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TULANE ENVIRONMENTAL LAW CLINIC

April 26, 2024

By email and online portal to: heather.evans@la.gov
Heather Evans, OCM Reviewer and Coastal Resources Scientist - Permits
Office of Coastal Management, Permits & Mitigation Division
State of Louisiana, Department of Energy and Natural Resources

RE: Comment Opposing and Request for Public Hearing on the Application for Coastal Use Permit for St. Charles Clean Fuels, LLC – Blue Ammonia Facility, St. Rose, St. Charles Parish, Louisiana, Permit No. P20230672

Dear Ms. Evans and the Permits & Mitigation Division:

On behalf of Refined Community Empowerment Inc., Gaynell Ellis, Concerned Citizens of St. John, RISE St. James, Green Army, Healthy Gulf, Sierra Club, and Eloise Reed, Manager of Louisiana Against False Solutions (“Commenters”), we respectfully submit these comments opposing St. Charles Clean Fuels’ (“SCCF’s”) Coastal Use Permit Application, Permit No. P20230672 for a proposed “blue” ammonia facility (the “Project” or the “Facility”).

Commenters renew their request for a public hearing on this permit. In addition, Commenters reserve the right to rely on comments submitted by others and request a written response to their comments and notice of any final decision.

The Office of Coastal Management (OCM) must grant a public hearing and, further, deny the SCCF Coastal Use Permit Application, No. 20230672 (the “Application”) because of the proposed Project’s significant adverse environmental, economic, and social impacts that threaten the health, welfare, and safety of the people, environment, and existing uses in the surrounding area and the Coastal Zone of Louisiana. Specifically, OCM should deny authorization of the proposed Project because it does not satisfy the Coastal Use Guidelines, and it violates the agency’s duty under the public trust doctrine, including failures to meet:

- **Guideline 711(A)(2)**, for example, because SCCF has not established that the St. Rose site has “foundation conditions sufficiently stable to support” the Facility; “flood and storm hazards” are not “minimal,” and public safety would be “unreasonably endangered;”
- **Guideline 701**, for example, because SCCF failed to include sufficient information for full consideration of all **Guideline 701** factors and provided an inadequate needs, alternatives, and justification analysis; because the proposed Project would have adverse cumulative impacts on both public health and the natural environment; it would disturb a significant amount of wetlands compared to alternative sites; it would overburden St. Rose’s flooding and storm drainage capacity; it would harm “areas of particular concern

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of the state program or local programs”; it would potentially destroy archaeological, historical, and cultural resources in St. Rose, including adverse effects to historic Elkinsville-Freetown; and SCCF misrepresents the benefits of and need for the Project as a “blue” ammonia facility;

- **Guideline 705**, for example, because the Facility’s proposed linear facilities do not minimize adverse effects on wetlands and depend on carbon capture and sequestration infrastructure that does not yet exist in Louisiana;
- **Guideline 717(B)**, for example, because runoff with unquantified and unidentified pollutants would flow into and adversely impact Coastal Waters and other valuable ecological resources, like the LaBranche Wetlands;
- **Guideline 701(H)** because a balance of the benefits does not outweigh the costs, there is no significant public benefit, the use would not serve important regional, state, or national interests, and it is not coastal water dependent, and therefore must be denied;
- **The Public Trust Duty** because the Project would negatively impact both a large swath of precious wetlands and further endanger an already-overburdened environmental justice community, Elkinsville, a historic, African American Community. In particular, the Project’s wetlands impacts and air emissions would injure and threaten the health, welfare, and safety of the people in the surrounding coastal zone area, including the community of Elkinsville, and would have significant adverse impacts on the economic, social, environmental, historic, and cultural interests. These concerns are not offset by the purported benefits of the Project nor by the proposed mitigating measures.

Because this Project violates the Coastal Use Guidelines, especially **Guideline 701(H)**, and raises serious concerns under the public trust doctrine, and because there is significant public concern about the Project, Commenters assert the following arguments in support of their request for a public hearing and for denial of the permit:

I. Community Opposition and the Proposed Facility’s Significant Adverse Environmental, Economic, and Social Impacts Demonstrate the Necessity and Appropriateness of Holding a Public Hearing.

As Commenters previously asserted in their April 11, 2024 letter, OCM must hold a public hearing to provide the St. Rose community and others a full opportunity to voice their concerns about St. Charles Clean Fuels’ proposed “blue” ammonia facility.¹ Under OCM’s regulations, a public hearing is appropriate “when there is significant public opposition to a proposed use . . . or in controversial cases involving significant economic, social, or environmental issues.” LAC 43.I.723(C)(6)(c). Here, the issues raised are substantial, and there is a valid public interest to be served by holding a public hearing, especially in light of OCM’s

¹ See Letter from Gaynell Ellis and Refined Community Empowerment to LDENR Re: Public Hearing for SCCF CUP Application, April 11, 2024, Exhibit A.

environmental justice obligations.² *See id.* §723(C)(6)(b) (factors calling for public hearing). OCM can only make a permit decision “after a full and fair consideration of all information” before it, and its decision “shall represent an appropriate balancing of social, environmental, and economic factors.” LAC 43.I.723(C)(8)(a).

The necessity and appropriateness of a public hearing here is apparent when considering the significant public opposition from people living and working in the St. Rose area. Over 200 people, most of whom are residents of St. Rose and St. Charles Parish, have expressed their opposition to this Project.³ These include, in particular, signatures from residents of Elkinsville—the descendant community immediately adjacent to the proposed Facility. Additionally, this Facility involves significant economic, social, and environmental issues, as detailed in these comments. As a state agency answerable to the guarantees of Article IX, section 1 of the Louisiana Constitution as a public trustee, OCM must safeguard the water and natural resources of the state and command protection, conservation and replenishment of them insofar as possible and consistent with the health, safety, and welfare of the people.⁴ St. Rose is already overburdened by the existing facilities in the area—adding another facility to an already-strained community in an already-polluted area of the Coastal Zone would only serve to exacerbate these inequities.⁵ Moreover, OCM should grant this request for a public hearing so that the community can have the opportunity to express its concerns that the proposed Project does not comport with the Coastal Use Guidelines.

