



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Fair Housing and Equal Opportunity
451 7TH Street, SW
Washington, DC 20410

VIA ELECTRONIC MAIL & CERTIFIED MAIL – RETURN RECEIPT REQUESTED

July 19, 2022

The Honorable Lori E. Lightfoot
Mayor, City of Chicago
121 North LaSalle Street
Chicago, Illinois 60602

Southeast Environmental Task Force
c/o Peggy Salazar
13300 S Baltimore Avenue
Chicago, IL 60633

People for Community Recovery
c/o Cheryl Johnson
13330 S Corliss Avenue
Chicago, IL 60827

Chicago South East Side Coalition to Ban Petcoke
13300 S Baltimore Avenue
Chicago, IL 60633

SUBJECT: Letter of Findings of Noncompliance with Title VI and Section 109
Southeast Environmental Task Force, et al. v. City of Chicago
Case No. 05-20-0419-6/8/9

Dear Parties:

This letter conveys the findings in the investigation conducted by the U.S. Department of Housing and Urban Development (the “Department”) under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulations at 24 C.F.R. Part 1 (“Title VI”) and Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309, and its implementing regulations at 24 C.F.R. Part 6 (“Section 109”).¹

The Department initiated this investigation on October 2, 2020 under 24 C.F.R. §§ 1.7(c) and 6.11(a) in response to a complaint filed with the Department by the Southeast Environmental Task Force, the South East Side Coalition to Ban Petcoke, and People for Community Recovery

¹ Because the Section 109 regulations closely track the Title VI regulations this letter will focus on Title VI and only identify differences with Section 109 where necessary.

alleging that the City discriminated on the basis of race and national origin in violation of Title VI and Section 109 by causing and facilitating the relocation of a large metal recycling facility from a majority White neighborhood to a majority Black and Hispanic neighborhood, and through a broader policy of constraining industrial and other polluting land uses to majority Black and Hispanic areas and relocating polluting facilities from predominantly White areas.

This letter is to notify you of the Department's findings and invite you to engage in discussions regarding the resolution of this complaint. As described below, the Department finds the City in noncompliance with Title VI and Section 109.²

I. Summary of Findings

The Department finds that the City caused and facilitated the relocation of a metal recycling facility from a predominantly White neighborhood to a predominantly Black and Hispanic neighborhood. The City's involvement in the relocation of the recycling facility, approval of the facility's new site, and the methods used to achieve these objectives were shaped by the race and national origin of the residents of each neighborhood. These actions continued a broader policy of shifting polluting activities from White neighborhoods to Black and Hispanic neighborhoods, despite the latter already experiencing a disproportionate burden of environmental harms.

In February 2022, upon completion of an impact assessment, the City denied a final permit necessary for the operations of the facility to commence. The Department recognizes this important decision as a step in addressing the potential harm of the actions discussed in this letter but notes that the owners of the metal recycling facility have appealed this decision to the City and a final disposition on the permitting remains pending.

The Department's findings are based on reviews of documents relating to the City's relevant policies, practices, actions, and decisions. The Department reviewed City communications and administrative records, along with publicly available documents and data, including those regarding environmental and health hazards in Chicago.

The Department notes the City failed to timely and fully produce requested information, to its detriment. The City severely delayed the production of some requested materials without good cause, and documents have been produced to the press or other requesters under the Illinois Freedom of Information Act or related laws that have not been produced to the Department, despite being responsive to the Department's requests for information. Further, the Department provided the City a summary of these Findings in February 2022. The City has not responded with evidence to alter the Department's conclusions.

II. Federal Financial Assistance

The City is a unit of local government that receives and distributes federal financial assistance from the Department. The City receives Community Development Block Grant ("CDBG") funds from the Department and distributes it to individual departments, averaging \$76 million per year for Program Years 2016-21. In the 2021 budget, the City distributed CDBG

² The complaint also alleged violations of the Fair Housing Act, 42 U.S.C. §§ 3601 – 19, and its implementing regulations at 24 C.F.R. Part 100, the Department's processing of which remains ongoing.

and other HUD block grant funds totaling \$375 million to thirteen City departments, including \$15,186,672 for Department of Planning and Development (“DPD”), \$62,827,921 for Department of Public Health (“CDPH”), and \$21,825,776 for the Office of Budget Management.³

The City Council authorizes the City’s budget director as the signatory for the approval of the City’s Consolidated Plan and Action Plan, and for the City’s civil rights certifications.⁴ The City’s Office of Budget and Management is responsible for grants management across the City, and works with the Mayor to develop an annual budget proposal that includes HUD grant funds.⁵ The Mayor’s budget proposal is submitted to the City Council, which has the ultimate authority on the City’s annual budget and appropriations, including all grant revenues, no expenditure of which “shall be made without prior approval of the City Council.”⁶

III. Factual Findings

A. Background

1. The General Iron Recycling Facility

General Iron⁷ owned a large metal recycling facility (“the Facility”) that crushes, shreds, and sorts automobiles, construction debris and other forms of scrap metal into base materials for sale and disposal. For decades, the Facility was located in north Chicago, but in 2018 General Iron announced that it would relocate the Facility to southeast Chicago. At the same time, General Iron announced it would be merging with Reserve Management Group (“RMG”), which operates several waste management related facilities in southeast Chicago.⁸

Around 2016, the City began meeting with General Iron to discuss relocating the Facility. As described in Section III.B below, these discussions culminated in a public announcement of the move in July 2018 and a negotiated agreement with the City in support of the move in September 2019. By December 2020, construction of a new facility in the southeast was largely completed, and operations at the Facility’s old site shut down.

Between March 2019 and September 2020, City agencies granted six regulatory permits necessary to move the facility, and in September 2019 the Illinois Environmental Protection Agency (“Illinois EPA”) granted an additional permit.⁹ However, in May 2021 the federal Environmental Protection Agency (“U.S. EPA”) strongly recommended that the City assess the

³ This includes funds under CDBG, HOME, HOPWA, ESG, HOME ARP, CDBG-CV, HOPWA-CV, and ESG CV.

⁴ Chi., Ill, Annual Appropriation Ordinance (2021), Section 9.

⁵ *Id.* at Section 8.

⁶ *Id.*

⁷ General Iron Industries, or GII, d/b/a General Iron Holdings, General Metals, General Iron.

⁸ RMG Investment Group, LLC and RMG Investment Group II, LLC, d/b/a Reserve Management Group, all operations at the South Burley Avenue site, including General III, LLC (d/b/a Southside Recycling), Reserve FTL (d/b/a Reserve Marine Terminals), Napuck Salvage of Waupaca, LLC, South Shore Recycling, LLC, and RSR Partners, LLC (d/b/a Regency Technologies), the four of which are collectively known as South Chicago Property Management, Ltd.

