analyses it is now undertaking, either prior to the November 4 presentation or during it. Indeed, the sole direct references to the past comments in the November 4 presentation were a slide recognizing the over 4,000 written comments received from 15 organizations and a slide containing visual excerpts of comments – including those *of the applicant itself* – that gave the impression that comments were somewhat equally weighted between support and opposition to the proposed operation. *See* HIA Overview Slides, at 20. Nowhere else in the November 4 presentation did CDPH provide any direct responses to any of the public comments received to date, leaving the impacted community to sort through in real-time the 60 slides it was being presented for the first time to infer CDPH’s responses. Nor can it realistically be said that CDPH and USEPA actually “engaged” the community at the November 4 webinar itself. Instead, CDPH and USEPA “presented” and the community was largely left to “listen.” This is not engagement and did not facilitate meaningful input from community members or other important public voices. Indeed, the ‘chat’ from that meeting clearly demonstrates the frustrations of residents, public health academics and others brought on by CDPH’s failure to engage or listen to them. *See* Transcript of Public Chat, available at: <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/HIA/Public-Engagement-Session-1-Chat-Transcript.pdf>.

as outlined in the HIA Toolkit. This neglect of recognized standards threatens the integrity of the HIA outcome and, as pointed out in Administrator Regan’s letter, undermines the trust of all parties in the HIA process.

A fundamental requirement of a properly conducted HIA is community engagement in all phases of the process. As set forth in the HIA Toolkit that CDPH claims to be applying, meaningful community engagement in an HIA process should include community input in the scope of the assessment, data and methods utilized, recommendations, reporting, and monitoring and evaluation.⁹ CDPH absolutely failed in this most basic HIA requirement. Nor is this omission a mere procedural misstep with no impact on the substance: as a result of this omission of community input at key grounding points in the HIA process, CDPH appears to be inappropriately narrowing the scope of the inquiry and so the potential outcomes, as discussed in more detail elsewhere in these comments.¹⁰

Likewise concerning, CDPH is continuing to inhibit meaningful community participation in the HIA process going forward. CDPH announced at the November 4 webinar that only one more public hearing would be held and that it would be held on December 2 – less than a month after the first meeting and during a period for comment shortened by the Thanksgiving holiday.¹¹ According to CDPH, the purpose of the December 2 meeting was to report on the steps of the HIA, including *CDPH’s recommendations* based on the prior three steps, into which the community has had no input. In response to community outrage over CDPH’s planned December 2 meeting, CDPH pushed back the date of that meeting to December 9 and now says that the December 9 meeting will be devoted solely to hearing from the community.

But community residents have informed CDPH that a meeting on December 9 conflicts with another long-scheduled community meeting, one in which CDPH itself is involved. And, CDPH has set the location for the December meeting in the part of the Southeast Side of Chicago farthest from the proposed RMG/GIII site and farthest from the areas of the Southeast Side resided in by the very community of color that contributes to this area being an environmental justice community. Disturbingly as well, the location of the December 9 meeting is not accessible by public transportation, making participation difficult or, in some instances, impossible for affected community residents. When CDPH was made aware of these issues with the planned December 9 meeting and asked both to move and reschedule the meeting to enable wider community participation CDPH declined – offering only to provide a second meeting for

⁹ Ex. 1, HIA Toolkit; In a section titled “Relationship and Trust Building,” the HIA Toolkit states that “[to ensure] that the HIA process is not co-opted by a particular agenda, and that the HIA results are as objective as possible,” “all groups engaged in the HIA should agree to explore and share their interests and goals in the HIA and any critical needs they have in the work at the beginning of the process.” HIA Toolkit, Appendix D at 1. The HIA Toolkit further describes the role of designated community organizations to include participating in developing the scope of the HIA and conducting necessary data collection, though it does not limit participation to these specific roles.

¹⁰ CDPH’s process is akin to the Walmart distribution facility example in the HIA Toolkit of when NOT to do an HIA, because the process is already towards the end, the community is not being heard, and decision-makers are taking a narrow view of the scope and analyses that is driving a specific outcome. *See* Ex. 1, HIA Toolkit, at 35.

¹¹ *See* HIA Overview Slides, at 60.

people unable to attend the first meeting and putting a stamp on CDPH's utter lack of understanding of the underlying injustice of its engagement with the community.

CDPH also on November 4 announced plans to make a decision on the RMG/GIII permit application in January 2022 – a decision deadline for which no explanation was given, and that is not compelled by any regulatory deadline and is counter to the necessity of community engagement and correcting the many flaws in the HIA to date.¹² And, while the City and USEPA have made some outreach to the community in response to the overwhelming expressions of concern of community members raised by the November 4 webinar, the limited outreach to the community and its advisers that CDPH is proposing with the December 9 meeting does not and cannot constitute the meaningful community engagement required by the HIA process.

As we understand it, CDPH envisions the December 9 meeting as a type of listening session at which CDPH will hear from Southeast Side residents their concerns about (or possible support for) the RMG/GIII operation. But that is not the kind of community engagement required for a meaningful HIA. Real community engagement involves CDPH gaining context for and qualitative information about the lived experience of residents, as well as the standards which it should apply. Instead, CDPH is merely pulling together raw data on reported health events that is limited in value for the requisite meaningful assessment that could then be used to develop appropriate recommendations.

The shortcomings in the HIA caused by the failure to engage the Southeast Side community in the first steps of the HIA process are magnified by on the ground health realities currently facing this community. The Southeast Side, like other low-income communities of color in Chicago, including those bearing heavy pollution burdens, has been disproportionately affected by the current COVID 19 respiratory pandemic. The disparate impact of the pandemic is evident from CDPH's own COVID data, looking at the two Southeast Side zip codes of 60617 (East Side) and 60633 (Hegewisch and South Deering) and 60614 for Lincoln Park, using CDPH's point of comparison:

60617 (East Side)(Population = 82,534):
Cumulative Case Count = 9,728
Cumulative Case Rate per 100,000 = **11,786.7**
Cumulative Death Count = 180
Cumulative Death Rate per 100,000 = **218.1**
Cumulative Test Count = 150,923
Cumulative Test Rate per 100,000 = **182,861.6**

¹² Moreover, the proposed decision-making timeline in the holiday season prevents truly meaningful engagement of the community and consideration of community input before an announced decision in January 2022 on the permit application.

60633 (Hegewisch and South Deering)(Population = 12,871):

Cumulative Case Count = 1,593

Cumulative Case Rate per 100,000 = **12,376.7**

Cumulative Death Count = 20

Cumulative Death Rate per 100,000 = **155.4**

Cumulative Test Count = 23,185

Cumulative Test Rate per 100,000 = **180,133.6**

60614 (Lincoln Park)(Population = 71,308):

Cumulative Case Count = 7,453

Cumulative Case Rate per 100,000 = **10,451.8**

Cumulative Death Count = 95

Cumulative Death Rate per 100,000 = **133.2**

Cumulative Test Count = 224,340

Cumulative Test Rate per 100,000 = **314,607.1**¹³

The Southeast Side zip codes show substantially higher COVID 19 case rates and death rates than Lincoln Park, even as they also have roughly half the test rate, indicating that COVID 19 disparities between the Southeast Side and Lincoln Park are even greater than these case rate and death rate numbers show. This is not a surprising finding for community members who have since the beginning of the pandemic called out their heightened vulnerability to COVID 19 due to the Southeast Side's history of and current poor air quality. The COVID 19 pandemic has revealed to the general public the gross inequities that exist across race, class, and geography in Chicago. We arrived at those inequities because of intentional decision making by City government around matters like this permit.

In sum, the inadequate structure and timeline for any meaningful community engagement in the HIA development and implementation is in direct conflict with the HIA process as set forth in the HIA Toolkit, Healthy Chicago 2025's guiding principles of community-led, equity-based, and antiracist work, and the City naming racism as a public health crisis. How this omission contributed to an inappropriately narrow scope and deficient assessment of data, and the apparent refusal by CDPH to acknowledge the clear outcome that the data and analysis to date compels – permit denial – is set forth in more detail elsewhere in these comments.

B. The Disparity Analysis Used by CDPH Is Indefensibly Narrow and Fails to Set Forth a Framework that Comports with Its Obligations to Protect Public Health and Uphold Civil Rights.

With no explanation or justification, CDPH used only a single community – Lincoln Park – for comparison in its disparity analysis.¹⁴ In doing so, CDPH failed to acknowledge and address the

¹³ Data obtained on November 29, 2021 from CDPH's COVID 19 Dashboard, available at <https://www.chicago.gov/city/en/sites/covid-19/home/covid-dashboard.html>.

¹⁴ Presumably, CDPH selected Lincoln Park as a comparison community because General Iron was historically located in Lincoln Park. If CDPH is going to use Lincoln Park as a comparison community the agency should at

heart of the matter: city-wide patterns of disparity between communities surrounding industrial corridors that the City’s policies identify as receiving zones for even more heavy industry displaced from the North Branch, and how communities like the Southeast Side compare to not only Lincoln Park, but also other even cleaner, healthier, and whiter communities.

CDPH’s own analysis, included in its July 2020 Air Quality and Health Report and presented at the November 4 webinar, clearly shows an array of communities, predominantly located in the northern parts of the city (and heavily populated by higher income, white residents), that do not exhibit high cumulative air-quality related burdens.¹⁵ These communities must also be included in the disparity analysis.¹⁶ This same map also shows a pattern of deep and disparate cumulative environmental burden around other industrial corridors located in BIPOC communities on Chicago’s West and South sides.