If OCM declines to hold a public hearing, it would not fulfill its duty of “full consideration of all the information” or an “appropriate balancing” of all the factors under LAC 43.I.723(C)(8)(a). A public forum in which concerned St. Rose residents may orally voice their concerns would be invaluable—particularly for any residents who may not feel comfortable sending written comments. The issues posed by this proposed Project are substantial, significant and form a compelling basis for OCM to grant a public hearing—a hearing that over 200 concerned citizens are asking for. Unless it provides a public hearing, OCM will abdicate its

² The Environmental Protection Agency (EPA) defines environmental justice as “the fair treatment and **meaningful involvement** of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulation, and policies.” EPA, Environmental Justice, available at <https://www.epa.gov/environmentaljustice> (emphasis added). According to the EPA, meaningful involvement means that: “(1) potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health;

(2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.” EPA, Plan EJ 2014 at 3, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100DFCQ.PDF?Dockey=P100DFCQ.PDF>.

³ Petition for Public Hearing with X signatures, Exhibit B

⁴ *Save Ourselves, Inc. v. Louisiana Env't Control Comm'n*, 452 So. 2d 1152, 1154 (La. 1984) (citing La. Const. art. IX § 1).

⁵ EJ Screen Community Report for St. Rose, LA (Blockgroup 22089062201), Downloaded April 18, 2024, attached as Exhibit C (hereinafter “EJ Screen Report”)

public trustee role by excluding the public from effective participation in its decision-making. This is also true under its environmental justice obligations, which require “meaningful involvement” in the decision-making process.⁶

II. The Proposed Project Does Not Comply with the Coastal Use Guidelines.

SCCF’s application fails to demonstrate compliance with the Coastal Use Guidelines. These Guidelines, incorporated in the Louisiana Administrative Code, must guide the agency’s review of any pending application for construction and uses in the Coastal Zone. The Louisiana Revised Statutes provide: “The adopted guidelines shall serve as criteria for the granting, conditioning, denying, revoking, or modifying of coastal use permits.” La. R.S. § 49:214.27(B)(2). **Guideline 701(A)** provides that “the guidelines must be read in their entirety. All applicable guidelines must be complied with.” LAC 43.I.701(A). As a Louisiana court held: “These guidelines are not optional and are essential to the granting of the coastal use permit.” *Save Lake Peigneur, Inc. v. Secretary, Louisiana Department of Natural Resources*, No. 122358, slip op. at 5 (La. 16th Jud. Dist. Ct., 9/23/14). In *Save Lake Peigneur*, the 16th Judicial District Court vacated and remanded a coastal use permit where OCM “did not comply with the mandatory guidelines and make the mandatory findings and did not show how it complied with the analytic process.” Importantly, when reviewing this application for compliance with the Guidelines, OCM cannot fill in gaps left by the applicant. *Sierra Club v. Louisiana Department of Natural Resources*, No. 60-961, slip op. at 5-7 (La. 25th Jud. Dist. Ct., 12/23/14) (reversing CUP determination where **Guideline 701(F)** was not met because the applicant failed to perform an alternatives analysis and “the record [did] not show that [OCM] exercises any independent evaluation of alternative sites”). Where a Guideline is triggered that requires avoidance of an outcome “to the maximum extent practicable,” OCM must conduct an in-depth analysis under the “maximum extent practicable” guideline to determine whether to allow the project to proceed anyway. *See* LAC 43.I.701(H)(1). Even then, a project can only proceed if it minimizes or offsets adverse impacts listed in **Guideline 701(G)**. *See* LAC 43.I.701(H)(2).

The application for the proposed SCCF Facility does not comply with many of the current guidelines. Under **Guideline 711(A)(2)**, SCCF has not established that the St. Rose site has “foundation conditions sufficiently stable to support” the Facility; “flood and storm hazards” are not “minimal,” and public safety would be “unreasonably endangered.” LAC 43.I.711(A)(2). Under **Guideline 701**, SCCF failed to include sufficient information for full consideration of all **Guideline 701** factors and provided an inadequate needs, alternatives, and justification analysis. LAC 43.I.701. Additionally, the proposed Project would have adverse cumulative impacts on both public health and the natural environment, it would disturb a significant amount of wetlands compared to alternative sites, it would overburden St. Rose’s flooding and storm drainage capacity, it would harm “areas of particular concern of the state program or local programs,” it would destroy archaeological, historical, and cultural resources in St. Rose, the site of a former plantation, it would adversely affect historic Elkinsville-Freetown, and SCCF misrepresents the benefits of the Project and its asserted cleanliness as a blue ammonia facility. *Id.* It also doesn’t meet the requirements of **Guideline 705** because the Facility’s proposed linear facilities do not

⁶ *See supra* note 2.

minimize adverse effects on wetlands and depend on carbon capture and sequestration infrastructure that does not yet exist in Louisiana. LAC 43.I.705(B) and (I). The Project also runs afoul of **Guideline 717(B)** because runoff with unquantified and unidentified pollutants would flow into and adversely impact Coastal Waters and other valuable ecological resources. Finally, in addition to not complying with these guidelines, the Project could not comply with **Guideline 701(H)**, because the “benefits resulting from the proposed use would [not] clearly outweigh the adverse impacts,” and there likely are feasible alternative locations, methods, or practices. Moreover, there will be no significant public benefit, the use doesn’t serve important regional, state, or national interests, and the use is not coastal water dependent. LAC 43.I.701(H)(1)(a)-(c). Failure to comply with this final guideline mandates a denial of the application.

A. The proposed Facility does not comply with Guideline 711 for Surface Alterations because several portions of the Facility would be located below five feet above sea level, the Facility poses significant stormwater and flood risks, and the Facility would unreasonably endanger the residents of St. Rose.