⁹ The permits granted by the City were a special use permit in Mar. 2019; four building permits in Feb. 2020 (two), Mar. 2020, and May 2020; and an air pollution permit in Sept. 2020. The permit granted by the Illinois EPA was an air pollution control permit.

environmental impact of the new site before the City grants the final permit needed for operations there to commence.¹⁰

In February 2022, the City completed this assessment and denied the final permit. The City's denial of the permit was largely based on concerns similar to those summarized by HUD in a letter to the City shortly before the denial and further documented in this LOF. For example, the City cited "concerns for health, environment, and quality of life in an already over-burdened community; the inherent risks of recycling operations; as well as concerns about the company's operating history."¹¹

However, in March 2022 General Iron and RMG (the "Companies") filed an appeal with the City, which remains pending. If the appeal results in an approval, operations at the new site are expected to begin immediately since the new facility is fully constructed and all other permits have been issued. In addition, many of the processes discussed in this letter remain unchanged and are ripe to be repeated.

2. The Lincoln Park Site

The Facility's old site is in Chicago's Lincoln Park neighborhood, which is in the North Branch Industrial Corridor (discussed in Section III.E below). Residents of the Lincoln Park neighborhood are 80% White.¹² Other industrial sites in and around Lincoln Park have recently been targeted for non-industrial redevelopment, including a multibillion-dollar mixed-use project that surrounds the Facility's old site on three sides.

Complaints from Lincoln Park residents about the environmental impact of the Facility were voluminous, with City staff describing roughly "a petition a week." Residents complained, for example, of noise, debris, water pollution, toxic emissions, and "awful odors" that cause "trouble breathing."¹³ In 2015, two fires at the Facility caused heavy smoke in the area; that same year, Alderman Brian Hopkins was elected to represent Lincoln Park based in part on promises to remove the Facility from the neighborhood.

Lincoln Park residents described their residential neighborhood as incompatible with the Facility.¹⁴ For example, one resident commented that "Lincoln Park and its residential

¹⁰ The final permit is a large recycling facility permit granted by the Department Public Health.

¹¹ Chi. Dep't. Pub. Health Rep., Health Impact Assessment., at 33, www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG_RecyclingPermit_HealthImpactAssessment_Feb2022.pdf; see also Chi. Dep't. Pub. Health, Letter re: Recycling Facility Permit Application (Feb. 18, 2022), www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/Final%20RMG%20permit%20denial%20letter%202.18.22%20with%20attachments.pdf.

¹² As used throughout this document, "White" refers to non-Hispanic White as identified by the U.S. Census, and neighborhoods refer to formally designated City of Chicago "Community Areas." Neighborhood-level demographic data, prepared by the Chicago Metropolitan Agency for Planning, is based on U.S. Census block and tract data aggregated based on Community Area boundaries.

¹³ Complaints filed with the City concerning General Iron can be found at <https://data.cityofchicago.org/Environment-Sustainable-Development/CDPH-Environmental-Enforcement/yqn4-3th2/data>. In 2019, the Chicago Department of Public Health commissioned a study in response to these complaints. The study "substantiat[ed] the high number of odor complaints and identifie[d] GII's operation as the likely source." Chi. Dep't Pub. Health, Nuisance Odor Investigation: GII, LLC (Aug. 2019).

¹⁴ These comments are from the North Branch Framework planning process and can be found at www.chicago.gov/content/dam/city/depts/dcd/supp_info/industrial/NBIC_Emails_Recd_DPD.pdf and www.chicago.gov/content/dam/city/depts/dcd/supp_info/industrial/NBIC_Letters_Comments_Recd_DPD.pdf.

neighborhoods are NO PLACE for the likes of General Iron.... Would you allow your family to breathe in this air? Time to send General Iron packing – into a neighborhood appropriate for industry like this.” Another resident complained that the Facility “looks awful and completely out of place in what is now a very residential neighborhood ... populated by families. An industrial plant has no place in Lincoln Park anymore.” Alderman Hopkins also argued that the Facility “is not compatible with the neighborhood,” and a group of residents started an online petition that garnered nearly three thousand signatures entitled “General Iron – Does it Belong in Lincoln Park?”

3. The Southeast Site

The Facility’s new site is located at the intersection of three neighborhoods (the “Southeast Neighborhoods”), and it is in the Calumet Industrial Corridor.¹⁵ Residents of the Southeast Neighborhoods are collectively 83% Black or Hispanic.¹⁶

The Southeast Neighborhoods already bear a disproportionate share of environmental burdens. The Southeast Neighborhoods contain disproportionate concentrations of toxic sites, including both of the City’s superfund sites.¹⁷ In 2017, 77% of toxic substance releases in Chicago occurred in the Southeast Neighborhoods.¹⁸ The area also has a disproportionate share of facilities permitted to produce significant emissions.¹⁹

The Illinois EPA recognizes the Southeast Neighborhoods as an “area of environmental justice concern,” a term used to describe neighborhoods with high vulnerability to environmental hazards.²⁰ Documents published by the Chicago Department of Public Health in 2016, 2020 and 2022 all identified the Southeast Neighborhoods as the most burdened by pollution and its negative health effects.²¹

These disparities are due in part to the concentration in the Southeast Neighborhoods of heavy industry and other polluting activities. The U.S. EPA notes that the City historically “fail[ed] to consider the potential implications of locating residential and industrial areas in close proximity to each other,” and cautions that “current pollution controls may not provide adequate

¹⁵ The three neighborhoods are East Side, Hegewisch, and South Deering.

¹⁶ See note 12 *supra* regarding data sources and definitions used throughout this document.

¹⁷ A superfund site is a waste containment site considered by the U.S. EPA to be an “uncontrolled waste site” with high “relative potential ... to pose a threat to human health or the environment.” U.S. EPA, Superfund Site Assessment Home, www.epa.gov/superfund/superfund-site-assessment-home.

¹⁸ Data covers ZIP Codes 60617, 60633, 60628, 60619 and can be compiled using the data tool provided by the U.S. EPA at https://enviro.epa.gov/triexplorer/tri_release.chemical.

¹⁹ City of Chi. Office of Inspector Gen., Chi. Dep’t Pub. Health Air Pollution Enf’t Audit (2019), <https://igchicago.org/wp-content/uploads/2019/09/CDPH-Air-Pollution-Enforcement-Audit.pdf>.