We also note another problem with using Lincoln Park as the sole comparison to the Southeast Side for the HIA disparity analysis that similarly goes to the heart of this proposed relocation of a metals operation: Lincoln Park has its own history as part of an industrial corridor. The current relative wealth – and racial make-up – of Lincoln Park reflects a transition away from that industrial past – a change that has been largely facilitated by the City, including its rezoning of Lincoln Park to enable Lincoln Yards, a project that is kicking clean-up and gentrification of the area into hyperdrive. It is not surprising that an area of the City that formerly included an industrial zone would continue to have higher levels of environmental burdens than areas without this industrial past and changing future or where gentrification has already largely happened. What is most noteworthy for the present comparison is that, aided by the City, the environmental challenges faced by residents of Lincoln Park are improving at an exceptional pace, at the expense of industrial “receiving” zones like the Southeast Side. Indeed, if facilities like General Iron are allowed by the City (acting on the permitting front through CDPH), to continue to move to “red” zones shown on CDPH’s Air Quality and Health Index map, the health disparities between the Southeast Side and Lincoln Park and other “greener” communities will grow even wider.¹⁷

Whether intentional or caused by insufficient consideration of its implications (or possibly a rush to complete an HIA), the effect of CDPH’s choice to use only Lincoln Park as a comparison area under-represents the disparities inherent in the City’s land use and environmental policies today and fails to account for the widening of those disparities should this operation move forward, and thus is racially prejudicial and imbeds inequities into the HIA analysis. CDPH cannot pretend that the HIA process is unbiased with use of a single community – one with its own industrial history, as demonstrated by the prior location of General Iron – as the sole comparison. The HIA must not go forward with this bias built into it. Additional comments on the disparity analysis are provided below.

least note the likely future health and environmental benefits to Lincoln Park residents of removing General Iron, the long-term contributor to environmental and health hazards in Lincoln Park, from that community.

¹⁵ Ex. 4, Air Quality and Health Report, at 7.

¹⁶ Although not precisely the same, caselaw on disparity analysis in other contexts is instructive with respect to selection of comparator communities. *See, for example, Banks v. McIntosh County, Georgia*, 530 F.Supp.3d 1335 (D.Ga. 2021) (comparing individual community services to services provided county-wide).

¹⁷ We note that CDPH did not include this potential increase in disparity in its November 4 presentation.

II. Taken on Its Face, CDPH’s Analysis Shows the Permit Must Be Denied, While Correcting the Many Critical Deficiencies Would Make the Case for Denial Even More Compelling.

Even setting aside these baseline omissions and errors, the record is clear that CDPH must deny the permit now, and that otherwise correcting deficiencies in the technical analysis would only strengthen the case for denial.¹⁸ Again, had CDPH actually engaged with the impacted community in a meaningful way prior to November 4, these deficiencies would likely have been identified earlier in the process.

A. CDPH Failed to Center Cumulative Impacts in Its Data Presentation, Focusing Instead on Individual Factors.

While CDPH concluded its “Key Findings” by presenting the “cumulative” analysis contained in its Air Quality and Health Report released in July 2020 - *which clearly demonstrates the Southeast Side bears a heavy cumulative burden compared to other Chicago communities, including Lincoln Park* - its presentation as a whole downplayed the overall heavy disparate burdens borne by the Southeast Side. Particularly alarming, the overwhelming focus of CDPH’s November 4 presentation – and apparently data gathering – was on individual factors, presented in silos, with limited to no analysis or communication of the overall relative burdens borne by the Southeast Side and Lincoln Park.¹⁹

Cumulative impacts is a widely acknowledged method employed in environmental justice analysis that was pioneered and has been advanced by impacted community advocates due to shortcomings in existing methods in reflecting their lived experience. The method is a way to analyze and describe the combination of multiple environmental and sociodemographic stressors experienced by EJ communities, which contribute to persistent health inequities and disparities in environmental health threats. In other words, cumulative impacts is built on the fact that environmental justice communities experience multiple environmental burdens at the same time, and further, that race and socioeconomic status along with health status make people more vulnerable to such multiple threats. The body of science supporting cumulative impacts is

¹⁸ Portions of the comments in this section reflect the contribution of the following individuals: Prof. Serap Urdal, University of Illinois Chicago School of Public Health; Prof. Vicky Persky, University of Illinois Chicago School of Public Health; Prof. Jeni Hebert-Beirne, University of Illinois Chicago School of Public Health; Joanna Tess, Collaborative for Health Equity-Cook County; Ranajit Sahu, consultant to NRDC; and Todd Cloud, consultant to NRDC.

¹⁹ The November 4 presentation bore a striking resemblance to a similar presentation by the Chicago Department of Planning and Development and CDPH during the Little Village Industrial Corridor Modernization process several years ago, before CDPH recognized cumulative impacts and before the July 2020 Air Quality and Health Report. That presentation also discussed individual environmental factors (using inadequate data), giving the impression that air quality in Little Village was not that bad compared to other Chicago communities. *See* Ex. 6, Chicago Department of Planning and Development, Industrial Corridor Modernization Little Village, Working Group Meeting #2 at 10-13 (June 22, 2018), available at https://www.chicago.gov/content/dam/city/depts/dcd/supp_info/industrial/lv-wg-2.pdf. While CDPH has taken significant steps since the Little Village process by acknowledging the importance of taking a cumulative impacts approach, it continues to fall short in its implementation of such a framework, including critically in its communications to the public.

extensive.²⁰ CDPH has itself acknowledged the value and appropriateness of applying a cumulative impacts framework to its environmental justice work, as evidenced in the agency's Air Quality and Health Report, in which it followed a method based on California's CalEnviroScreen.²¹

In the current HIA, CDPH acknowledges the importance and appropriateness of applying a cumulative impacts analysis, as demonstrated by its inclusion of its Air Quality & Health Index at the end of its data presentation. However, as presented during the November 4 meeting, CDPH's Key Findings analysis spent the majority of time walking through individual factors that gave the impression that Lincoln Park is itself relatively more burdened than the cumulative impacts analysis concludes. This message was deeply disturbing and traumatic for participants from the Southeast Side, as it runs counter to their lived experience as residents of an environmental justice community. Nor does it appear to be consistent with the cumulative impacts approach that CDPH claims to be taking. As such, the presentation did not create the necessary base for the public to weigh-in on whether and how to allow another source of air and other pollutants on the Southeast Side.²²

B. USEPA's and CDPH's Presentation of Environmental Factors Was Misleading and Otherwise Deficient, Leading to an Under-representation of Disparities.

With respect to the environmental factors that the agencies presented on November 4, the analyses and presentations suffer from numerous omissions and other flaws that taken together underestimate the disparate environmental burdens borne by the Southeast Side. We note in particular that USEPA Region 5 inexplicably produced an air report that largely relies on and carries forward the very "traditional," limited data sources and analyses that it has used in the past and that have left us with the environmental justice issues we are trying to solve today. Whether intentional or the result of rushing the analysis, such limited evaluations of available environmental data fall short of USEPA's commitments and duties, should be corrected in this instance, and should not be repeated in the future.

²⁰ Ex. 7, Excerpt from forthcoming issue brief by Yukyan Lam et al., *Increasing Scientific Support for Cumulative Impacts*.

²¹ Ex. 4, Air Quality and Health Report, at 4.

²² Had CDPH instead started with and taken more time for a discussion of cumulative impacts analysis and the importance of taking such an approach, including how the agency was proposing to take cumulative impacts into account in its decision, and had the agency emphasized the Air Quality and Health analysis (with individual factors presented with less emphasis as components feeding into the cumulative impacts analysis), the public likely would have received a very different overall message. Our concern, of course, is not just the method of presentation, it is the message CDPH is intending to give. The greater concern is whether the many shortcomings of CDPH's (and USEPA's) process/analysis to date reflect a lack of commitment to conducting and making decisions based on an HIA that reflects actual health disparities.

1. The Air Quality Data in USEPA’s Report Demonstrates Significant Existing Air Quality Burdens on the Southeast Side, and Adding More Air Pollution Will Increase Burdens and Disparities on the Southeast Side Community.

On its face, USEPA’s Southeast Chicago Ambient Air Quality Analysis shows that the Southeast Side has among the worst air quality in the City and Chicagoland region, including for pollutants for which there are no known “safe” effects or no-effects thresholds. In short, the report makes clear that the existing level of air pollutants is already too high in general and compared to other Chicago communities. CDPH therefore should deny the proposed operation because it will increase air pollutant levels, including for PM and heavy metals for which no health-effects thresholds have been identified.

As reported by USEPA, the Washington High School monitor has the highest monitored 24-hour levels of PM_{2.5} in the region, based on 2018-2020 data.²³ In addition, coarse particle pollution trends are headed in the wrong direction in this community: PM₁₀ annual and 24-hour average concentrations at the Washington High School monitor both have shown an increasing pattern since 2018.²⁴ Annual average PM₁₀ concentration increased from about 23 ug/m³ in 2018 to 37 ug/m³ in 2020 (i.e., 13-14% increase). USEPA also concluded that 24-hour average PM₁₀ concentrations show an increasing trend from 2018 to 2020, using a best-fit line approach. Notably as well – and contrary to USEPA’s report of a “flat” trend in heavy metals - heavy metal concentrations in total suspended particulate at the Washington High School station have increased from 2018 to 2020, looking at the annual average levels taken from the underlying data (instead of or in addition to the best-fit line approach used by USEPA’s air monitoring staff):

- Lead increased to 13.34 ng/m³ from 7.88 ng/m³, a 69.3% increase
- Nickel increased to 6.13 ng/m³ from 3.77 ng/m³, a 62.6% increase
- Manganese increased to 54.81 ng/m³ from 47.65 ng/m³, a 15% increase
- Chromium increased to 13.11 ng/m³ from 6.75 ng/m³, a 94.2% increase²⁵

This combination of PM levels that are among the worst in the region (and increasing in the last 3 years with regards to coarse particles) and relatively high and increasing heavy metals concentrations measured at the Washington High School monitor is itself sufficient to deny a permit that would undeniably introduce more PM and heavy metals, including lead, into the community.²⁶

²³ Ex. 8, USEPA Region 5, Southeast Chicago Ambient Air Quality Analysis at 9 (Oct. 2021), available at <https://www.epa.gov/system/files/documents/2021-10/southeast-chicago-air-quality-report-202110-26p.pdf>.

²⁴ *Id.* at 12-13.

²⁵ See Ex. 9, Spreadsheet of metals monitoring data from the Washington High School monitor, obtained from Michael Compher, USEPA Region 5.