Guideline 711 provides that industrial activities “shall, to the maximum extent practicable, take place only: (1) on lands 5 feet or more above sea level or within fast lands; or (2) on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered.” LAC 43.I.711(A)(2). The purpose of this Guideline is to ensure the stability of land to support a project’s use and to ensure that construction and use takes place in less vulnerable areas of the Coastal Zone. For example, in *Save Lake Peigneur, Inc. v. Secretary, Louisiana Department of Natural Resources*, the Louisiana 16th Judicial District Court vacated the grant of a coastal use permit because OCM did not make mandatory findings under **Guideline 711(A)**.⁷ Particularly, there were no findings that the project would take place “on lands which have foundation conditions sufficiently stable to support the use,” or “where the public safety would not be unreasonably endangered.”⁸ OCM had found that the “vicinity ha[d] a tradition of use for similar habitation or development,” but because it had not made findings of foundation condition stability or public safety, and therefore had not fulfilled its duties under **Guideline 711**.⁹

Additionally, this Guideline emphasizes that “[t]o the maximum extent practicable wetland areas shall not be drained or filled.” LAC 43.I.711(D). This Project violates this Guideline on each of these factors and does not minimize or offset adverse impacts, as required under **Guideline 711(A)** and **Guideline 701(H)(2)**.

First, it is clear the Project will not take place only on lands five feet or more above sea level. A large portion of the Project is in wetlands—183.5 acres according to its CUP

⁷ *Save Lake Peigneur, Inc. v. Secretary, Louisiana Department of Natural Resources*, No. 122358, slip op. at 4 (La. 16th Jud. Dist. Ct., 9/23/14).

⁸ *Id.*

⁹ *Id.*

application.¹⁰ The maps and drawings attached to the Army Corps of Engineers December 25, 2023 Clean Water Act Permit Public Notice also demonstrate that the Project is not taking place on lands five feet or more above sea level.¹¹ This is not compliant with the requirements of **Guideline 711(A)(2)**.

The application also fails to meet the factors outlined in **Guideline 711(A)(2)** because it has not established: 1) that the St. Rose site has sufficiently stable foundation conditions to support its proposed “blue” ammonia facility, 2) that flood and storm hazards are minimal or can reasonably be protected against, and 3) that the public safety would not be reasonably endangered.

SCCF has not even made an attempt to demonstrate that foundation conditions are sufficient to support the use—a chemical production and transportation facility that will operate natural gas, ammonia, and CO2 pipelines and store ammonia in tanks. Ensuring that the SCCF facility would be constructed on lands where foundation conditions are stable enough to support its use is especially crucial considering that the St. Rose site consists primarily of wetlands.¹² All of this infrastructure could be subject to shifting ground and damage during storm events.

Additionally, flood and storm hazards are not minimal in this area, and protection from these hazards is not achievable by destroying wetlands that serve as an active floodwater buffer, *see* discussion *infra* Part II (B)(2). St. Charles Parish regularly deals with heavy rainfalls and storms that can contribute to flooding.¹³ The Project site is designated as a Special Hazard Flood Area by FEMA, suggesting it is more prone to flooding during heavy rain events.¹⁴ According to the Risk Factor website, a tool created by the First Street Foundation to make it easy to understand environmental risks that evaluates flood risks nationwide, “St. Rose has a severe risks of flooding over the next 30 years, which means flooding is likely to impact day-to-day life within the community.”¹⁵ Specifically, there are “312 properties in St. Rose that have greater than a 26% chance of being severely affected by flooding over the next 30 years. This represents

¹⁰ Needs Alternative and Justification Analysis, February Cup Application, February 2, 2024, p, 10, (hereinafter "Needs, Alternatives, Justification").

¹¹ *See* Public Notice, SCCF Clean Water Act Permit, Army Corps of Engineers, drawings, A-9 through A-13, available at https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2022_00623_PNALL_122523_2.pdf?ver=ESAOK7FimoUsbu8Rgb6Idg%3d%3d.

¹² Needs, Alternatives, Justification at 10.

¹³ St. Charles Parish, Quality of Life, Climate, available at <https://www.stcharlesparish.gov/residents/economic-development-and-tourism/information-for-businesses/quality-of-life> (noting that St. Charles Parish receives an annual average of 54 inches of rain per year)

¹⁴ *See* Flood Zones, FEMA, last updated July 8, 2020, available at <https://www.fema.gov/glossary/flood-zones>.

¹⁵ Risk Factor, “Does St. Rose have Flood Risk?”, available at https://riskfactor.com/neighborhood/st.-rose-louisiana/552155_fsid. The Risk Factor’s flood risks calculator uses FEMA flood zone information and historical flooding. *See* Risk Factor, Methodology, Flood, available at: <https://riskfactor.com/methodology/flood>.

95% of all properties in St. Rose.”¹⁶ EJScreen’s flood risk mapping tool shows that the area is already in the 80-90th national percentile for flood risk—and the immediate surrounding area is in the 95-100th percentile—even before this new proposed destruction and filling of the wetlands¹⁷

Additionally, the Project would “unreasonably endanger” public safety, particularly that of the residents of St. Rose. LAC 43.I.711(A)(2). Although SCCF did not provide any modeling to OCM to project the potential impacts of an accident at the Facility, despite having the burden to demonstrate the Guidelines are met, the potential impacts are well known from other comparable facilities. Ammonia facilities present a range of substantial risk to surrounding residents, including most basically the risk of ammonia leakage in excess of permitted levels.¹⁸ Accidents including spills, leaks, fires and other malfunctions can create serious hazards for neighboring residents, and depending on the scope and environmental conditions, can even impact communities miles away.¹⁹ If ammonia facility accidents can impact communities that are located miles away, then homes in historic Elkinsville, which are adjacent to the existing IMTT facility and would be very close to the proposed blue ammonia facility, have high potential to be harmed by weather-related facility failure. Indeed, one study suggests that the evacuation radius for “worst-case scenarios” at an ammonia plant—which often occur in Louisiana after storms—could be three miles.²⁰ For SCCF this would not only include the Elkinsville community, but also many other nearby communities, churches, businesses, and extremely concerningly, the St. Rose Elementary School.