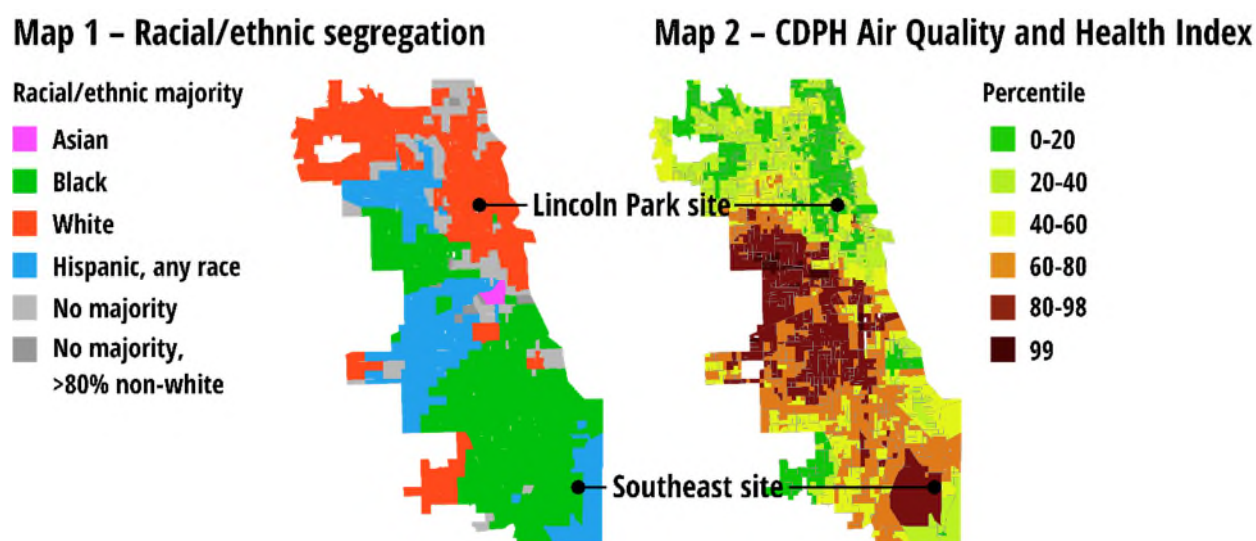
²⁰ Illinois EPA, Environmental Justice (EJ) Policy, www2.illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx.

²¹ Chi. Dep’t. Pub. Health, Healthy Chicago 2.0 (2016), www.chicago.gov/content/dam/city/depts/cdph/CDPH/HC2.0Plan_3252016.pdf; Chi. Dep’t Pub. Health, Healthy Chicago 2025 (2020), www.chicago.gov/content/dam/city/depts/cdph/CDPH/Healthy%20Chicago/Assessment_CTSA.pdf; Chi. Dep’t Pub. Health, Air Quality and Health Report (2020), www.chicago.gov/city/en/depts/cdph/provdrs/healthy_communities/svcs/air-quality-and-health.html; Chi. Dep’t. Pub. Health Rep., Health Impact Assessment. (2022), www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG_RecyclingPermit_HealthImpactAssessment_Feb2022.pdf.

protection to residents faced with multiple exposures.”²² The U.S. EPA explains further that these “environmental threats” arose because “so much of Chicago’s heavy industry and waste disposal has been located” in the area.²³ Similarly, the City has specifically identified the area as “disproportionately affected by the impacts of [waste] disposal methods ... and the location of waste management infrastructure.”²⁴

Southeast residents strongly objected to continuing this pattern by relocating the Facility. As one resident put it, “Our community will remain stagnant if it isn’t improved and revitalized like the North Side. We don’t need another polluting industry or another eyesore,” concluding “Time and time again the city tries to bully us and stick us with everything the rest of Chicago doesn’t want.”²⁵

*Maps of Chicago showing the Lincoln Park Site and the Southeast Site*²⁶



B. The City Caused the Facility’s Relocation and Facilitated the Move to a Predominantly Black and Hispanic Neighborhood.

From 2016 to 2020, city officials worked closely with the Companies first to entice them to move the Facility from Lincoln Park and then to orchestrate the move to the Southeast Site.

²² U.S. EPA Rep., Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning (2003), www.epa.gov/sites/default/files/2015-02/documents/napa-land-use-zoning-63003.pdf.

²³ *Id.*

²⁴ City of Chi., *Existing Conditions Report, 2021 Waste Strategy*, 37, www.chicago.gov/city/en/progs/env/2021-waste-strategy.html.

²⁵ Michael Hawthorne, *Tired of Being the City’s Dumping Ground*, Chicago Tribune, Mar. 25, 2021.

²⁶ Map 1 is based on 2017 ACS 5-Year estimates, Table B03002. Map 2 is based on Chi. Dep’t. Pub. Health., Air Quality and Health Index Scores by Census Block Group, www.chicago.gov/city/en/depts/cdph/provdrs/healthy_communities/svcs/air-quality-and-health.html. The CDPH Index is derived from six health factors, seven air pollution factors, two metrics for polluted sites, and six social factors of which minority concentration is one.

1. 2016 – 2018: Pressure on the Companies to Move the Facility

Starting around 2016, local stakeholders began lobbying the City to relocate the Facility and City officials initiated a series of meetings with General Iron about a potential move. By the start of 2018, the Deputy Mayor and other high-level City officials were in regular communication and meetings – sometimes several times per week – with the Companies to plan the relocation.²⁷ City officials characterized these meetings as “negotiations” and described them as “intensive” and “sensitive.” City officials consistently expressed strong support for the relocation, describing it prior to its finalization as “almost there!” and “great!” The City took an unusually active role in facilitating the relocation, for example, by coordinating closely with the Companies to ensure that the Alderwoman from the Southeast Neighborhoods “is now on board and won’t be an issue.”

In its discussions with the Companies, the City pushed hard for the relocation. As General Iron’s owner testified, “the City pressured General Iron to close its lawfully operated North Side facility,” and absent the City’s pressure General Iron would not have “capitulated” and disturbed a profitable business.²⁸

In the end, General Iron “agreed to cease operations of its validly permitted profitable business ... [i]n exchange” for City assistance,²⁹ and in July 2018, General Iron and RMG publicly announced the relocation. City officials coordinated particularly closely with the Companies around the announcement. For example, City staff reviewed drafts of the Companies’ press release prior to publication and insisted that timing of the release be coordinated. At no time during this close coordination with the Companies did the City raise concerns about the impact of the relocation on the Southeast Neighborhoods nor any mitigation measures to offset these impacts.

2. 2019 – 2020: The Agreement Between the City and the Companies

In September 2019, the City signed an agreement with the Companies (the “Agreement”) “wind[ing] down operations” at the Facility.³⁰ The City could point the Department to no other agreement of this kind executed with private companies for similar purposes.

The City touted its role in the relocation, announcing the Agreement in a press release headlined “Agreement with General Iron to Decommission and Relocate to a New Site by 2021.” In the press release, the City described the Agreement as the “exit plan” for General Iron from Lincoln Park, and the City’s corporation counsel characterized the Agreement as setting “a clear timeline for [the Facility’s] eventual relocation.”

²⁷ The Department reviewed hundreds of City emails and other documents; the quotes in this paragraph are drawn from among those documents that are otherwise publicly available.

²⁸ Labkon Aff. ¶ 2 filed in *General III, LLC v. City of Chicago*, 21-cv-2667, (N.D. Ill. June 29, 2021). The Companies sued the City for its delay of the large recycling permit; the case was dismissed as unripe in June 2021.

²⁹ Labkon Aff. ¶ 4.