²⁶ We note in particular, as we have pointed out to CDPH in the past, that USEPA Region 5’s Xact Study implicates RMG/GIII’s current S. Burley operations as already contributing substantially to metals levels at the Washington High School monitor, including lead levels. See Ex. 10, USEPA Region 5, Xact Metals Study: Southeast Chicago, September 2015 (polar plots for various metals at 12), available at https://www.chicago.gov/content/dam/city/depts/cdph/environmental_health_and_food/A1NRDCSupComKinderMorganVarReq_3102017.pdf. In addition, RMG/GIII’s own application acknowledges that it will increase both PM₁₀

2. Other Available Air Data – Not Included in the USEPA Report – Shows the Problem on the Southeast Side Is Even Worse than the USEPA Report Depicts.

Other available data from regulatory-grade monitors that were not included in the USEPA report show the problem at Washington High School and elsewhere on the Southeast Side is even worse than the above data depicts. Without explanation, USEPA omitted this monitoring data from its analysis, even as it recognized the limitations in coverage of the monitors that it did review.²⁷ As discussed below, these omissions appear to stem primarily or entirely from a myopic focus on the National Ambient Air Quality Standards (NAAQS) and compliance with these standards within Illinois. Such limited and selective review of monitoring data, and lack of sufficient explanation for it, is arbitrary and capricious and falls far short of ensuring environmental justice and civil rights.

PM10. For instance, the USEPA report presents only the data for the three Chicago PM10 monitors, misleadingly suggesting the Washington High School data is in the middle of the pack.²⁸ In contrast, if USEPA had included PM10 monitors from nearby, heavily industrialized Northwest Indiana, the data would show that the Washington High School site consistently ranks in the top 3 of 8 sites across Chicagoland and Northwest Indiana for daily PM10 levels.²⁹ It ranks at the top with the monitor at McCook – which is right next to a dusty quarry – and Bethlehem Steel, a massive industrial site, at times registering first max levels higher than either of these two sites, such as in 2019.

USEPA appears to have looked only at the McCook and Northbrook PM monitors because these are the Chicago-area PM10 monitors used in Illinois for determining compliance with the PM10 NAAQS.³⁰ If USEPA did in fact select these monitors on this basis, it is an example of how a myopic focus on the NAAQS is inhibiting evaluation of air quality disparities. Given the small number of Chicagoland, Illinois PM10 monitors available, it is appropriate for analysis of other

and metals levels in the community. *See, e.g.*, RMG/GIII November 2020 Permit Application, Attachment V, “Air Quality Impact Assessment,” at 11 (reporting a “Maximum Predicted PM10 Impact” of 29.37 ug/m3), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/2020-11-12-Southside-Recycling-LRF-Permit-App.pdf>; January 2021 Permit Application, Addendum 1, Attachment S, “Revision of Modeling for DC-01 PM10 Emission Rate,” at 1 (reporting a “Maximum Predicted PM10 Impact of 30.02 ug/m3); *see also* Ex. 11, RMG/GIII Application to Illinois EPA, Supplement No. 1 to the January 24, 2020, Air Dispersion Modeling Report for Assessment of Metal Emission Impacts, General III LLC, February 12, 2020, at 10, Table 4-1, Summary of Predicted Impacts for Lead (reporting predicted monthly averages, a “Predicted Maximum 3-Month Rolling Average” of 0.0649 ug/m3, and a “Design Value (Background)” of 0.02 ug/m3). Our prior comments on RMG/GIII’s application include additional air quality analyses that CDPH should have required, which would have shown that the impacts will be even greater than the applicant claims.

²⁷ Ex. 8, USEPA Southeast Chicago Ambient Air Quality Analysis, at 1-2.

²⁸ *Id.* at 12.

²⁹ Ex. 12, USEPA, Monitor Values Reports for PM10, Chicago-Naperville-Elgin, IL-IN-WI, 2018 to 2020, available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

³⁰ *See* Ex. 8, USEPA Southeast Chicago Ambient Air Quality Analysis, at 4 (discussing the monitoring network in terms of NAAQS compliance); *see also* Ex. 13, Illinois EPA, Illinois Air Quality Report 2019, at 17 (noting that there are 4 PM10 monitoring sites in Illinois, including the three USEPA evaluated plus one in Granite City), available at <https://www2.illinois.gov/epa/topics/air-quality/air-quality-reports/Documents/2019AnnualAirQualityReportFinal.pdf>.

nearby monitors to assess the overall levels of pollution on the Southeast Side and how they (likely) compare to other Chicago communities without industrial corridors for purposes of CDPH's analysis.

Ozone. In addition, according to USEPA air monitoring staff, a preliminary analysis of the most recent ozone data, which includes this past summer, shows the highest levels of ozone in the region at the South Water Treatment Plant just north of Steelworkers Park.³¹

Lead. We express a similar concern that USEPA's narrow look at only the Washington High School and Perez Elementary School monitors for lead omits important information going to whether the Southeast Side is likely to have disparately high lead concentrations in the air compared to other Chicago communities, in particular those without heavy industrial corridors. Lead data from total suspended particulate (TSP) monitors in Lake and Porter Counties in industrialized Northwest Indiana show the following for 2019 (which we selected here for an initial scan as the last pre-COVID monitoring year):

- Portage-Burns Harbor/Port of Indiana, 6600 U.S. Highway 12. 2019 mean lead = 0.00891 ug/m³
- East Chicago Marina, 3301 Aldis Ave. 2019 mean lead = 0.0062 ug/m³
- 1 Stadium Plaza, Gary. 2019 mean lead = 0.00762 ug/m³
- 1350 E. Lakeview St., Hammond. 2019 mean lead = 0.06225 ug/m³ and 0/07785 ug/m³ (from two monitors)³²

For comparison, the 2019 average annual lead level at the Washington High School monitor was 0.009 ug/m³ (the 2019 average annual lead level at the two Perez Elementary School monitors were 0.00901 ug/m³ and 0.00862 ug/m³). In sum, with the exception of the Hammond monitor, these Northwest Indiana TSP lead monitors all show average annual 2019 levels below those at Washington High School. Notably, the Hammond monitor is sited a mere 0.2 mile drive from Whiting Metals, a problematic source of metals pollution that has been the focus of investigation by both USEPA and the Indiana Department of Environmental Management.³³

We also note that there are two lead-PM_{2.5} monitors in Chicago and a lead-PM₁₀ monitor in Northbrook that USEPA did not include in its written report. These monitors are located at 1745 N. Springfield and 7801 S. Lawndale in Chicago, and 750 Dundee in Northbrook; none of them

³¹ Ex. 14, Email from Michael Compher, U.S. EPA, Chief, Air Monitoring and Analysis Section, Region 5, Air and Radiation Division, to Meleah Geertsma, NRDC, November 3, 2021.

³² See Ex. 15, USEPA, Monitor Values Reports for Hazardous Air Pollutants 2019, Lake County and Porter County, available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report-hazardous-air-pollutants>. We note some caution in citing this metals data, as we understand USEPA has been evaluating dispersal of metals related to the steel plants in Northwest Indiana relative to current monitor locations. Members of our partnership also are not as familiar with community concerns in Northwest Indiana about air quality in relation to placement of monitors as we are for the Southeast Side. Nevertheless, these monitors can be taken at face value in terms of the relative level of lead present at these monitor locations as compared to those at Washington High School (whether or not the Indiana monitors are located in a manner so as to capture maximum impacts from the Northwest Indiana lead sources).

³³ See, e.g., Ex. 16, USEPA, EPA in Indiana, Whiting Metals, available at <https://www.epa.gov/in/whiting-metals>.

are located immediately adjacent to an industrial corridor (though the Springfield location is adjacent to a railyard and the Lawndale location is to the Southeast of the Brighton Park Industrial Corridor; see elsewhere in these comments for additional discussion of the Lawndale and Northbrook monitors). According to Illinois EPA's 2019 Illinois Air Quality Report (the most recent available on Illinois EPA's website), the Northbrook monitor had maximum 3-month rolling means for 2015 and 2016 well below those at the Washington High School location, at 0.01 ug/m³ for Northbrook in both years versus 0.04 ug/m³ and 0.02 ug/m³ for Washington.³⁴ It appears that Northbrook stopped collecting/reporting data to Illinois EPA in 2016, ostensibly because the lead levels are relatively low compared to the three lead monitoring sites – the two Chicago TSP sites and the Granite City TSP site – that Illinois EPA evaluates for lead NAAQS compliance. Recent/current data for all three sites, however, is available on USEPA's monitor value reports website.

USEPA did not recognize or discuss why it did not evaluate these monitors. If in fact USEPA omitted these monitors because the agencies do not use them for determining NAAQS compliance in Illinois, this is yet another way in which the agency's myopic focus on the NAAQS resulted in its failure to recognize and assess important and available air quality monitoring data for this HIA process and environmental justice analyses more generally. Given that these lead monitors are in Chicagoland within Illinois, USEPA should have analyzed the monitoring data from these monitors to make some comparison of the lead levels in relatively non-industrialized areas of the city to levels at Washington High School (and Perez Elementary).

Nor did USEPA or CDPH include data from a number of regulatory-grade monitors that are currently operating or have operated on the Southeast Side in the past. In some cases, USEPA and CDPH have required these monitors as part of enforcement actions and/or regulatory initiatives to address pollution on the Southeast Side. Monitors include those located at the KCBX, S.H. Bell, Watco, and American Zinc Recycling facilities. These monitors have registered exceptionally high levels of PM₁₀ and metals, supporting concerns of the fence-line communities around these monitored sites and others like them that remain unmonitored. Notably, such levels have tended to show spikes following distinct patterns of hourly increases tracking industrial hours of operation, reaching peaks far above average annual or even daily levels. As we have commented to the City in the past, including with respect to the Hilco implosion that blanketed Little Village with dust during the COVID 19 pandemic, such hourly increases in pollution have been shown to negatively impact health.³⁵

³⁴ See Ex. 13, Illinois EPA, Illinois Air Quality Report 2019, at 82, Table B23, "Lead Design Values," available at <https://www2.illinois.gov/epa/topics/air-quality/air-quality-reports/Documents/2019AnnualAirQualityReportFinal.pdf>. We further note that older Illinois EPA Air Quality Reports available on Illinois EPA's website report values not only for the Northbrook monitor, but also for a longer list of Illinois lead monitors that have operated in the state, along with the Washington High School monitor. With only a few exceptions, most likely related to high lead events at facilities of concern and including the highly industrialized Granite City site, these reports show that the Washington High School monitor has had substantially higher lead levels than the other Illinois locations for years. We provide several examples here and ask that CDPH and USEPA further evaluate these reports. See Ex. 17, Illinois EPA, Illinois Air Quality Report 2011, 2015, 2017, available at <https://www2.illinois.gov/epa/topics/air-quality/air-quality-reports/Pages/default.aspx>.