Exposure to ammonia emissions is a common cause of industrial-related injuries and fatalities. Though the community and environmental costs due to ammonia accidents are difficult to quantify, two accidents are illustrative. In July 2009, a woman was killed after she was overcome by ammonia vapors while driving her car near Tanner Industries, an ammonia plant located near Swansea, South Carolina.²¹ And in the aftermath of Hurricane Harvey in 2017, the Arkema ammonia plant near Houston exploded twice, sending more than a dozen residents and

¹⁶ *Id.*

¹⁷ EJScreen Report, Exhibit C; *See also, e.g.* Dianne Place in St. Rose, LA., WWLTV, Marullo, Mike (April 13, 2021) available at <https://www.wwltv.com/video/weather/st-rose-flooding/289-5f8e79c5-bc4a-490a-bac2-fdd9ce4897fa> (showing extensive flooding in St. Rose)

¹⁸ Indeed, blue hydrogen is believed to have a slightly higher risk of production leakage “due to the added complexities of its production system, including an additional separation process.” Fan et al, Hydrogen Leakage: A Potential Risk for the Hydrogen Economy, Columbia Center on Global Energy Policy, at 4, available at https://www.energypolicy.columbia.edu/wp-content/uploads/2022/07/HydrogenLeakageRegulations_CGEP_Commentary_063022.pdf.

¹⁹ *See* Blue Hydrogen: A Threat to Public Health? Environmental Health Project, available at <https://www.environmentalhealthproject.org/post/blue-hydrogen-a-threat-to-public-health>.

²⁰ Sara Sneath, “Ticking Time Bombs: Residents Kept in the Dark About Risks to La.’s Chemical Plants During Storms,” WWNO (Dec. 7, 2020), ['Ticking Time Bombs': Residents Kept In The Dark About Risks To La.'s Chemical Plants During Storms | WWNO](#).

²¹ *See* Anna Rhett Cobb, South Carolina woman dies during ammonia leak, CNN (July 15, 2009) available at <https://www.cnn.com/2009/US/07/15/south.carolina.ammonia/>.

first responders to the hospital from ammonia exposure.²² Despite these demonstrated risks, SCCF proposes to build an ammonia plant in extremely close proximity to homes. This would compound risks to residents who already have a high level of risk exposure because of IMTT—IMTT has had serious recent accidents related to its tanks at its already existing facilities.²³

The proposed use of carbon capture technology on the site also poses serious safety concerns that should be examined under **Guideline 711(A)(2)**. Pipelines will necessarily be required to transport captured carbon dioxide away from the point of capture at the Facility to long-term storage.²⁴ The transport of liquified CO₂ can be highly risky, especially when passing in close proximity to residential areas. This is not a theoretical concern; a CO₂ pipeline in Satartia, Mississippi ruptured in May of 2022 due to heavy rains shifting the ground levels—and heavy rainfall is a common occurrence in St. Charles Parish. That rupture led to 45 hospitalizations and many more evacuations of the population nearest to the rupture.²⁵ Emergency personnel attempting to respond to the accident found that they could not start their vehicles because of the elevated levels of CO₂ displacing O₂ in the air.²⁶ The Satartia rupture was raised by a St. Rose community member in a September 22, 2023 meeting with SCCF leadership, who claimed to be unfamiliar with the details of that disaster. This lack of attention to potential accidents is also reflected in SCCF’s application, which makes no mention of how it will ensure safe capture and transport of CO₂. More recently, on April 3, 2024, an ExxonMobil CO₂ pipeline in Sulphur in Calcasieu Parish leaked approximately 2,548 barrels of CO₂ into the air.²⁷ The leak, a “dense white gas gushing out vertically and horizontally from the pipeline,” smelled like chemicals and sounded like a “pressure cooker.”²⁸ Concerned residents’ phone calls to the company went unanswered—and after they contacted local law enforcement and emergency services, it took more than two hours for an operator to arrive at the scene and to repair the leak.²⁹ This leak—occurring not even a full month ago as of submittal of this

²² U.S. Chemical Safety and Hazard Board, Organic Peroxide Decomposition, Release, and Fire at Arkema Crosby Following Hurricane Harvey Flooding, available at https://www.csb.gov/assets/1/20/final_arkema_draft_report_2018-05-23.pdf?16272.

²³ See, e.g., Fire Reported at IMTT chemical storage facility in St. Charles Parish, WWLTV (April 3, 2023) available at <https://www.wwltv.com/article/news/local/st-charles/fire-imtt-st-charles-parish/289-2a24016a-bb02-4d48-9dc3-2fc2b518bc47>; see also International-Matex Tank Terminal Inspection Report, E.P.A. Region 6 – Enforcement & Compliance Assurance Division (July 10-13, 2023).

²⁴ Louisiana has attempted to expedite the construction of CCS pipeline infrastructure at great risk to the public. See, e.g., Delaney Nolan, Louisiana Rushes Buildout of Carbon Pipelines, adding to Dangers Plaguing Cancer Alley, The Intercept, available at: <https://theintercept.com/2023/08/24/carbon-pipeline-ccs-air-products-louisiana/>.

²⁵ Julia Simon, The U.S. is expanding CO₂ pipelines. One poisoned town wants you to know its story, NPR (May 21, 2023), available at <https://www.npr.org/2023/05/21/1172679786/carbon-capture-carbon-dioxide-pipeline>.

²⁶ *Id.*

²⁷ See ‘Wake-up call’: pipeline leak exposes carbon capture safety gaps, advocates say, The Guardian, Lakhani, Nina, (April 19, 2024) available at <https://www.theguardian.com/us-news/2024/apr/19/exxon-pipeline-leak-carbon-capture-safety-gaps>.

²⁸ *Id.*

²⁹ *Id.*

Comment—illustrates the safety issues surrounding the implementation of carbon capture technology in Louisiana. OCM must consider these safety concerns under **Guideline 711(A)(2)**.