³⁰ Press Release, City of Chi., City of Chicago Announces Agreement with General Iron to Decommission and Relocate to New Site by 2021, Sep. 11, 2019.

Under the Agreement,³¹ the Companies committed to closing the Facility by December 2020, even though the Facility's operating permit was valid until February 2022. The Companies also agreed to enhanced traffic controls and reduced hours until the Facility closed. In exchange, the City agreed that it would not disturb any "licenses, permits, allowances, or accommodations currently issued" for the Facility to operate until the move. The City also agreed to "reasonably cooperate" with the Companies in "achieving the efficient and expeditious transition of the business" and "to use best efforts to manage issues of concern through face to face discussion" while engaging only in "reasonable" public discourse.

The City produced no evidence that it even attempted to secure commitments from the Companies on any features to benefit the Southeast Neighborhoods. Although the City announced that the Southeast Site would have "new state of the art environmental features," the Agreement lacked any commitments from the Companies as to the environmental controls they would install.³² Likewise, the City promised that the Southeast Site would "create new jobs for the community and ... apprenticeship opportunities," but the Agreement lacked commitments from the Companies as to hiring metrics or employment programs.³³

Without the Agreement, the relocation could not have occurred. According to RMG's owner, RMG's purchase of General Iron hinged on the City signing the Agreement since it publicly demonstrated that the City would continue to support the move. He testified that "the Agreement was to facilitate the closing of the ... [Lincoln Park Site] and the permitting of [the Southeast Site]. RMG was unwilling to close on its purchase of General Iron's assets until it had secured this Agreement with the City."³⁴

Local news similarly characterized the Agreement as the City striking a deal that "ensures [General Iron] leaves the North Side"³⁵ and referred to the Agreement as "hammered out by the [City]."³⁶ Headlines declared that the City "has struck a deal with the scrap metal recycler to shut down its North Branch facility and vacate a prime piece of real estate."³⁷

After signing the Agreement, the Companies "began in earnest the engineering, preparation work, permit applications, and ultimate construction" of the Southeast Site "in reliance on the City's promises made in the Agreement."³⁸ Close coordination between the City and the Companies continued through the permitting process into 2021.

³¹ The full title of the Agreement is "Term Sheet Regarding General Iron/RMG Interim Operating Plan, Cessation of Northside Operations and Southside Transition," and it is available at https://static.wixstatic.com/ugd/688fe2_7a372457912e4b748a07a93648eebcf2.pdf.

³² Press Release, Agreement with General Iron, *supra* note 30.

³³ *Id.*

³⁴ Joseph Aff. ¶ 2. filed in General III, LLC v. City of Chicago, 21-cv-2667, (N.D. Ill. Jun. 29, 2021).

³⁵ Michael Hawthorne, *Reversing one of Emanuel's last decisions, Lightfoot ensures clout-heavy scrap shredder leaves North Side by 2020*, Chicago Tribune (Sep. 12, 2019), www.chicagotribune.com/news/environment/ct-general-iron-pollution-north-side-20190912-iuotpbegbfa77fkqseuqrerk5q-story.html.

³⁶ Danny Ecker, *General Iron will close Lincoln Park site next year*, Crain's Chicago Business (Sep. 11, 2019), www.chicagobusiness.com/commercial-real-estate/general-iron-will-close-lincoln-park-site-next-year.

³⁷ *Id.*

³⁸ Joseph Aff. ¶ 4.

C. The City Knew the Relocation Would Negatively Impact the Southeast Neighborhoods.

As detailed in this Section, negative environmental impacts from the relocation were expected based on the Facility's impact at its old site and the lack of significant mitigation measures at its new site. Expert organizations joined Southeast residents in raising these concerns with the City, but the City pushed ahead with the relocation nonetheless.

1. Environmental Problems at the Lincoln Park Site

As mentioned in Section III.A.2 above, the City received hundreds of complaints – over 300 in 2018 and 2019 alone – from Lincoln Park residents about the environmental impact of the Facility at its old site. For example, one Lincoln Park resident complained “I can taste the fumes in the back of my throat both inside the house and outside.” Another said “we cannot open the windows or sit on our terrace, [one] can actually taste the emission from General Iron.... we have high-quality windows which the noise easily permeates.... Sometimes we are still hearing and smelling them at 9pm.”

These resident concerns comport with expert findings. In May 2018, researchers at the University of Illinois shared a study that found high levels of lung-damaging fine particulate matter downwind from General Iron based on testing done in 2016 and 2017.³⁹ In July 2018, the U.S. EPA issued a Notice of Violation under the Clean Air Act for “excessive air emissions,” and failing “to install adequate air pollution controls.”⁴⁰ In August 2019, the Companies signed a Consent Order and agreed to install additional pollution controls. However, the City subsequently found that pollutants were “escaping” the new equipment, leading to continued “offensive odors and elevated [pollutant] concentrations.”⁴¹

The City also cited the Facility for violations related to environmental impacts. In 2016 the City temporarily shut the Facility down due to numerous violations, including repairs being needed to reduce noise and debris accumulation. From December 2019 to December 2020, the City cited General Iron for thirty-five code violations, twelve of which were for violating the City's air pollution regulations by allowing “untreated emissions” to escape the premises and eight of which were for improperly handling “material susceptible to becoming windborne.”⁴² All of these violations occurred while the City was actively pursuing the Facility's move to the Southeast.

2. Inadequate Environmental Controls at the Southeast Site

Although the City assured the public that the Southeast Site would have enhanced environmental controls, it took no actions to ensure this would be the case. In the City's press release announcing the Agreement, the City promised that “as part of its move to the [Southeast

³⁹ The study's findings were shared with the press in 2017, shared directly with the City in 2018, and are publicly available at www.documentcloud.org/documents/4329921-Serap-Erdal-study.html.

⁴⁰ Notice and Finding of Violation to Adam Labkon, July 18, 2018, www.epa.gov/sites/default/files/2018-07/documents/general_iron_industries_inc._nov-fov.pdf.

⁴¹ U.S. EPA, General Iron Consent Agreement and Final Order, Aug. 25, 2021, www.epa.gov/il/general-iron#background.

⁴² See Chi. Mun. Code 11-4-730, 11-4-760.

Site], the company will adopt new state of the art environmental features, including a new recycling facility with an enclosed shredder equipped with suction hood, high efficiency filters, solar panels, and air monitoring technologies.” However, the Agreement itself contained no commitments about environmental features, let alone the specific ones listed in the City’s press release. In fact, no air pollution modeling was performed or specific technological commitments made until well after the Agreement was signed and the City granted the special use permit (discussed in Section III.D.3 below).

Furthermore, the City did not consider any alternative ways to improve the Facility’s environmental controls other than moving it to the Southeast Neighborhoods. In its press release the City promoted the relocation as the best way to ensure “the company operates in accordance with the latest and best environmental practices.” However, the City never considered whether the promised enhancements could have been made at the Lincoln Park Site instead. In fact, most of the features listed in the press release already existed at the Lincoln Park Site, and the City had found them to be inadequate. The City did not consider whether any potential sites other than the Southeast Site could have had less of an environmental impact.