³⁵ See Ex. 18, E-mail and attachments from Meleah Geertsma to Elise Zelechowski, May 14, 2020; See also Ex. 19, Ji-Young Son and Michelle Bell, *The Relationships Between Short-term Exposure to Particulate Matter and*

USEPA and hence CDPH also omitted other regulatory-grade monitors that have operated on the Southeast Side in the past and that demonstrate relatively high levels of air pollutants in this community. Such monitors include the one placed across from the ArcelorMittal Riverdale facility to the West of Altgeld Gardens, home of People for Community Recovery, due to concerns with lead emissions. This monitor also demonstrated a lead design-value of 0.03 ug/m³ for 2013-2015, which appears to be the last period for which the monitor was in operation prior to its being discontinued, with variable year-to-year maximum values.³⁶ In addition, we have noted concern in the past to both CDPH and USEPA that while this monitor showed lead levels in compliance with the NAAQS over the period it was in use, it also demonstrated disturbingly increasing manganese levels. Specifically, from 2013 to 2016, the manganese mean went from 0.08 ug/m³ to 0.18 ug/m³, while the manganese max went from 0.237 ug/m³ to 0.658 ug/m³.³⁷ Yet the monitor was discontinued (and omitted from USEPA's analysis here).

Higher levels of pollution documented by these monitoring sites has likely contributed to ongoing health impacts and heightened vulnerability to environmental exposures among Southeast Side residents, even where currently monitored levels are lower than historic highs.

We also note that current levels at these area monitors still show concerning PM₁₀ and metals from industrial sources, including at the monitors located directly across the Calumet River from the proposed RMG/GIII site at the American Zinc Recycling facility.³⁸ Were these current and historic pollution levels evidenced by regulatory-grade monitors accounted for in CDPH's HIA analysis, the case for denial would be even stronger.

It also does not appear that USEPA or CDPH have made any attempt to compile and evaluate additional available monitoring data, such as that produced by community-based initiatives. The irony here is that USEPA has funded such initiatives as part of its environmental justice work, such as with the Village Green Monitoring Bench at Jane Addams Elementary School on the Southeast Side, but apparently does not consider them relevant to environmental justice analyses such as the one at hand.

Lastly, we also note that this monitoring data suggests that the air quality data used in EJSCREEN, and thus in various cumulative impacts analyses including our own, may underestimate the true, relative air pollution burdens faced by the Southeast Side and other Chicago

Mortality in Korea: Impact of Particulate Matter Exposure Metrics for Sub-daily Exposures, *Environ Res Lett.* 2013 March ; 8(1): 014015, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4288032/pdf/nihms442357.pdf>.

³⁶ See Ex. 20, Illinois EPA, *Illinois Ambient Air Monitoring 2017 Network Plan*, at 9, available at <https://www.epa.gov/sites/default/files/2017-12/documents/ilplan2016.pdf>.

³⁷ See USEPA, Monitor Values Reports for Hazardous Air Pollutants 2013-2016, <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report-hazardous-air-pollutants>.

³⁸ CDPH is in possession of monitoring data collected at the American Zinc Recycling site across the Calumet River from the RMG/GIII S. Burley Site, which the agency can evaluate in terms of potential contribution from the S. Burley operations. We note that as raised with CDPH in the past, CDPH has issued RMG/GIII a notice of violation which ultimately led to a liability finding related to fugitive dust at RMG/GIII's barge area, based on reports by employees at American Zinc Recycling.

environmental justice communities, to the extent such sources rely on limited monitoring data coupled with emissions estimates and modeling.

3. CDPH and USEPA Failed to Convey that More Pollution Means More Harm.

USEPA and CDPH in the November 4 webinar did not sufficiently acknowledge and present the large body of science supporting that there are impacts to health at levels below the NAAQS and the Minimum Risk Levels (MRLs). As the Eastern District of Missouri has found, “[b]ased on the no-threshold, linear concentration-response relationship for PM_{2.5}, any incremental increase in PM_{2.5} exposure produces an incremental increased risk of mortality and other health effects in the [exposed population]. Similarly, any incremental decrease in exposure produces a positive impact on public health.”³⁹ At the same time, this court rejected the industry expert’s testimony “that PM_{2.5} concentrations below the NAAQS do not cause actual adverse health effects,” as “[t]his testimony contradicts the EPA statements and congressional reports regarding the NAAQS.”⁴⁰ Despite this clear scientific consensus, CDPH and USEPA in their presentations on November 4 omitted this information that is critical to examining and addressing environmental and cumulative disparities.

This is an especially important omission with regards to lead and particle pollution, two pollutants for which science to date has identified no “safe” levels or thresholds for no effects. The omission from the presentation is particularly notable on USEPA’s part, as the written report itself does include some discussion of this important science, but the USEPA presenter failed to convey it during the November 4 presentation.⁴¹ Indeed, by visually and orally presenting the individual NAAQS and MRLs as analytic thresholds and omitting this important information about health effects associated with the pollutants, USEPA and CDPH gave the wrong impression that air quality is at acceptable levels on the Southeast Side in general and in relation to other Chicago communities with cleaner air. USEPA and CDPH should have presented information on the scientific consensus around these pollutants, including that more particulate matter and more lead mean more harm as a general matter, and that this science should be taken into account in determining how to assess the air data from a disparity perspective.

Moreover, at base, USEPA and CDPH should desist from using the NAAQS and MRLs as bright-line thresholds for gauging acceptable air pollutant concentrations in this HIA and in other environmental justice analyses. They should instead analyze disparities among communities even where all communities appear to be attaining the NAAQS and meeting the MRLs. In further support of this point, we note that (as pointed out in our comments to CDPH on its proposed rules for construction and demolition reprocessing facilities and proposed warehouses in the Stockyards Industrial Corridors) Congress has recognized that significant health impacts

³⁹ *United States v. Ameren Missouri*, 421 F.Supp.3d 729, 774 (E.D. Mo. 2019). We note that the expert in this case, Dr. Joel Schwartz, also authored the expert reports on PM in the Ameren-Edwards case that we have provided to CDPH.

⁴⁰ *Id.* at 775.

⁴¹ See Ex. 8, USEPA Southeast Chicago Ambient Air Quality Analysis, at 8 n. 3 (regarding PM) and n. 15 (regarding lead).

can and do happen at levels below the NAAQS, specifically in the text of the Clean Air Act itself.⁴² The Fourth Circuit Court of Appeals also has called out decision-makers who purport to be examining environmental justice but rely solely on compliance with the NAAQS in their analysis:

The Board's reliance on air quality standards led it to dismiss EJ concerns. Even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station -- an overwhelmingly minority population according to the Friends of Buckingham Survey -- will be affected more than those living in other parts of the same county. The Board rejected the idea of disproportionate impact on the basis that air quality standards were met. But environmental justice is not merely a box to be checked, and the Board's failure to consider the disproportionate impact on those closest to the Compressor Station resulted in a flawed analysis.⁴³

In addition to these legal sources supporting the insufficiency of using the NAAQS as the sole metric for gauging health effects and environmental justice disparities, since the USEPA's adoption of the current standard in 2012, a wealth of scientific health effects evidence has accumulated on cardiac and respiratory health effects of PM_{2.5} at concentrations lower than the current PM_{2.5} NAAQS. USEPA recently acknowledged this evidence and committed to revisiting its recent decision not to strengthen the PM NAAQS.⁴⁴

This data also has formed the basis of establishment of more recent and more stringent thresholds for PM than the USEPA's NAAQS by the World Health Organization (WHO). Specifically, in September 2021, the WHO set forth a PM_{2.5} air quality threshold of 5 µg/m³ for the annual mean concentration as compared to USEPA's NAAQS of 12 µg/m³. It also adopted a threshold of 15 µg/m³ for 24-hour average concentrations, versus USEPA's NAAQS of 35 µg/m³. Similarly for coarse particles, the WHO has a PM₁₀ air quality threshold of 15 µg/m³ for annual mean concentration versus no EPA annual standard for PM₁₀ and 45 µg/m³ for 24-hour average concentrations versus USEPA's NAAQS of 150 µg/m³. In past rulemakings over the PM NAAQS, the American Lung Association has supported strengthening the annual PM_{2.5} NAAQS to 8 µg/m³ and the 24-hour PM_{2.5} NAAQS to 25 µg/m³. Concentrations at the Washington High School monitor are already at or above these levels.

In addition, the exclusive use of the Agency for Toxic Substances and Disease Registry's (ASTDR) MRLs to assess heavy metal concentrations is a concern. In contrast to the MRLs, the

⁴² See 42 U.S.C. § 7470(a) (Purpose of the Prevention of Significant Deterioration program is "to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipate [sic] to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air), notwithstanding attainment and maintenance of all national ambient air quality standards" (emphasis added).

⁴³ *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68, 91-92 (2020).

⁴⁴ Ex. 21, USEPA, *EPA to Reexamine Health Standards for Harmful Soot that Previous Administration Left Unchanged* (June 10, 2021), available at <https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged>.