SCCF's application also fails to meet the three, separate further conditions under **Guideline 711(A)(2)(a)-(c)**. In addition to the conditions regarding foundation conditions, flood and storm hazards, and public safety, the proposed Facility must also be located where “(a) the land is already in high intensity of development use; or (b) there is adequate supporting infrastructure; or (c) the vicinity has a tradition of use for similar habitation or development.” LAC 43.I.711(A)(2). While this tract of land has established industry like the IMTT site, it also has over 180 acres of undeveloped natural wetlands.³⁰ According to the National Wetlands Inventory, the St. Rose site consists almost completely of freshwater forested/shrub wetlands.³¹ SCCF's application provides more detail, explaining its plans to permanently impact 97.60 acres of cypress swamp, 48.24 acres of bottomland hardwoods, 16.48 acres of wet pasture, and 0.54 acres of forested batture.³² The construction will result in temporary impacts as well, affecting 17.91 acres of cypress swamp, 2.21 acres of wet pasture, and 0.48 acres of forested batture.³³ Nor has SCCF demonstrated that there is adequate supporting infrastructures under **711(A)(2)(b)**. The site does not currently have the carbon capture and sequestration infrastructure required to support the proposed Facility—a fact apparent on the face of SCCF's application. In fact, SCCF's application reveals that it will likely propose running a carbon dioxide pipeline *under* the Mississippi River to make its Facility “blue” because the only proposed CO₂ pipeline connection, operated by Denbury, is across the River on the West Bank of the Mississippi.³⁴ Additionally, the vicinity does not have a tradition of use for similar habitation or development. LAC 43.I.771(A)(2)(c). SCCF proposes building the proposed Project in virgin wetlands to the north of existing industry—moving away from the industrialized area along the River.³⁵ In fact, the site is surrounded by large amounts of other virgin wetlands, especially to the north, east, and west.³⁶ Thus, under **Guideline 711(A)(2)**, the vicinity does not have a tradition of use for similar development. The degree of alteration this Facility would require does not comport with **Guideline 711(A)(2)**'s prioritization of land “already in high intensity of development use,” with “adequate supporting infrastructure” or with “a tradition of use for similar habitation or development.” LAC 43.I.711(A)(2).

Because this Project is below five feet above sea-level and SCCF has not demonstrated that (i) this Project has a stable foundation, (ii) flood and storm hazards are minimal, (iii) protection from these hazards can be reasonably well achieved, or (iv) the public safety would not be unreasonably endangered, this project violates **Guideline 711(A)**. Furthermore, the Project is not located where “(a) the land is already in high intensity of development use; or (b) there is adequate supporting infrastructure; or (c) the vicinity has a tradition of use for similar habitation

³⁰ Needs, Alternatives, Justification at 10.

³¹ National Wetlands Inventory Screenshot for IMTT Site, US Fish and Wildlife Service, (April 15, 2024), Exhibit D.

³² *Id.*

³³ *Id.*

³⁴ St. Charles Proposed Site Facility Area Map, Sheet #2, February CUP Application.

³⁵ Exhibit D, National Wetlands Inventory Screenshot.

³⁶ *Id.*

or development,” as is required under **Guideline 711(A)(2)**. As discussed below in Part II(E), the Project design’s failure to avoid these impacts to the maximum extent possible are not offset by its benefits and thus cannot be remedied under **Guideline 701(H)(1)**.

B. The proposed Project does not comply with Guideline 701 for All Uses because the project does not avoid adverse effects to the maximum extent practicable.

Guideline 701 applies to “all” uses and requires the OCM to use a list of “factors . . . in evaluating whether the proposed use is in compliance with the guidelines,” and to “avoid” specific kinds of “adverse impacts.” LAC 43.I.701. **Guideline 701(F)** provides the general factors that “shall be utilized by the permitting authority” to determine if a Project is in compliance with the Coastal Use Guidelines. LAC 43.I.701(F). **Guideline 701(G)** describes adverse effects that “shall be . . . avoid[ed] to the maximum extent practicable.” LAC 43.I.701(G). OCM must consider the factors incorporated into **Guideline 701(F)** and must abide by the policies in **701(G)**, including the following examples:

- 1) *The proposed Project will have detrimental, significant cumulative impacts on St. Rose, an area already suffering from pollution.*

Guideline 701(F)(15) provides that OCM must consider the “likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts.” LAC 43.I.701(F)(15). **Guideline 701(G)(10)**, in turn, provides that the OCM must avoid to the “maximum extent practicable significant” . . . adverse effects of cumulative impacts.” LAC 43.I.701(G)(10). The Coastal Use Guidelines define cumulative impacts as “impacts increasing in significance due to the collective effects of a number of activities.” LAC 43.I.700. And, per the Louisiana Revised Statutes, a goal of the Coastal Use Guidelines is to “minimize detrimental effects of foreseeable cumulative impacts on coastal resources from proposed or authorized uses.” La. R.S. § 49:214.27(C)(9).

SCCF’s proposed blue ammonia facility’s cumulative impacts on wetlands would be significant. The chronic polluting of Louisiana’s coastal wetlands is a well-documented ongoing issue which has had a dramatic cumulative impact on the Gulf region as a whole.³⁷ Of the 218.6 acres of the facility footprint at the proposed site, 183.5 acres would be disturbed wetlands.³⁸ The removal of 183.5 acres of wetlands, and their replacement with acres of pavement and impermeable structures will undoubtedly cause reduced floodwater carrying capacity in the wetlands surrounding St. Rose, specifically the historic Black Elkinsville community, increasing that area’s risk of flooding. As discussed in greater detail in Part II(B)(2) below, wetlands also provide natural hurricane protection, storm surge protection, habitat to many birds, fish, and

³⁷ USGCS.gov, Louisiana Coastal Wetlands: A Resource at Risk, <https://pubs.usgs.gov/fs/la-wetlands/> (last visited January 24, 2024); Audrina Lange, “Helping People Help the (Marsh) Land,” U.S.D.A. Natural Resources Conservation Service, <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/louisiana/news/helping-people-help-the-marsh-land> (last visited January 24, 2024).