3. Objections by Southeast Residents and Expert Organizations

Almost immediately after public announcement of the relocation, Southeast residents and community groups began raising concerns.⁴³ For example, in July 2018 residents held a press conference and protest, saying “We don’t want a company with a history of EPA violations,” and “It’s not fair how everybody else gets to have clean air and not us.”⁴⁴

Experts in planning, public health, and environmental protection joined local residents in voicing concerns and calling on the City to analyze cumulative pollution and nuisance impacts on the Southeast Neighborhoods.⁴⁵ These groups included the Metropolitan Planning Council, the Respiratory Health Association, the University of Illinois Chicago School of Public Health, the Sierra Club, the Natural Resources Defense Council, Friends of the Parks, the Audubon Society, and the Nature Conservancy.

That the Southeast Neighborhoods were already heavily burdened by pollution was common knowledge. The EPA referred to the disproportionate pollution burdens in the

⁴³ These organizations included Southeast Side Coalition to Ban Petcoke, People for Community Recovery, Southeast Youth Alliance, United Neighbors of the 10th Ward, Bridges/Puentes, Southeast Side Educators for Environmental Justice, George Washington High School Student Voice Committee, Alliance of the SouthEast.

⁴⁴ Alex Ruppenthal, ‘We Don’t Want Your Trash’: Residents Protest General Iron’s Move to Southeast Side, WTTW (July 30, 2018), <https://news.wttw.com/2018/07/30/we-don-t-want-your-trash-residents-protest-general-iron-s-move-southeast-side>.

⁴⁵ See, e.g., Christina Harris and Olga Bautista, *Stopping General Iron is Just the Start of Fixing the Environmental Problems on the Southeast Side*, Metropolitan Planning Council (May 18, 2021), www.metroplanning.org/news/10129/Stopping-General-Iron-is-just-the-start-of-fixing-environmental-problems-on-the-Southeast-Side; Letter to Mayor Lori Lightfoot from the Collaboratory for Health Justice, Univ. of Il. Chi. Collaboratory for Health Justice (Jan. 6, 2022), https://publichealth.uic.edu/wp-content/uploads/sites/302/2022/01/RMG_Southside-Recycling-Permit-and-HIA-Process-Letter_FINAL-for-CHJ-Website.pdf; Comment letters from Respiratory Health Ass’n, Audubon Society, Nature Conservancy, Friends of the Parks, NRDC, and the Metropolitan Planning Council, available at www.chicago.gov/city/en/sites/rmg-expansion/home/public-comments.html.

Southeast as “well-known.”⁴⁶ Public health experts from the University of Illinois Chicago School of Public Health noted that “ample data already in existence indicates that there is a disproportionate environmental burden currently experienced by the residents on the Southeast Side.”⁴⁷ Press articles regarding the relocation repeatedly referenced the heavy burden faced in the Southeast. For example, the Chicago Tribune wrote just days after the relocation was announced: “A scrap metal shredder with a long history of pollution problems is moving from wealthy, largely white Lincoln Park to a low-income, predominantly Hispanic neighborhood that already is heavily burdened by toxic waste and other environmental maladies.”⁴⁸

D. The City Abandoned its Commitments to Address Environmental Impacts.

1. The City’s Commitments on Environmental Justice

In 2016 and 2020, the City launched two successive initiatives through which the City committed to tackling racial disparities in environmental burdens. The 2016 initiative entitled “Healthy Chicago 2.0” aimed to “ensur[e] every city agency approaches its work using a health equity lens.”⁴⁹ Specifically, the 2016 initiative called for “prevent[ing] the predominant location of polluting sites in communities of color and communities with low income levels” and “limit[ing] the production of toxic chemicals and disproportionate burden on communities of color.”⁵⁰ The 2020 initiative entitled “Healthy Chicago 2025” contained similar commitments, including to protect “[c]ommunities disproportionately burdened by pollution.”⁵¹

Additionally, since at least 2016 the City has contracted with the Illinois EPA to facilitate and administer the state’s Environmental Justice program within the City.⁵² The goal of this program is to “ensure that communities are not disproportionately impacted by degradation of the environment or receive a less than equitable share of environmental protection.” The City’s contract with the Illinois EPA obligates the City “to ensure proper siting of new facilities” consistent with the program’s goals.

The contract also requires the City to “engage in community outreach” about such matters. The Contract references the Illinois EPA’s “Environmental Justice Policy,” which lists specific actions needed to make public outreach meaningful.⁵³ These actions include proactively notifying residents and advocates about any siting decisions “likely to generate significant public interest,” holding informational meetings, and providing a plain language summary of all major aspects of a proposed project.

⁴⁶ Letter from EPA Administrator Regan to Mayor Lightfoot, U.S. EPA (May 7, 2021), www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/USEPA_Letter_RMG_5.7.21.pdf.

⁴⁷ *Id.*

⁴⁸ Michael Hawthorne, *Planned move of scrap shredder alarms Southeast Side pollution fighters: ‘We’re tired of being the city’s dumping ground’*, Chicago Tribune (June 19, 2018), www.chicagotribune.com/news/ct-met-general-iron-scrap-shredder-east-side-pollution-20180714-story.html.

⁴⁹ Healthy Chicago 2.0, *supra* note 21 at 8.

⁵⁰ Healthy Chicago 2.0, Community Health Assessment, *supra* note 21.

⁵¹ Healthy Chicago 2025, *supra* note 21, at 59.

⁵² Under the contract, the City receives \$400,000 per year in exchange for these commitments.

⁵³ Il. EPA Environmental Justice (EJ) Policy, Il. EPA, www2.illinois.gov/epa/topics/environmental-justice/Pages/ej-policy.aspx.

Following this policy, the Illinois EPA engaged in robust community outreach when it became involved with the relocation. In September 2019, the Companies applied to the Illinois EPA for an air pollution permit for the Facility's new site. In response, the Illinois EPA held an extended public comment period and two public hearings, recordings of which it posted online. These efforts proved meaningful as more than 320 people submitted comments and more than 200 people attended the hearings. The Illinois EPA describes this response as "far exceeding the level of past participation in previous projects impacting [environmental justice] areas," and notes that "Oral and written comments generally expressed opposition to the project."⁵⁴

2. The City's Failure to Consider Environmental Impacts

Despite the commitments to environmental justice described above and in contrast to the actions of the Illinois EPA, the City took significant actions to bring about the relocation without meaningful public engagement or an assessment of the environmental and racial impacts. The City first held a public town hall about the relocation in July 2020, after all but two permits had been granted; residents and others who spoke all opposed the relocation, as did seventy-seven of the eighty-two written submissions.⁵⁵ Until July 2020, the City also lacked a public-facing website with information about the relocation. Moreover, the City did not start to formally evaluate the relocation's impact until 2021 when the U.S. EPA strongly recommended that the City "complete an environmental justice analysis ... to meaningfully consider the aggregate potential health effects of the proposed RMG facility on the southeast area of Chicago."⁵⁶

All of these actions occurred long after the City began meeting with General Iron in 2016, announced the relocation in 2018, signed the Agreement in 2019, and approved the special use permit in 2019 (discussed below). The City never posted the plain language summary called for by state policy or other public material designed to facilitate early input.