California Office of Environmental Health Hazard Assessment’s Inhalation Reference Exposure Levels (RELs) and USEPA’s Residential Air Regional Screening Levels (RSLs) are more current. For example, Mn respirable MRL was last reviewed in September 2012; Ni in August 2015; and Cr in September 2012. On the other hand, the California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment RELs were last reviewed in November 2019 and USEPA’s RSLs were last reviewed in May 2021. Per ATSDR, “It is important to note that MRLs are not intended to define clean up or action levels for ATSDR or other Agencies.”⁴⁵

Portraying the individual NAAQS and MRLs as thresholds in the HIA process also fails to convey that people are exposed to more than one pollutant at a time in real life. A decision whether to allow the addition of more pollution of various types should clearly recognize this reality in its communications with the public. While our knowledge of health effects of mixtures is limited, there are methods available to do better than looking at one pollutant at a time that can and should be used here. There is also voluminous research concerning the effects of a population being subjected to a wide array of environmental and social harms of the types faced constantly by Southeast Side residents, including pollutants, traffic, noise, noxious odors, and the socioeconomic challenges of life limited by lower income and prejudices.

4. USEPA and CDPH Have Omitted Evaluation of Pollutants from Diesel Trucks.

To date, neither USEPA nor CDPH has evaluated concentrations and emissions of pollutants that are specific to diesel trucks, such as NO₂ and ultrafine particles, and presented this critical information to the public. This is a significant omission given the number and type of diesel vehicles that operate at industrial sites on the Southeast Side, as well as on neighborhood streets going to and from such sites, and that do not operate in other Chicago communities. Recent modeling by an applicant for proposed warehouses in the Stockyards Industrial Corridor demonstrates substantial increases in localized NO₂ pollution from diesel trucks, even taking the analysis on its face, as well as increases in PM.⁴⁶

We understand from the November 4 webinar that CDPH now plans to include diesel emissions in the Human Health Risk Assessment portion of its evaluation of the proposed RMG/GIII, recognizing our longstanding call for evaluation of diesel emissions in CDPH’s decision-making. While we support this development, we object to CDPH simply using the same protocol for the proposed RMG/GIII operation that CDPH recently used for evaluation of two warehouses proposed for the Stockyards Industrial Corridor. That protocol is insufficient for all of the reasons we laid out in our comments on those two warehouses, which we incorporate here by reference.⁴⁷ We also are preparing additional comments on NO₂ impacts and evaluation, as well

⁴⁵ Ex. 22, ATSDR, *Minimal Risk Levels (MRLs) for Hazardous Substances*, available at <https://www.atsdr.cdc.gov/mrls/index.html>.

⁴⁶ See and incorporate by reference: Ex. 23, NRDC, Stockyards Industrial Corridor Warehouse Comments (Nov. 10, 2021).

⁴⁷ *Id.* As set out in the warehouse comments, CDPH must conduct a baseline study looking at relative diesel truck burdens within and across Chicago before assessing/allowing any additional diesel-truck-intensive uses for the industrial corridors. The baseline study must include actual monitoring of key diesel marker pollutants along roads

as other aspects of CDPH's evaluation of mobile sources, which CDPH should create the time and space to vet for current purposes if it refuses to deny the permit on the clear and convincing current record.

5. CDPH Has Failed to Include Environmental Factors Other than Air Quality in its Data Gathering and Analysis.

Overall, the presentations at the November 4 webinar suggested that the only relevant environmental exposures are those related to air quality, despite some recognition that there are other environmental factors of concern. The sole focus on air quality to date has resulted in a myopic and unrealistic HIA that fails to consider the detrimental effects of the multitude of environmental exposures experienced by Southeast Side communities. Conversely, substantial evidence exists in the record now that the Southeast Side currently bears disproportionately high burdens from soil contamination and that the proposed RMG/GIII operation would increase both that contamination and its further mobilization into the community. Thus, consideration of soil and other similar factors further support or compel a permit denial now. We also note our extensive past comments on the wide range and huge quantities of hazardous materials that the proposed RMG/GIII would bring to the community, that to date have gone unaddressed by CDPH and that also support a permit denial.⁴⁸

with significant diesel truck traffic, as well as roadways in areas without such diesel trucks to serve as a comparison. It must also collect detailed, current truck activity data to use in looking at distribution of trucks, as well as truck model/engine data to inform emissions estimates. Once such a baseline study is complete, CDPH must do a detailed study of any proposed additions to truck-burdened areas, applying a cumulative impacts frame. Such evaluation must include standards that account for health impacts below current regulatory thresholds and exposure to multiple pollutants, along with increased vulnerability of populations surrounding Chicago's industrial corridors and location of "sensitive receptors" along truck routes. Additional details on assessing impacts of mobile sources are in comments submitted to CDPH regarding the proposed Large Recycling Facility Rules, the Proposed Rules for Reprocessable Construction and Demolition Material Facilities, and the proposed warehouses for the Stockyards Industrial Corridor, which we incorporate by reference here. *See* SETF, Public Comment on the Proposed Rules for Reprocessable Construction/Demolition Material Facilities (Nov. 1, 2021), available at https://www.chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/Comment-SETF_Nov12021.pdf; NRDC, Comments on Proposed Rules for Reprocessable Construction/Demolition Material Facilities (Nov. 1, 2021), available at https://www.chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/Comment-NRDC_Nov12021.pdf; CEJN, Proposed Rules for Reprocessable Construction/Demolition Material Facilities Public Comment (Nov. 1, 2021), available at https://www.chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/Comment-ChicagoEnvironmentalJusticeNetwork_Oct3121.pdf; Ex. 23, NRDC, Stockyards Industrial Corridor Warehouse Comments (Nov. 10, 2021). We also anticipate submitting additional comments on diesel trucks in this HIA process and in the process for CDPH's interim guidance on air quality impact studies under the new Air-Zoning Ordinance, on which CDPH is accepting comments (and for which CDPH provided no opportunity to provide input prior to releasing the interim guidance or in advance of applying the guidance to the two warehouses).

⁴⁸ *See and incorporate by reference:* SETF and PCR Public Comments - General III, LLC Amended Large Recycling Facility Permit Application (Jan. 29, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/comments-received/Comment-from-SETF-and-PCR-1.29.21.pdf>.

a. The HIA Omits Soil Conditions.

CDPH to date has failed to evaluate and present to the public existing soil conditions at and around the proposed site for RMG/GIII; the relative level of soil contamination in this community compared to other Chicago communities and impacts to the community of current operations on the site; and likely impacts to the environment of conducting new industrial operations on such soil and within such a community. This is a substantial omission given that soil at the proposed site, and large parts of the surrounding area, are likely or known to be contaminated with heavy metals, PAHs, and other toxic substances, due to historic use by steel companies and other industrial operations.⁴⁹ RMG/GIII's use to date of the S. Burley site for metals recycling operations with limited intact pavement, as well as the likelihood that portions of the site will remain unpaved but in-use if the proposed RMG/GIII moves forward, make the RMG/GIII S. Burley site even more likely to be sources of these contaminants were CDPH to grant the permit.

b. Evidence of Contamination Related to Historic Steel Production at the Burley Site Supports that Soil Likely Poses a Significant Threat to the Southeast Side from the proposed RMG/GIII.

General public information and documents obtained through a FOIA request to the Illinois EPA in 2013 support that there are significant soil issues at the S. Burley site.

The Northern portion of the site is the location of the proposed RMG/GIII, and also appears to be at least partially occupied by RMG's current four operations, as well as a fifth business that appears to provide material handling/transportation support to RMG/GIII. Despite being the location of heavy industry, in particular steelmaking, for many decades, it does not appear that there has been any comprehensive remediation of this portion of the S. Burley site.⁵⁰

Also based on documents received in response to a FOIA request in 2013 and public information, with regards to the Southern portion of the site, which also appears to house some RMG activities, documentation of possible contamination exists as a result of a 2000 study developed by CPI Environmental Services, Inc. (CPI), commissioned by South Chicago Property Company, LLC, in anticipation of completing the Illinois SRP Program and receiving an NFR letter. Apparently, remediation of the Southern portion began around May 2001, but was

⁴⁹ As examples of soil contamination within the Southeast Side communities of the East Side, Hegewisch and South Deering, we note that the Southeast Side has the Schroud and Lake Calumet Cluster Superfund sites, as well as multiple soil clean-up sites like those for manganese associated with S.H. Bell and Watco.

⁵⁰ Our understanding is rather than a comprehensive remediation, there have been several piecemeal environmental studies and a few targeted remedial activities to address confined areas with observed soil contamination. Our further understanding is that one previous remediation within the northern portion of the site encompassed only a small area west of Burley and 116th. This remediation was triggered by a spill of polychlorinated biphenyls (PCBs); Illinois EPA issued a letter of No Further Remediation in February 1999 (Illinois EPA follow-ups in 2004 and 2010 concluded that the area was in compliance with the NFR letter). We also understand that there were additionally a few incidences of tar contaminated soil in this area that were allegedly remediated pursuant to the Resource Conservation and Recovery Act (RCRA).

abandoned at a preliminary stage sometime around 2003 or 2004. We are not aware of any information evidencing any characterization or remedial activities after 2004.

The 2000 CPI Report apparently identified a number of contaminants in the soil and groundwater, which the Report concluded were confined to small areas. The CPI Report found four substances present in amounts over Tier 1 Tiered Approach to Corrective Action Objectives (TACO) objectives: PCBs, arsenic, chromium, and lead; conversely, the CPI Report did not find levels over Tier 1 objectives for barium, cadmium, mercury, selenium, silver, or petroleum. There may also have been identification of large amounts of asbestos containing materials on the Southern portion of the site, which is consistent with discovery of asbestos material in one of the steel mill buildings when a roof collapsed earlier this year, an event that RMG failed to timely report. It appears that Illinois EPA had significant concerns with the scope of the CPI Report, which in turn appear not to have been resolved once remediation efforts were abandoned in 2004.

c. Evidence of Contamination Related to RMG Operations on S. Burley Supports that Soil Likely Poses a Significant Threat to the Southeast Side from the Proposed RMG/GIII.

In addition to likely contamination of the site from past steel production-related activities, there is significant evidence that RMG/GIII's own operations have resulted in additional soil contamination due to years of its handling and processing of heavy metals and failure to maintain intact pavement at the S. Burley site. A review of such evidence pulled from CDPH's inspection reports is available in our prior comments to Illinois EPA and CDPH on the proposed General III.⁵¹ In sum, CDPH inspectors have over the years documented chronic paving problems leaving soil vulnerable to contamination with materials handled by the RMG/GIII operators, as well as significant outdoor piles and accumulation of metallic fines at the site.