³⁸ Needs, Alternatives, Justification, p. 10.

other wildlife, opportunities for fishing, recreation, and ecotourism, and act as a natural filter in keeping nutrients, sediments, and other materials from entering other water bodies.³⁹ The loss of habitats, productivity, and flood protection are not only important, but “one of the *most* important [cumulative] impacts to be avoided” under the Coastal Use Guidelines.⁴⁰

In addition to cumulative impacts to wetlands, residents of St. Rose, and particularly those in Elkinsville, are already overburdened with industrial pollution, especially air pollution. According to the most recent EPA data available, the census block group closest to the proposed SCCF site, which includes Elkinsville, has a higher risk of respiratory disease from pollution exposure than 95% of Louisiana residents.⁴¹ Commenters detailed the health impacts of the projected ammonia emissions extensively in their comments to the Louisiana Department of Environmental Quality (LDEQ).⁴² SCCF’s Project would be a major source of Louisiana Toxic Air Pollutants (TAPs), emitting 59.35 tons per year—five times the major source threshold—of ammonia, a TAP under LAC 33:III § 5103.⁴³ The major health risk associated with ammonia exposure is decreased lung function and respiratory symptoms.⁴⁴ Ammonia is a highly reactive gas that hydrolyzes in the mucus membranes of the lungs, causing corrosive damage that can result in severe respiratory problems.⁴⁵ Since 1991, there have been over 400 peer-reviewed scientific studies that have addressed the impacts of ammonia exposure on respiratory health.⁴⁶ Importantly, the maximum modeled ammonia concentration predicted by SCCF is more than double the Massachusetts state limit for short-term ammonia exposure (246 versus 100 µg/m³).⁴⁷ Thus, the proposed SCCF facility should be considered a significant public health risk based on current science.

³⁹ EPA, Watershed Academy Web – Wetland Functions and Values, <https://www.epa.gov/sites/default/files/2016-02/documents/wetlandfunctionsvalues.pdf>; see also Edward Barbier, et al. The Value of Wetlands in Protecting Southeast Louisiana from Hurricane Storm Surges, PLOS One (2013), <https://doi.org/10.1371/journal.pone.0058715>.

⁴⁰ *Pardue v. Stephens*, 558 So.2d 1149, 1174 (La. App. 1 Cir. 1989) (emphasis added).

⁴¹ See EJSscreen Report, Exhibit C

⁴² December 20, 2024, Comment from Refined Community Empowerment to LDEQ, attached as Exhibit E.

⁴³ SCCF LDEQ Permit Application, AI No. 236110, EDMS Doc. No. 13839639 at p. 11.

⁴⁴ EPA Toxicological Review of Ammonia, Executive Summary, at 4 (Sep 2016), available at https://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=322470. Direct link https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=529124.

⁴⁵ Agency for Toxic Substances and Disease Registry, Medical Management Guidelines for Ammonia, available at

<https://wwwn.cdc.gov/TSP/MMG/MMGDetails.aspx?mmgid=7&toxid=2#:~:text=Exposure%20to%20ammonia%20gas%20or,the%20hygroscopic%20nature%20of%20ammonia>.

⁴⁶ Based on a Web of Science search on Nov 30, 2023 using the keywords “ammonia” AND “exposure” AND “respiratory.” attached as Exhibit F.

⁴⁷ See Mass. Dep’t Env’t Prot., *MassDEP Ambient Air Toxics Guidelines*, <https://www.mass.gov/info-details/massdep-ambient-air-toxics-guidelines> (last visited April 25, 2024).

LDEQ already regularly receives complaints of noxious odors and associated respiratory symptoms from St. Rose residents about the existing IMTT Facility.⁴⁸ Indeed, residents have been so overwhelmed by noxious petrochemical fumes in the middle of the night that they have had to evacuate and temporarily leave St. Rose.⁴⁹ The SCCF facility would pose an additional significant nuisance to the community by causing and contributing to noxious odors. Scientific studies have reported a wide range of odor thresholds for ammonia, as low as 0.05 ppm.⁵⁰ The maximum modeled ammonia concentration reported by SCCF (246 µg/m³ equivalent to 0.35 ppm) is seven times higher than this odor threshold. Given that St. Rose residents already regularly report noxious odors to LDEQ, efforts should be made to reduce concentrations of odorous pollutants in this community, and SCCF should not be permitted to worsen to this problem.⁵¹ Additionally, the traffic, noise, and viewshed during both the construction and operation phases of the Project will be primarily borne by the Elkinsville community. The construction and subsequent operations of this piece of the Facility would have substantial daily noise, odor, and air impacts that would add to those from IMTT.

If permitted in accordance with the application, the Facility would produce 8,000 metric tons per day of liquid ammonia.⁵² In the course of its annual production, SCCF plans to emit 65.47 tons per year of nitrogen oxide (NO_x), 75.91 tons per year of carbon monoxide (CO), 31.92 tons per year of volatile organic compounds (VOCs), 11.98 tons per year of particulate matter (PM₁₀), 11.98 tons per year of fine particulate matter (PM_{2.5}), 0.62 tons per year of sulfur dioxide (SO₂), 1.24 tons per year of hazardous air pollutants, and 59.35 tons per year of ammonia.⁵³

In addition to substantial air emissions, the Facility will require the construction of a considerable amount of new infrastructure, further contributing to cumulative impacts.⁵⁴ For example, the Facility would require the construction of two “blue ammonia production trains” for the capture, compression, and transportation of carbon off-site, with each train being a source of emissions because of fossil fuel combustion from its auxiliary boilers and heaters.⁵⁵ The

⁴⁸ Complaints to LDEQ regarding odors and problems with the facility’s proximity to IMTT are available on EDMS for AI No. 4885 and include EDMS Document Nos. 14066359, 14066357, and 14066355.

⁴⁹ *See id.*

⁵⁰ Christopher van Thriel et al., From Chemosensory Thresholds to Whole Body Exposures—Experimental Approaches Evaluating Chemosensory Effects of Chemicals, 79 *Int’l Archives Occupational Env’tl. Health* 308, 314 (2006), available at <https://link.springer.com/article/10.1007/s00420-005-0057-4>.