3. The City's Approval of the Special Use Permit

The City held only one hearing on the relocation's impact before the City began issuing permits and the Companies began constructing the new facility.⁵⁷ That hearing occurred in March 2019 in the lead up to the Chicago Zoning Board of Appeals ("ZBA") granting a special use permit for the Southeast Site.

The ZBA failed to ensure key stakeholders were notified of the hearing. Only property owners (i.e., not renters) within 250 feet of the proposed site were notified of the hearing, the bare minimum required by ZBA rules. Residents, community organizations, and aldermen raised concerns about the lack of notice, with some testifying to learning of the hearing that day. Nevertheless, the ZBA disregarded numerous requests for more outreach or to delay the hearing or a decision.

⁵⁴ In granting the permit following this extensive public engagement the Illinois EPA noted that it had very narrow authority to deny the permit but that the City should determine whether "the facility will be designed and operated in a manner that prevents public nuisance and protects the public health, safety, and the environment."

⁵⁵ Cmty. Town Hall, RMG Expansion Proposal Meeting Notes (July 25, 2020), www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG-Expansion-Community-Meeting-Notes-1.pdf.

⁵⁶ Letter to Mayor Lori Lightfoot, *supra* note 46.

⁵⁷ In Dec. 2020, after all permits but the final one had been granted, the City solicited public comments and held a hearing about granting that permit; written and oral comments were overwhelmingly opposed.

Moreover, despite rigorous standards for granting a special use permit, the ZBA only cursorily considered the adverse impact on the Southeast Neighborhoods. A special use permit must be granted only if the facility would “not have a significant adverse impact on the general welfare of the neighborhood or community.”⁵⁸ If the “potential for adverse impacts” exists, the permit “must be denied or conditions must be placed on the approval to ensure that any adverse impacts will be mitigated.”⁵⁹

At the hearing, concerns were raised about air pollution, water pollution, noise, traffic, and the number and type of jobs created for local residents. The Lincoln Park community’s complaints against the Facility were also raised, as was General Iron’s noncompliance history, including the U.S. EPA’s unresolved findings for failing to meet emissions standards. Public health experts and others reminded the City of the disproportionate environmental burden already borne by the Southeast Neighborhoods and asked for impact studies, recruitment and hiring plans, and details about environmental controls.

The ZBA’s findings, which are supposed to be “fact-based, detailed, non-conclusory, and not tautological,”⁶⁰ exclusively cite submissions and testimony from General Iron and RMG. The ZBA refrained from exercising its broad authority to conduct fact finding into the Companies’ claims, such as the lack of alternative locations or the economic harm that would ensue if the permit were denied.⁶¹ The ZBA’s substantive findings, which do not address any of the raised concerns, read in their entirety as follows:

The proposed special use is in the interest of the public convenience because without the proposed metal shredder, there would be a terrible disruption to the recycling chain in the City, with significant negative economic and environmental consequences. The [ZBA] finds [the owner] to be a very credible witness on this point. Further the proposed special use will not have a significant adverse impact on the general welfare of the neighborhood or community. The [Southeast Site] is located in [a manufacturing district] and is surrounded by other manufacturing uses, including RMG’s existing facility. As very credibly testified to by [the owners and consultants], the Applicant’s operation will be very well run. The proposed metal shredder will therefore neither disrupt these nearby manufacturing uses nor impact the residential uses further away. Indeed, [a consultant] very credibly testified that the proposed metal shredder will not have any negative impact on property values and will, instead, likely have a positive impact on the community.⁶²

Thus, the City issued a key permit needed for construction of the Facility based on assertions by the Companies alone and without any meaningful consideration of the numerous concerns with the environmental impact of the new site.

⁵⁸ Special Uses, Approval Criteria. Chi. Mun. Code 17-13-0905.

⁵⁹ Special Uses, Conditions of Approval. Chi. Mun. Code 17-13-0906.

⁶⁰ City of Chi., Zoning Board of Appeals Rules of Procedure (2021).

⁶¹ For example, the Companies claimed that a failure to approve the special use permit would result in “terrible disruption” to the supply chain even though the Facility could continue operating at its old location.

⁶² City of Chi., Zoning Board of Appeals Resolutions, 69, Mar. 15, 2019, www.chicago.gov/content/dam/city/depts/zlup/Administrative_Reviews_and_Approvals/Publications/ZBAsignedresolutions/Resolutions_15MAR2019.pdf.

E. Moving the Facility Continued a Broader Policy of Relocating Heavy Industry to Black and Hispanic Neighborhoods.

1. The Industrial Corridor System

The City's efforts to relocate the Facility were part of a broader City initiative to shift heavy industry from White neighborhoods in the northeast to Black and Hispanic neighborhoods elsewhere in the City. In 2004, the City codified twenty-four areas as Industrial Corridors, with two more added in 2016.⁶³ These twenty-six areas were designated Industrial Corridors because they had a history of prior industrial use due to City planning, zoning rules, and targeted public investment. Although all Industrial Corridors are zoned for industry, not all are zoned for the same type of industry. For example, only half of the Industrial Corridors are zoned for heavy industry.

In 2016, as the City began engaging with General Iron, the City launched its Industrial Corridor Modernization Initiative to "guide future public and private investments."⁶⁴ The Initiative would "mitigate the loss of industrial land and facilities" in certain areas of the City by promoting industrial development in other areas of the City.⁶⁵

As part of this Initiative, the City designated all but three of the Industrial Corridors as "Receiving Corridors," meaning that in those areas the City would "reinforc[e] traditional industrial activities."⁶⁶ The City created a specific funding mechanism to "be used solely for projects located in receiving corridors" for "the preservation, development and/or growth of industrial uses."⁶⁷ The Calumet Corridor, in which the Southeast Site is located, was among those designated as a Receiving Corridor.

The Industrial Corridors not designated as Receiving Corridors are disproportionately White. All twenty-six Industrial Corridors are collectively 26% White, and the twenty-three designated as Receiving Corridors are collectively 20% White. By contrast, the three Industrial Corridors not designated as Receiving Corridor are collectively 68% White.⁶⁸

The North Branch Industrial Corridor, in which the Lincoln Park Site is located, was one of the three Industrial Corridors not designated as a Receiving Corridor. In 2016, when the City created the Receiving Corridor designation, the City also created the designation of a "Conversion Area" and applied it to the North Branch Industrial Area.⁶⁹ In Conversion Areas, the City would use zoning and other land use changes to "unleash the potential" of the area.⁷⁰

⁶³ Chi. Mun. Code § 17-17-0274.