Additional evidence of significant metallic fines/dust at the site is available in RMG/GIII's emission calculations submitted to Illinois EPA. Specifically, RMG/GIII presented sample results for its paved and unpaved roads at the S. Burley site that show very high levels of manganese, including 5,040 ppm for the unpaved roads and 4,760 ppm for paved roads.⁵² Notably, these results are from samples that were composited in the field, and so may not represent actual high measurements from specific areas of the site. We also note the high levels of metals in baghouse dust evidenced in these calculations, which may also contribute to soil contamination and other impacts to the community at such a site if not handled properly.

⁵¹ See SSCBP Public Comment on Large Recycling Facility Application of General III, LLC (d/b/a Southside Recycling) (Jan. 29, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/comments-received/Comment-from-SSCBP-1-1.29.21.pdf>; NRDC Comments on Recycling Permit Application for the Proposed General III/Southside Recycling (Jan. 14, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/organization-comments/Comment-from-NRDC-1.14.21.pdf>.

⁵² Ex. 24, South Chicago Property Management submission to Illinois EPA, Metals Emissions from South Chicago Property Management, Ltd., General III, LLC, Mar. 13, 2020, at 3, Table 2.

Similar data for the General Iron Lincoln Park facility and the proposed paving and overall layout/site design for RMG/GIII likewise raise concerns that the proposed new RMG/GIII operation would add substantially to the potential for further contamination of soil at the site, in particular with respect to lead, and its mobilization into the community. In its January 2020 Air Dispersion Modeling for Assessment of Metal Emissions Impacts submitted to Illinois EPA, RMG/GIII included a table entitled “Summary of Metal Concentrations in Material Deposition at GII.”⁵³ This table reports results of applicant-conducted materials sampling conducted at the General Iron Lincoln Park facility for five areas: ferrous roadway, “ASR” roadway, general roadway, ferrous transfer, and nonferrous transfer. The data provided shows levels of lead ranging from 525 mg/kg to 1,610 mg/kg for the roadways, with the ASR roadway showing the highest level, and 4,230 mg/kg to 4,720 mg/kg for the ferrous and non-ferrous transfer points, respectively. These levels are above soil clean-up levels used by agencies for residential soil, and independently demonstrate the high risk of metals contamination from a range of activities at the proposed operation. While RMG/GIII appears to have used these figures for its calculation of metals emissions that went into the metals air quality modeling, as noted elsewhere in our comments to CDPH (and to Illinois EPA), those emission calculations assume an unrealistically high level of control, especially given the track record of General Iron and then RMG at the Lincoln Park site (including while under management of the same key personnel as will apparently hold key positions at the proposed RMG/GIII Burley operation).

In addition, while RMG/GIII is proposing to pave a significant portion of the proposed Burley site, it appears that its paving plan would involve only “gravel pavement” in an area very close to handling areas for potentially untreated ASR (which as we’ve commented to CDPH in the past poses high risks of metals dispersal and contamination), as well as treated ASR.⁵⁴ The proposed RMG/GIII ferrous operations, in turn, are right up to the proposed lease boundary. The area North of the proposed lease boundary is entirely unpaved and appears to be an area for storing, moving and loading bulk materials, possibly to rail, based on aerial Google Earth images.⁵⁵ Also from these images and based on the application materials to date, it appears there is no barrier to trucks associated with the proposed RMG/GIII operation driving onto this unpaved portion North of the lease boundary.⁵⁶ In sum, RMG/GIII is proposing to conduct lead-intensive operations in areas that pose high risk of soil contamination from that activity, as well as likely mobilization of such contamination into the community.

We also note that while RMG/GIII in its calculations for the current RMG Burley operations claims that it will significantly reduce the substantial manganese emissions from its current S. Burley operations by paving roads at Reserve Marine Terminals and South Shore Recycling,

⁵³ Ex. 11, RMG/GIII, Permit Application to Illinois EPA, “Air Dispersion Modeling for Assessment of Metal Emissions Impacts Proposed Scrap Metal Recycling Facility,” Jan. 24, 2020, at 8, Table 2-1.

⁵⁴ See RMG/GIII, January 2021 Supplement to Permit Application, at Addendum 1, Attachments C and I, depicting the pavement plan and unloading/staging/storage areas, respectively. We use “potentially untreated ASR” here because as far as we have been able to determine, RMG/GIII has not clearly identified the stage in the process at which it would apply treatment to ASR.

⁵⁵ Ex. 25, Google Earth screenshot of 11600 S. Burley, Dec. 3, 2021.

⁵⁶ See, e.g., February 2020 Air Quality Modeling Supplement submitted to Illinois EPA, at 3 (discussing the North site boundary for air quality modeling purposes as being fenced by an existing fence) and 5, depicting the proposed GIII lease limits and referencing an “existing fence” well beyond this lease limit.

review of current and past aerial photos of the site available on Google Earth does not clearly show that such paving has occurred, despite the proposed GIII/RMG operation itself being largely if not entirely built. This is concerning given that RMG/GIII also represents in its emissions calculations for the current S. Burley operations that “[i]nallation of GIII is expected to add approximately 74.18 lb/yr of additional Mn emissions to this site” and is claiming that the additional road paving will result in a net reduction in Mn emissions from the site as a whole.⁵⁷ The concern that RMG has not in fact paved these roads is in addition to the concern that RMG has failed to demonstrate that it can actually maintain intact paved roads at this site (as well as our previously noted comment that metals modeling for the proposed RMG/GIII shows exceedances of California’s 8-hour REL for manganese).

Lastly, we express concern that activity at the RMG Burley campus from 2018 to 2020 may already have contributed to increasing and relatively high levels of metals (and PM10) at the Washington High School monitor. If confirmed, this contribution is further evidence that increasing activity at this site as proposed would further increase PM and metals concentrations in this already over- and disparately-burdened community. We previously have commented to CDPH that metals at this monitor show an increasing trend looking at average annual levels derived from reports available on USEPA’s air quality data website. We have subsequently obtained the underlying metals data from USEPA, as noted elsewhere in these comments. This data shows periods of distinct spikes in early 2019, around the time that RMG/GIII was going through the zoning process, and in summer 2020, around the time that RMG/GIII received an air permit from Illinois EPA.⁵⁸ Our concerns about mobilization of contaminated soil due to increased activity associated with the proposed RMG/GIII in the 2018 to 2020 window also extends to uses of the parcel between S. Burley and S. Green Bay Road, and between 116th and 114th, which similarly appears to be used for storage and handling of bulk materials, looks to have had an increased level of activity over this period of time, and we believe is under the control of South Chicago Property Management in some form.

d. A Third-Party, Comprehensive Soil Assessment is Needed.

While the current record includes substantial evidence of soil contamination at the proposed site and a likelihood of further contribution to and mobilization of that contamination into the community from the proposed RMG/GIII, as noted above and to date to our knowledge, there has been no comprehensive, third-party study to evaluate soil contamination at the S. Burley site; the degree to which existing operations are mobilizing soil contaminants into the air and water; and whether allowing more industry at the site would both worsen soil contamination and push more of these substances into the community. If CDPH determines it needs further analysis of soils to inform its permit decision, it should take the following steps.

A target analyte list in soil should be developed based on the historic uses of the site. The soil should be sampled using a statistically based sampling design not to miss hot spots and the

⁵⁷ See Ex. 24, South Chicago Property Management submission to Illinois EPA, Metals Emissions from South Chicago Property Management, Ltd., General III, LLC (Mar. 13, 2020), at 5-6.

⁵⁸ See Ex. 9, Spreadsheet of metals monitoring data from the Washington High School monitor, obtained from Michael Compher, USEPA Region 5.

surface soil samples should be collected by USEPA-certified laboratory/staff and the samples collected at the specific locations at the site (not composite samples) should be analyzed per USEPA-approved methods for metals and SVOCS, and other appropriate methods to measure target analytes (e.g., PCBs, dioxins/difurans, etc.). CDPH should also require the applicant to provide a detailed month-to-month history of its activities at the site, including those at the four RMG S. Burley operations, from 2018 to 2021 for purposes of comparing to metals monitoring data at the Washington High School monitor.

In addition, CDPH should evaluate soil conditions and the likelihood of soil being mobilized into the air and water in other Chicago communities for purposes of a disparity study.

C. CDPH’s Analysis and Presentation of Health Data Are Substantially Flawed and Cannot Support Comparisons or Conclusions About Health Effects or Equity.

CDPH’s analysis and presentation of health data suffers from numerous flaws, the correction of which would likely further demonstrate the heavy disparate burden borne by the Southeast Side communities and so further compel permit denial. As-is, the summary of the health status data included in the HIA presented at the November 4 webinar suffers from numerous defects that render it insufficient for purposes of CDPH’s current HIA process. These defects include failure to obtain input from community residents and the medical/scientific community experienced in working with the community on community health experiences, failure to include consideration of qualitative data in addition to or in place of quantitative data, inadequate/incomplete quantitative data, misleading presentation of data, and a failure to provide context for the data that was presented.

With respect to the overall picture from the health data, while CDPH included a brief slide and statement on “data considerations,” that treatment failed entirely to discuss to what degree there are biases, gaps and uncertainties in the presented data that could not be and were not addressed by the approach CDPH took. Instead, the impression given to the public was that CDPH’s measures address/eliminate any such data issues, which is patently not the case. CDPH should at minimum provide a clear and detailed assessment of the biases, gaps and uncertainties in the data that it used, including clear statements as to the likely direction and degree of bias in the overall results from such data issues, and take additional steps to address these data issues.

We also here note the work of other environmental justice advocates who have opposed the use of health data in a definition of environmental justice communities in large part due to “data collection that is rooted in implicit bias.”⁵⁹ In other words, where public health data collection itself has not adequately addressed sources of bias that arise from inequities in the health care system, social factors impacting health and how data has been collected historically, use of such

⁵⁹ See Ex. 26, Letter from ACE et al. to the Boston City Council Committee on Government Operations, Subject: Ordinance Amending City of Boston Code, Ordinances, Chapter VII, Sections 7-2.1 and 7-2.2, Building Energy Reporting and Disclosure (BERDO) and the Environmental Justice Population Definition (Sept. 13, 2021).

data can work against the very communities whose well-being the HIA process is intended to support.⁶⁰

Specific shortcomings in CDPH's health analysis are as follows.