⁵¹ *See supra* note 48.

⁵² SCCF LDEQ Permit Application, AI No. 236110, EDMS Doc. No. 13839639 at p. 10.

⁵³ *Id.* at 11, Table 1-1. Emission levels as described here rely on the accuracy of measurements provided in SCCF’s permit application, which Commenters contest.

⁵⁴ *See generally* Needs, Alternatives, and Justification, p. 6-7.

⁵⁵ *Id.*, p. 6. Additionally, a gas pipeline and metering station would supply fuel to the blue ammonia production trains. *Id.* The blue ammonia production trains would also require a water intake system, two cooling towers, one process gas flare for potential gas releases, and a second ammonia flare for potential ammonia releases. *Id.* at 6-7.

Facility would also require the construction of two cooling towers and flares.⁵⁶ The blue ammonia production trains, four above-ground ammonia containment storage tanks, and a ship-loading facility would all be connected to a pipeline routing system for ammonia.⁵⁷ Two air separation units would provide the blue ammonia trains with oxygen and nitrogen for the ammonia production process.⁵⁸

SCCF asserts that the Facility would make use of other infrastructure already present at the IMTT site thereby minimizing some impacts. SCCF's Needs, Justifications, and Alternatives Analysis, however, does not mention that this infrastructure sharing still requires substantial upgrades and new additions. For example, the proposed new, large equipment platform is 425' x 175',⁵⁹ and the proposed new water intake platform is a sizeable 300' x 150'.⁶⁰ These examples contradict SCCF's claims that it will only need to make "minimal" changes to IMTT's existing infrastructure, particularly the infrastructure already in the Mississippi River.⁶¹ SCCF plans to install a natural gas pipeline as well to bring natural gas into the Facility, but it provides few details in its Needs, Justifications, and Alternatives Analysis. SCCF mentions that it plans to "utilize responsibly sourced natural gas" and will build "one incoming natural gas pipeline and metering station for the natural gas supply."⁶² It also provides that it plans to connect to an existing Gulf South pipeline nearby.⁶³ SCCF, however, does not provide sufficient information in its CUP application that represents the extent of all of these modifications. A close review suggests construction will require a substantial overhaul of the existing site in addition to widespread new infrastructure. The new impact of this construction—most especially to the site's wetlands resources and the surrounding air—will contribute to substantial cumulative impacts for the residents of St. Rose and the local coastal zone environment, in violation of **Guideline 701(G)(10)**.

- 2) *The proposed Project will have an adverse impact on a significant amount of wetlands, reducing their valuable coastal and flood protection functions, in violation of Guidelines 701(G)(5) and (20), as well as destroying valuable habitats, in violation of 701(G)(16).*

Guideline 701(F)(12) provides that OCM must consider the "proximity to and extent of impacts on important natural features." LAC 43.I.701(F)(12). **Guideline 701(G)(5)**, in turn, provides that OCM must avoid, to the maximum extent possible, significant "destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier island, and other natural biologically valuable areas or protective coastal features."

⁵⁶ *Id.* at 7.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 7.

⁵⁹ SCCF CUP Application, Maps and Drawings, "2023.1222_COE_REV3.pdf" (hereinafter "Maps and Drawings") at p. 38

⁶⁰ *Id.*

⁶¹ Needs, Alternatives, and Justification, pp. 14, 20; Maps and Drawings, p. 38

⁶² Needs, Alternatives, and Justification, p. 6.

⁶³ *Id.* at pp. 14, 17, 19.

LAC 43.I.701(G)(5). **Guideline 701(G)(20)** mandates permits avoid, to the maximum extent possible, significant “increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;” and **Guideline 701(G)(16)** mandates permits avoid, to the maximum extent possible, significant “adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands.” LAC 43.I.701(G)(16), (20).

The SCCF Project does not avoid these impacts to the maximum extent possible. Indeed, SCCF has chosen a site that will *maximize* the destruction and adverse alterations of wetlands by building directly on natural, undeveloped wetlands that protect residential areas and nearby existing industry from flooding. Indeed, these wetlands are not far from, and are aquatically linked to the LaBranche Wetlands.⁶⁴ The restoration and protection of the LaBranche Wetlands is a key initiative of the state Coastal Protection and Restoration Authority because of their unique protective function for Louisiana’s coast.⁶⁵ As previously stated in Part II(A), this Facility would cause irreparable harm to wetlands and permanently alter the wetlands’ capacity to store floodwaters, diminishing the site’s ability to serve not only storm water and flood prevention functions, but also its character as a habitat for cypress trees and wildlife.⁶⁶

SCCF’s materials demonstrate that the proposed Facility’s placement in wetlands could have additional adverse effects to the floodplain. The site is in an area zoned AE on FEMA flood maps.⁶⁷ This is a “Special Hazard Flood” area and must meet more stringent development and insurance requirements.⁶⁸ This is because development of flood-prone wetlands reduces the capacity of those wetlands to store storm water and exacerbates flood risk for adjacent properties. Indeed, the Louisiana Coastal Protection and Restoration Authority projects that if the Parish does not take future action to save wetlands, “over the next 50 years under the medium environmental scenario” then “100-year flood depths [will] increase to 13-15 feet” in some parts of the Parish.⁶⁹ Site flooding could impact neighboring residents whose homes might be more vulnerable to storm-related flooding events, as well St. Rose’s historic Freetown Cemetery, and both the Fifth African Baptist and Mt. Zion Baptist churches which have served as community

⁶⁴ See Needs, Alternatives, Justification, at p. 18.

⁶⁵ See, e.g. Louisiana Coastal Wetlands Conservation and Restoration Task Force, “LaBranche Central Marsh Creation,” (March 2021), at https://www.lacoast.gov/reports/gpfs/PO-133_hq.pdf; see also Mark Schleifstein, “LaBranche East marsh project offers drive-by view of \$56.9 million coastal restoration effort,” Nola.com (June 21, 2023), at https://www.nola.com/news/environment/labranche-marsh-project-showing-off-coastal-restoration/article_eed11d10-070c-11ee-b0db-47365c7a7e98.html

⁶⁶ See generally LAC 43.I.701 ; LAC 43.I.701(G)(16).