⁶⁴ City of Chi., Industrial Corridor Modernization Initiative, May 14, 2020, www.chicago.gov/city/en/depts/dcd/supp_info/repositioning-chicago-s-industrial-corridors-for-today-s-economy.html.

⁶⁵ Chi. Mun. Code § 16-8-050.

⁶⁶ Industrial Corridor Modernization Initiative, *supra* note 64.

⁶⁷ Chi. Mun. Code §§ 16-8-060, -120.

⁶⁸ 2017 ACS 5-year estimates, Table B03002. Industrial Corridor demographics estimated by aggregating Census block groups at least partially located within each Industrial Corridor's boundaries. Block groups overlapping multiple Corridors were attributed to the Corridor with which they have the greatest overlap.

⁶⁹ Only one other area has been designated a Conversion Area. In 2017, the City rezoned the eastern half of the Kinzie Industrial Corridor and designated it as a Conversion Area, as discussed in Section III.E.2 below.

⁷⁰ Industrial Corridor Modernization Initiative, *supra* note 64.

2. The North Branch Framework Plan

As part of the Industrial Corridor Modernization Initiative, the City announced it would create a series of plans, one for each Industrial Corridor. The first in this series was the North Branch Framework Plan to transform the North Branch Industrial Corridor. Portions of the Plan were first shared with the public in June 2016, and it was formally adopted in May 2017. The Plan aimed to shift local industry “from traditional manufacturing” towards “innovation [and] high tech offices” while transforming the area into “a sustainable and people-oriented landscape.”⁷¹ Public commenters called for the City to assess “[w]here ... relocation [would] be encouraged and how would those neighborhoods be impacted,” but the City declined to do so.⁷²

Under the Plan, the City would “[f]acilitate business expansion and relocation to elsewhere within Chicago’s Industrial Corridor system.”⁷³ Specifically, the City would “assist North Branch companies seeking [to move] ... and allocate funding to provide the appropriate infrastructure and related amenities to accommodate ongoing shifts as needed.”⁷⁴ The Plan favorably mentions the 2014 relocation of a steel plant from Lincoln Park to the southside Burnside Industrial Corridor, which is only 2% White. Specifically, the Plan highlights the significant financial assistance from the City that made this relocation possible.⁷⁵

In 2017, while the City was negotiating with General Iron, the City relocated another industrial facility from the North Branch Industrial Corridor in accordance with the Plan. The City sold its large fleet maintenance facility, which had been located just across the river from General Iron, and built a new facility to “maintain and repair city vehicles such as fire engines, garbage trucks, and snowplows” in a southside neighborhood that is only 1% White.⁷⁶ In 2018, the City announced significant financial assistance for redevelopment of the area that included the maintenance facility’s former site.⁷⁷

The City originally committed to developing plans for all of the Industrial Corridors and prioritizing three with predominantly Black and Hispanic residents,⁷⁸ but to date only two plans other than North Branch have been completed. The first of these plans was for the northside Ravenswood Industrial Corridor that is 72% White; the plan focused on redevelopment for non-industrial uses.⁷⁹ The second plan was for the Kinzie Industrial Corridor; the plan expanded non-industrial uses in the eastern half of the Corridor, which is predominantly White, while

⁷¹ City of Chi., North Branch Framework Plan at 35, 48, 52, 122, May, 17, 2017, https://www.chicago.gov/content/dam/city/depts/dcd/supp_info/industrial/NBIC_Adopted_Final_For-Web.pdf.

⁷² Letter from the Metropolitan Planning Council, *supra* note 45.

⁷³ North Branch Framework Plan, *supra* note 71.

⁷⁴ *Id.*

⁷⁵ The city sold six parcels of land to Finkl Steel for a dollar and offered \$22.5 million in tax increment financing.

⁷⁶ Chi. Dep’t of Planning and Dev., Mayor Emanuel Announces Land Sale to Support Fleet Management Headquarters Relocation to Englewood, Oct. 11, 2017, www.chicago.gov/city/en/depts/dcd/provdrs/ec_dev/news/2017/october/mayor-emanuel-announces-land-sale-to-support-fleet-management-he.html.

⁷⁷ The City committed \$900 million in tax increment financing along with other assistance.

⁷⁸ Press Release, Chi. Dep’t of Planning and Dev., Mayor Emanuel Announces Plan to Modernize Industrial Corridors, Apr. 6, 2019, 8-9, https://www.chicago.gov/content/dam/city/depts/dcd/supp_info/industrial/North_Branch_Meetings_Summary.pdf.

⁷⁹ Chi. Dep’t of Planning and Dev., Ravenswood Framework Plan, March 29, 2019, www.chicago.gov/city/en/depts/dcd/supp_info/ravenswood-framework-plan-and-design-guidelines.html.

“strengthen[ing] the industrial and manufacturing context” in the western half of the Corridor, which is predominantly Black and Hispanic.⁸⁰ In 2018, the City did publish a draft plan for the Little Village Industrial Corridor, which is predominantly Black and Hispanic, but deindustrialization was not considered and the process to finalize this plan stalled out in 2019.⁸¹

IV. Legal Analysis

A. Jurisdiction

Title VI prohibits discrimination in any program or activity receiving federal financial assistance, and Section 109 does the same for programs and activities funded under the Housing and Community Development Act of 1974. Title VI defines “program” as “all of the operations of ... the entity of such ... local government that distributes such assistance and each such department or agency to which the assistance is extended.”⁸² The City’s contractual obligation to comply with Title VI and Section 109 – and its inclusion of CDBG grants in citywide budgeting that touches all aspects of city government – subjects all the City operations discussed in this letter to Title VI and Section 109.

B. Legal Authority

Title VI mandates that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁸³ Section 109 mandates that “No person in the United States shall on the ground of race, color, [or] national origin, ... be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded [under the Housing and Community Development Act of 1974].”⁸⁴

HUD’s regulations specifically prohibit recipients from discriminating when siting facilities. The regulations provide that “In determining the site or location of ... facilities, ... [a] recipient may not make selections with the purpose or effect of ... subjecting [persons] to discrimination ... on the ground of race, color, or national origin” or “with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of [Title VI].”⁸⁵

In addition, recipients may not “Provide any ... facilities, services, financial aid, or other benefits ... which are different, or are provided in different manner” nor “Restrict ... any advantage or privilege ... in connection with such ... facilities, services, financial aid, or other benefits” because of race, color, or national origin.⁸⁶ Recipients also may not use “criteria or methods of administration that have the effect of subjecting persons to discrimination because of their race, color, or national origin.”⁸⁷ Additionally, recipients have “an obligation to take

⁸⁰ Chi. Dep’t of Planning and Dev., Kinzie Framework Plan and Implementation, Sept. 17, 2020, www.chicago.gov/city/en/depts/dcd/supp_info/kinzie-framework-plan.html.

⁸¹ Chi. Dep’t of Planning and Dev., Little Village Framework, Apr. 1, 2019, www.chicago.gov/city/en/depts/dcd/supp_info/little-village-framework-plan.html.