1. CDPH Cannot Rely on a Single Comparison Community.

Similar to the general disparity analysis comment above, CDPH's selection of only Lincoln Park as a health comparison is flawed and cannot be used for drawing meaningful conclusions about health disparities faced by residents of the Southeast Side environmental justice community. Lincoln Park is not representative of the full range of wealthier, predominantly white communities in Chicago with respect to health data, for reasons similar to why it is not representative of the full range of such communities with respect to environmental factors: Lincoln Park, while relatively white and affluent, is not uniformly so or the most white/affluent community in Chicago. The question the HIA is supposed to be addressing is not simply whether the Southeast Side suffers greater health inequities than a single community that is still transitioning away from its industrial past – as so clearly demonstrated by the exit of General Iron from that community – but whether the health (and other socioeconomic indicators) already experienced by the Southeast Side as compared to the City more broadly would unjustly and inequitably expose Southeast Side residents to additional and cumulative environmental harms that they should not be forced to bear.

2. CDPH's Analysis Raises Issues with Respect to the Years Included and Covariate Adjustment.

It is not clear from CDPH's presentation and other materials whether the hospitalization, incidence and prevalence data was sex and/or age adjusted. The mortality data was age-adjusted, but the presence of the cancer incidence in the Health Atlas data states that it was "risk adjusted". If "risk adjusted" included adjustment for race/ethnicity, it is over-adjustment, since that variable is strongly co-linear with environmental risks. The best practice is to use age-adjusted incidence

⁶⁰ While California includes health-related data in its CalEnviroScreen, that state is at a far more advanced stage than Illinois and Chicago with respect to health data collection overall and for environmental health measures in particular. Because Illinois and Chicago have significant room for improvement in their health data collection practices, CDPH should proceed with extreme care and caution in its assessment and use of health data here, such that it does not in fact worsen implicit biases in our health system and social factors impacting health rather than alleviate them. In this vein, we also raise questions about CDPH's plan to conduct a Human Health Risk Assessment (HHRAP) as announced at the November 4 webinar. See HIA Overview Slides, at 57. Cumulative impacts analysis was developed as an alternative to problems inherent in traditional health risk analysis, which fails to fully capture the extent of the burdens environmental justice communities face from multiple forms of pollutants and exposures (e.g., chemical and non-chemical stressors). Traditional risk analysis likely underestimates real risk and may be particularly flawed when applied to a community like the Southeast Side where cumulative burdens significantly enhance health risks, even where the methodology attempts to account for cumulative risks. See Ex. 27, Pullen Fedinick, K.; Yiliqi, I.; Lam, Y.; Lennett, D.; Singla, V.; Rotkin-Ellman, M.; Sass, J., *A Cumulative Framework for Identifying Overburdened Populations under the Toxic Substances Control Act: Formaldehyde Case Study*. Int. J. Environ. Res. Public Health 2021, 18, 6002. <https://doi.org/10.3390/ijerph18116002>; See Air Alliance Houston et. al., Notice, Request for Information and Citations on Methods for Cumulative Risk Assessment, EPA-HQ-ORD-2013-0292; FRL-9807-5, 78 Fed. Reg. 25,440 (May 1, 2013)(June 28, 2013).

rates, as noted in the Nationally Consistent Data and Measures (NCDM) guidelines issued by the CDC.⁶¹ (The CDC issued NCDM to help develop standardized data and measures for understanding the impact of the environment on health.)

It is also not clear why total, lung and breast cancers were chosen as health endpoints and no other cancer types like leukemia were examined, which tend to track more clearly with environmental exposures (though also pose small sample size issues when conducting comparative analyses). Higher incidence rates of potentially curable cancers, such as breast and prostate, are sensitive to screening and reflect access to health care, and therefore underestimate cancers in underserved communities.

3. CDPH's Analysis Lacks Local Data.

Of deep concern is the use of community-wide data, without more precise measurements of exposures and health endpoints closest to the source of exposure. The use of a relatively large area leads to less precise measurements and a bias towards the null hypothesis. Even with limited numbers, it would be far better to obtain more detailed exposure and health measurements close to the source of exposure. Even if the numbers were not sufficient to obtain statistically significant associations, trends would add greatly to the overall assessment.

4. CDPH's Analysis Is Skewed by Misleadingly Narrow Hospitalization/Mortality Data.

CDPH's analysis is misleadingly skewed by using only Illinois data for hospitalizations and mortality. This ignores the fact that a significant portion of residents in Southeast Chicago cross the Indiana border for health care and would therefore not be counted in the Illinois databases, again biasing towards lower rates of recorded disease in state data for this community. Similarly, immigrants as they age often return to their home countries, once more possibly leading to an under-count of their mortality in Illinois data and potentially biasing the analysis here to underestimate health conditions on the Southeast Side.

5. Health Surveys Used by CDPH Likely Underestimate Ill-health.

CDPH relied for comparison of the disease rates, such as hypertension, coronary heart disease and stroke, on individual health survey data, from surveys such as the Healthy Chicago Survey or the Behavioral Risk Factor Surveillance Survey (BRFSS). Both levels of participation in the survey and having diagnoses of health conditions are affected by socioeconomic status and race/ethnicity, as well as limited access to care in lower-income neighborhoods, again biasing towards underestimates of the conditions and disease rates. Thus, such diagnosis-related measures of health from surveys can have issues with validity and reliability, especially for particular racial/ethnic groups. The likely direction of bias is that we are underestimating the

⁶¹ See Ex. 28, CDC, *Standards for Nationally Consistent Data and Measures within the Centers for Disease Control and Prevention's National Environmental Public Health Tracking Network* (Apr. 1, 2017), available at: https://www.cdc.gov/nceh/tracking/pdfs/NCDM_Requirements_April2017.pdf.

levels of disease in populations that have limited access to healthcare, and thus the levels of disparity. Self-rated health is a survey measure that is more independent of access to health care for those who in fact have health conditions. Individuals with a health condition will self-report ill-health, even if they do not have access to care and so do not respond positively to survey questions about particular diseases or diagnoses. As discussed in more detail below, looking at self-rated health, the Southeast Side shows up as very burdened and vulnerable compared to Lincoln Park and much of Chicago.

6. CDPH Omitted Lead Level Data, A Key Factor in Southeast Side Health Status.

Without explanation or justification, CDPH omitted lead level data from its analysis. CDPH's failure to include lead level data is surprising and a significant omission given the overall focus on environmental exposures and concerns with heavy metals in the Southeast Side. This is data that is available to CDPH in the Chicago Atlas and shows significantly higher burdens on the Southeast Side than in Lincoln Park and other northside communities and must be included in a meaningful HIA. Standing alone, CDPH's failure to include this lead data calls into question comparisons of health between the Southeast Side and other parts of Chicago.

7. CDPH Used Quantitative Health Data Without Acknowledging Its Biases and Limitations, and Without Employing Qualitative Methods for Addressing these Biases and Limitations.

CDPH largely ignored socioeconomic factors in its analysis. However, health status is often determined by access to factors affecting chronic diseases, such as diet and exercise, which in turn are affected by access to public transportation, green space and grocery stores, which are structured by socio-economic political context. The determination of quality of life indicators is complicated and often relies on factors not assessed in the HIA. Many of these are not easily assessed by quantitative data. Thus, high quality, qualitative data is needed. Of particular utility to *this* HIA are qualitative data produced as part of a yearlong, collaborative research project, for the Calumet Databook on how people experience their neighborhoods with respect to health.⁶² We also note that, as discussed above, self-rated health gets to these issues to a greater extent than specific diagnosis-related metrics. Looking at self-rated measures included at slide 46 of CDPH's November 4 presentation, the Southeast Side communities rate exceptionally low on a suite of metrics like overall health, life expectancy and poor physical and mental health, with substantial disparities between these communities and Lincoln Park.

⁶² See Ex. 29, University of Illinois at Chicago Collaboratory for Health Justice (In Coordination with Calumet Connect and By Request of Alliance for the Great Lakes), *A Hidden Gem in Chicago – A Calumet Connect Qualitative Needs Assessment of the Southeast Side* (Apr. 30, 2020), available at: https://greatlakes.org/wp-content/uploads/2021/02/Calumet_DataBook_Qualitative.pdf.

8. CDPH's Presentation of Health Data at the November 4 Webinar Was Visually Misleading and Otherwise Inadequate.

Data presentation at the November 4 webinar was, in some instances, misleading or otherwise fell short of visually conveying the degree of disparity between communities. For example, the data presented comparing East Side, South Deering, and Hegewisch to Lincoln Park and Chicago as a whole used a simplified line chart with no standard scale or axis. This is important to note because measures with drastically larger deltas were depicted the same way as measures with smaller deltas. The East Side has an asthma Emergency Department visit rate of 128.3 per 100,000 when Lincoln Park has 16.7 visits per 100,000. Visually, this was depicted at the same scale as a 3% difference in asthma prevalence between South Deering and Lincoln Park. This is clearly misleading. Oddly, in its presentation, CDPH seemed to point to differences in health care access, screening utilization, and other structural factors that impact the data to explain differences in the incidence rates, but failed to acknowledge these factors as significant and problematic differences in and of themselves for purposes of HIA disparity analysis.

In addition, CDPH opted to use a blue-and-green color scheme for visually presenting the health data. Such a color scheme fails to visually indicate areas of concern and disparity when compared to other available color schemes, like the red-yellow-green scheme employed in CDPH's air-health map and community organizations' cumulative impacts map.

It is important to recognize the potential consequences of how this data is presented. CDPH is choosing to display data in a way that downplays the scale of the discrepancies and fails to highlight as significant to this data and its interpretation of important factors in the HIA analysis such as the inequities in access to care.

III. CDPH's Approach to the HIA Exacerbates – Rather than Relieving – Inequities in the City's Land Use and Environmental Permitting Processes.

CDPH cannot move forward with granting a permit given the clear record of discriminatory and disparate impacts and burdens already evident in the record; doing so would be in violation of its duties to protect and advance public health, environmental justice and racial justice, including the agency's and City's civil rights obligations under numerous federal laws. Indeed, the record at present compels CDPH to deny the permit now, in order to satisfy these commitments and legal duties. As we have set forth in multiple comments to the City and in a complaint to the Department of Housing and Urban Development, the City must in this proceeding uphold its duties to protect public health and uphold civil rights.⁶³ Both USEPA and HUD have recognized

⁶³ Ex. 30, SETF, SSCBP, Housing Discrimination Complaint (Oct. 20, 2020); *See* SSCBP Public Comment on Large Recycling Facility Application of General III, LLC (d/b/a Southside Recycling) (Jan. 29, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/comments-received/Comment-from-SSCBP-1-1.29.21.pdf>; SSCBP Public Comment on the Large Recycling Facility Application of General III, LLC (d/b/a Southside Recycling) (Jan. 29, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/comments-received/Comment-from-SSCBP-2-1.29.21.pdf>; NRDC Comments on Recycling Permit Application for the Proposed General III/Southside

civil rights concerns attaching to this proposed operation and this proceeding, the former in its investigation of Illinois EPA's permitting process and Administrator Regan's letter to Mayor Lightfoot, the latter in its own investigation of the City's land use and zoning practices that undergird why we are here today.⁶⁴

Each of the relevant bedrock civil rights statutes acknowledges that intentional discrimination is unacceptable except in the narrowest of narrow circumstances. They also each acknowledge that disparate impact is of deep concern, even where actions do not constitute intentional discrimination.⁶⁵ Of note, the Fair Housing Act in particular requires the City not only to not engage in further discrimination or disparate treatment, but also to affirmatively further fair housing.⁶⁶ As a recipient of Community Development Block Grant funding from HUD, CDPH has a direct obligation to comply with the Fair Housing Act.⁶⁷ The receipt of these funds is materially conditioned on an annual certification that City policies and activities are in compliance with federal civil rights laws, which includes the duty to affirmatively further fair housing. The obligation to affirmatively further fair housing requires the City to take proactive measures, beyond simply combating discrimination, to identify patterns of segregation, assess underlying contributors to segregation, and take action to rectify the public and private policies, programs, or actions that have the effect of perpetuating segregation. In addition to this

Recycling (Jan. 14, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/organization-comments/Comment-from-NRDC-1.14.21.pdf>; NRDC Comment on Revised Application for General III, dba Southside Recycling (Jan. 29, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/comments-received/Comment-from-NRDC-1.29.21.pdf>; SETF Public Comments - General III, LLC Large Recycling Facility Permit Application (Jan. 14, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/organization-comments/Comment-from-Southeast-Environmental-Task-Force-1.14.21.pdf>; SETF-PCR Public Comments - General III, LLC Amended Large Recycling Facility Permit Application (Jan. 29, 2021), available at <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/comments-received/Comment-from-SETF-and-PCR-1.29.21.pdf>; Ex. 31, SETF, SSCBP, NRDC, Environmental Justice Grievance – Illinois EPA Permit for General III, LLC, 11600 S. Burley, Chicago, IL 60617, Application No. 19090021, I.D. No. 031600SFX (Aug. 20, 2020), available at <https://www2.illinois.gov/epa/topics/environmental-justice/Documents/SETF%20NRDC%20Coalition%20IL%20EPA%20Environmental%20Justice%20Grievance.pdf>

⁶⁴ See Ex. 30, SETF, SSCBP, Housing Discrimination Complaint (Oct. 20, 2020); Ex. 32, USEPA, Informal Resolution/Tolling of Investigative Timeframe (Feb. 19, 2021); Ex. 33, U.S. Department of Housing and Urban Development, Letter from HUD to the City of Chicago (Mar. 12, 2021); Ex. 5, Letter from USEPA Administrator Michael Regan to Mayor Lightfoot (May 7, 2021), available at https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/USEPA_Letter_RMG_5.7.21.pdf.

⁶⁵ Where disparate impact is evident, actions that exacerbate such impacts cannot be taken without a showing of substantial, legitimate justification and consideration of ways to avoid the harm.

⁶⁶ See *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987); *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973) (holding that “[a]ction must be taken to fulfill, as much as possible, the goal of open integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat”); See 24 C.F.R. § 5.154(a); See 42 U.S.C. § 3608(e)(5).

⁶⁷ CDPH receives Community Development Block Grant Funds administered by HUD for its lead poisoning prevention, violence prevention, and mental health services programs. See Ex. 34, City of Chicago, Office of Budget and Management, *Community Development Block Grants*, available at https://www.chicago.gov/city/en/depts/obm/supp_info/community-development-block-grant--cdbg-.html. We also understand that CDPH receives funding from Illinois EPA for CDPH's air permitting functions, which may render it a subrecipient of USEPA funding.

affirmative obligation, the City is also explicitly prohibited from taking any actions that are materially inconsistent with its obligation to affirmatively further fair housing.⁶⁸ The City's failure to identify, and rectify, how its pattern of relieving white, wealthy communities of heavy industrial uses while increasingly burdening communities of color with industrial actors perpetuates its historic segregation and represents a failure to affirmatively further fair housing. Applying this lens, CDPH must deny the permit.

Critically, CDPH's process fails to acknowledge the broader context here. As detailed at length in a complaint by residents of the Southeast Side to HUD and as well-documented more generally, the proposed move of General Iron's operations from Lincoln Park to the Southeast Side is not happening in a vacuum without other City involvement outside of this permit proceeding. This permit proceeding is a further step in a long history of land use, zoning, permitting, and development policies and actions that have had both the intent and the effect of segregating areas of the City along racial and ethnic lines, in violation of U.S. civil rights laws. Here, the City rezoned the whiter and more affluent Lincoln Park neighborhood to move heavy, polluting industry out in order to make clean, breathable room for the development of Lincoln Yards, and likely follow on high-end, non-polluting commercial businesses and residences and facilitated doing so by designating areas including the Southeast Side as "receiving" zones. And, what the Southeast Side and other communities of color are set to receive is the heavy industry, like industrial recyclers and diesel truck-dependent warehouses. On its face, this is discriminatory, and very clearly not environmental justice – it also is especially egregious because it directly evidences the City's disparate treatment of communities of different racial and ethnic makeups. Going through the exercise of a hurried and grossly faulty HIA process, one that does not even acknowledge or provide any framework for assessing how such discrimination can and should be addressed in this action (see lack of disparity analysis above), does not somehow rectify what is, in fact, happening here.

In addition, without even addressing the issues raised above, the results and impacts of the City's actions – both historically and in the immediate context – are laid clear in several components of the HIA to date:

- CDPH's own assessment of race;
- USEPA's air monitoring data report; and
- CDPH's own Air Quality and Health Index map, which is a form of cumulative impacts analysis (though it focuses only on air-related environmental factors).

Taken together with the General III permit application, which itself evidences the many environmental impacts of the proposed operation – including as discussed above increases in harmful PM and heavy metals – these critical pieces make clear that CDPH must deny the permit now.

Race. CDPH acknowledges in the HIA, consistent with its position on the social determinants of health and racial justice more broadly, that race increases vulnerability to environmental and

⁶⁸ 24 C.F.R. § 91.225(a)(1).

health threats.⁶⁹ The agency thus evaluated race as part of its analysis of social factors presented on November 4. This evaluation confirms that the Southeast Side communities under evaluation are composed of a much greater percentage of people of color than even Chicago as a whole (with the exception of Hegewisch), let alone predominantly white Lincoln Park, which the City is aiding in further gentrification.⁷⁰ It also confirms a similar racial pattern around other heavy industrial corridors on the City's South and West sides.

USEPA's Air Monitoring Report. As set forth above, the USEPA air monitoring report on its face shows that the Southeast Side bears among the highest air pollution burdens in the City and region, including for air pollutants with no identified health effects thresholds and for which these communities have a long history of even higher pollution levels. Assessment of other available data from regulatory monitors as set forth above makes an even stronger case. In addition, the USEPA air monitoring report acknowledges that the Southeast Side communities rank among the most burdened looking at factors and indices included in EJSCREEN.⁷¹

Cumulative Impacts Analysis: Air Quality and Health Index Map. Moreover, CDPH conducted and presented a quasi-cumulative impacts analysis in its Air Quality and Health Index map. This analysis and map goes a step further than EJSCREEN by looking at more factors together than EJSCREEN's indices. It again confirms that the Southeast Side communities are among the most burdened in the City, as well as substantially more burdened than Lincoln Park.

RMG/GIII's Permit Application. On its face, the General III permit application confirms that RMG/GIII will increase environmental impacts, most of which cannot be eliminated or even substantially offset. As discussed above, these impacts include diminution in air quality for pollutants that to date have no identified health thresholds, and for which the Southeast Side ranks at the top of the city and region in existing air pollution burden.⁷²

In sum, the HIA data to date shows – and both CDPH and USEPA have acknowledged - the Southeast Side is already, both in actual terms and comparatively, a community that is heavily burdened looking at individual factors, combined indices and cumulative impacts, far outscoring other parts of the City and ranking at the top of nearly all metrics (and “outscored” only by other industrial corridors in BIPOC communities). The proposed RMG/GIII by the company's own admission will increase the environmental burdens borne by the Southeast Side.

For CDPH to move forward with granting the RMG/GIII permit would further the long history of environmental injustices this community continues to suffer from every day and ignore the especially egregious history of this particular operation. CDPH can and must meet its obligations under the City's own laws and regulations and under the U.S. civil rights laws by denying the RMG/GIII permit application.

⁶⁹ See HIA Overview Slides, at 48-49.

⁷⁰ See HIA Overview Slides, at 48.

⁷¹ Ex. 8, USEPA Region 5, Southeast Chicago Ambient Air Quality Analysis, at 2-3.

⁷² See also Ex. 35, NRDC and SSCBP, Summary of Legal Authorities and Technical Bases to Deny the RMG Permit Application (Mar. 12, 2021).

Sincerely yours,

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