⁸² 42 U.S.C. 2000d-4a(1)(B).

⁸³ 42 U.S.C. § 2000d; 24 C.F.R. § 1.4(a).

⁸⁴ 42 U.S.C. § 5309; 24 C.F.R. § 6.4.

⁸⁵ 24 C.F.R. § 1.4(b)(3).

⁸⁶ 24 C.F.R. § 1.4(b)(1)(ii), (iv).

⁸⁷ 24 C.F.R. § 1.4(b)(2)(i).

reasonable action to ... overcome the consequences of ... prior discriminatory practice ... and to accomplish the purpose of [Title VI].”⁸⁸

C. Violations of Title VI and Section 109

Discrimination may be proven by considering the following factors: (1) whether the consequences of an action bear more heavily on certain groups; (2) the historical background of the action; (3) the sequence of events leading up to the action; (4) departures from normal procedural process; (5) departures from normal substantive criteria; and (6) the legislative and administrative history.⁸⁹ All of these factors support a finding that City’s goal of relocating the Facility and the manner in which the City pursued this goal were shaped by the race and national origin of the Southeast residents as compared to that of the Lincoln Park residents.

First, relocating the Facility to the Southeast Site will bring environmental benefits to a neighborhood that is 80% White and environmental harms to a neighborhood that is 83% Black and Hispanic. These consequences are particularly egregious given the longstanding and well-known disproportionate environmental burdens already borne by the Southeast Neighborhoods.

Second, the City’s actions with respect to General Iron continued a historical pattern and broader policy of directing heavy industry to Black and Hispanic neighborhoods. The Industrial Corridor Modernization Initiative and the North Branch Framework Plan show that the City strongly influences where heavy industry is sited through policy initiatives and significant financial support, and that the City has largely chosen to use this influence to redevelop formerly industrial areas in White neighborhoods.

Third, the events surrounding the public announcement and the Agreement reveal an unusually close collaboration between the City and the Companies. Absent the City’s driving role, the relocation would not have occurred.

Fourth, in addition to this close collaboration, the process surrounding the relocation deviated from what one would expect in other ways. The City did not even attempt to negotiate for specific mitigation measures or other benefits for the Southeast Neighborhoods while assuring the public these features would come. Furthermore, throughout the process the City avoided addressing concerns about the Southeast Site, as for example when it failed to provide meaningful notice of the special use permit hearing or any consideration of these concerns in the ZBA decision.

Fifth, the City ignored key substantive concerns throughout the process. Disparities in environmental burdens and their health effects were well known by the City and raised by residents and experts, yet the City took significant actions towards the relocation without considering how the relocation would exacerbate these disparities. The City’s disregard for the Southeast residents’ concerns stands in contrast to the City’s receptiveness to the complaints of the Lincoln Park residents that the relocation aimed to address. The City also did not consider any potential alternative sites, that General Iron had recent environmental violations, or that

⁸⁸ 24 C.F.R. § 1.4(b)(6)(ii).

⁸⁹ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977). These factors are non-exhaustive and not all must be shown to establish a violation. See *Ave. 6E Invs. LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016); *Mhany Mgmt. v. Cty. of Nassau*, 819 F.3d 581, 606 (2d Cir. 2016).

many of the “state of the art environmental features” promised by the City in its press release existed at the old site when those violations occurred.

Sixth, in addition to the legislative and administrative actions discussed above, the City had committed itself through two City programs and a contract with the Illinois EPA to address the exact type of environmental disparities it failed to consider with respect to the relocation.

The City has not proffered a contemporaneous non-discriminatory justification that accounts for the fervor with which the City sought the relocation nor the ways in which it discounted the needs of the Southeast residents along the way. Notably, neither the Agreement nor City communications about the relocation discuss a specific purpose beyond generally referencing the Lincoln Park residents’ complaints. The City has since proffered post hoc justifications, such as the size of the Southeast Site, characteristics of the surrounding area, improved environmental controls, and job creation. However, the City has provided no evidence that these factors were considered *before* it decided pursue the relocation.⁹⁰ Furthermore, as discussed above, the validity of these benefits is dubious, as is their weight compared to the environmental harms.

Thus, the Department finds that the City’s decision to pursue the relocation and the City’s actions to achieve this goal were discriminatory and violated Title VI and Section 109. The City violated HUD’s regulations (noted above) prohibiting discrimination in siting facilities, in providing benefits, in restricting privileges, and in adopting methods and criteria as each of these actions is implicated by the City’s involvement in relocating the Facility, the City’s approval of the Southeast Site, and the City’s process to achieve these goals. For years the City also failed to act towards overcoming the environmental disparities that accrued from past actions.

V. Conclusion

Based on the Department’s investigation and for the reasons set forth above, the Department finds the City in noncompliance with Title VI and Section 109.

The Department seeks to resolve these matters as soon as possible. If a voluntary resolution cannot be obtained, HUD may initiate administrative proceedings or refer this matter to the U.S. Department of Justice for enforcement.⁹¹ Voluntary resolution would be through a written Voluntary Compliance Agreement (“VCA”) with a clear timetable for implementation.⁹²

A VCA resolving this matter would require the City to address existing and potential environmental harms of the relocation and to adopt an enhanced fair housing planning process that includes planning for overcoming disparities in environmental impacts. The Department notes that the denial of the final permit was a necessary action to address these harms and urges the City to affirm the denial to avoid further harm. The Department remains eager to engage in discussions with the City about other actions necessary to remedy the Department’s findings.

Please note that pursuant to 24 C.F.R. § 6.11(a)(8) and (c) either party to the referenced complaint may request review of this letter of findings by the Responsible Official, by mailing or delivering a request for review within 30 days of receipt of this LOF to the Responsible Official (attn: Jacy Gaige), Room 5100, Office of Fair Housing and

⁹⁰ See *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994).

⁹¹ See 24 C.F.R. § 1.8.

⁹² See 24 C.F.R. §§ 1.7(d)(1) and 8.56(j)(2).

Equal Opportunity, HUD, Washington, DC 20410, including a written statement of the reasons why the letter of findings should be modified. The Department asks that such request also be made contemporaneously by electronic transmission to jacy.d.gaige@hud.gov.

The Department encourages the City to expeditiously correct these violations through a VCA. I am available to answer any questions and begin discussion to bring the City into voluntary compliance.

Sincerely,



Jacy Gaige

Director, Compliance & Disability Rights Division
Office of Enforcement

cc: John Hendricks, Deputy Corporation Counsel, City of Chicago
Susie Park, Budget Director, City of Chicago
Chicago City Council, c/o Anna Valencia, City Clerk

Keith Harley, Greater Chicago Legal Clinic, representative for Southeast Environmental Task Force and People for Community Recovery
Nancy Loeb, Director, Northwestern University Environmental Advocacy Center, representative for Chicago South East Side Coalition to Ban Petcoke