⁶⁷ FEMA Flood Map Service Center: St. Charles Parish, available at <https://msc.fema.gov/portal/search?AddressQuery=11842%20River%20Road%2C%20St.%20Rose%2C%20Louisiana>; see also St. Charles Planning and Zoning Department, FIRM Flood Insurance Rate Map (June 16, 1992) available at <https://map1.msc.fema.gov/firm?id=2201600150C>.

⁶⁸ See Flood Zones, FEMA, last updated July 8, 2020, available at <https://www.fema.gov/glossary/flood-zones>.

⁶⁹ Coastal Protection and Restoration Authority, St. Charles Parish Fact Sheet (2017) <https://coastal.la.gov/wp-content/uploads/2017/04/St.-Charles.pdf>, Exhibit G.

worship centers since the 1870's.⁷⁰ Despite this Special Hazard Flood area serving as flood protection for a developed residential and industrial area, the SCCF plan will reduce that protection and increase the potential for storm damage, in violation of **Guideline 701(G)(20)**.

SCCF's application materials do not sufficiently justify its plan to offset these floodplain impacts from the Facility. First, the Facility's hydrologic modification analysis relies on 100-year, 24-hour rain events, but does not justify that these are sufficiently protective metrics to use.⁷¹ In an area that has seen 500-year rain events in recent years, there should be additional analysis for larger rain events or substantiation for why 100-year is sufficient.⁷² Based on these 100-year, 24-hour rain volumes, SCCF proposes the creation of a detention pond and attached ditch to mitigate flood risk.⁷³ This differs from its December CUP application, in which it proposed two detention ponds,⁷⁴ one to the northeast of the site and one to the southeast of the site.⁷⁵ The original northeastern pond, which is now the proposed temporary laydown yard, was supposed to outfall directly into undisturbed cypress swamp at the north side of the site.⁷⁶ In its February CUP application, SCCF removed this northern pond, citing the results of its hydrologic review and an attempt to minimize wetlands impacts.⁷⁷ Although SCCF's February CUP application states that this area will later be restored back to wetlands, there is no clear plan for how or when those wetlands will be returned to their full productive capacity for stormwater management, and no indication as to whether, once restored, they will perform as well as the now-removed detention pond.⁷⁸ With residents' homes mere feet away, these missing details are concerning.⁷⁹

In addition to risks to the human environment, the habitat impacts of the Facility are not sufficiently detailed in SCCF's application. Although the LDWF certified that no known endangered species will be harmed by the Project, it did raise concern about the possibility of bald eagle nests on the site.⁸⁰ SCCF's application is silent as to whether there are bald eagles on the site, or if there was any investigation into their possible presence. OCM must undertake a comprehensive review of wildlife at the site before making its determination per **701(G)(16)**.

⁷⁰ See St. Charles Parish, LA: Town Histories (January 2000)

<https://www.stcharlesparish.gov/residents/economic-development-and-tourism/parish-history/town-histories#:~:text=Elkinsville%20ended%20up%20with%20two,Zion%20Baptist%20in%201874>.

⁷¹ SCCF, Hydrologic Modification Impact Analysis (Feb. 19, 2024) (submitted as part of the Coastal Use Permit Application) (hereinafter "Hydrologic Modification Impact Analysis"), p. 5.

⁷² See, e.g. LSU Law Center: Climate Change Law and Policy Project, "Why was the Louisiana Flood of August 2016 so severe?" (Aug. 24, 2016), available at <https://sites.law.lsu.edu/coast/2016/08/why-was-the-louisiana-flood-of-august-2016-so-severe/>

⁷³ Hydrologic Modification Impact Analysis, p. 4.

⁷⁴ SCCF, Hydrologic Modification Impact Analysis (Dec. 15, 2023), pp. 4, 6.

⁷⁵ SCCF, Needs, Alternatives, Justification (attached to December CUP application) (Dec. 11, 2023), p. 14.

⁷⁶ *Id.*

⁷⁷ Needs, Alternatives, Justification, p. 16.

⁷⁸ *Id.*

⁷⁹ Attachment B: Additional Adjacent Landowners, SCCF February CUP Application.

⁸⁰ Letter from Stephen Clark, LDWF, to Kyle Balkam, LDENR, Feb. 12, 2024, Re Application Number, P20230672, attached as Exhibit H.

Furthermore, and as discussed in greater detail below in Part III (B), these harms are especially striking because all but one of the alternative sites SCCF considered would have involved substantially less intrusion into wetlands.⁸¹ The Noel Site would disturb only 6.0 acres of wetlands. The River-Plex Site would disturb 20.5 acres of wetlands. And the Welham Site would disturb 17.0 acres of wetlands. In contrast, the proposed St. Rose IMTT Site will disturb 183.5 acres of wetlands, more than eight times as many acres as the River-Plex Site, ten times as many acres as the Welham Site, and thirty times as many acres as the Noel Site. This Project's wetlands impacts therefore not only run afoul of **Guidelines 711(G)(5), (16), and (20)** because the Project location does not avoid the aforementioned negative impacts to the maximum extent possible, but it also violates **Guideline 701(H)(1)** because, as discussed further in Part II(E) below, the benefits do not outweigh the costs, there are likely alternative sites available, there is no significant public benefit from the use, it does not serve important regional, state, or national interests, and it is not a coastal water dependent use. This mandates denial of the application

- 3) *SCCF's claim that St. Rose contains no cultural resources is based on incomplete data, and the project would likely adversely impact archaeological, historic, or other cultural resources in violation of Guideline 701(G)(14).*

Guideline 701(F)(16) provides that OCM should consider "proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources." LAC 43.I.701(F)(16). **Guideline 701(G)(14)** provides that OCM must avoid the "adverse alteration or destruction of archaeological, historical, or other cultural resources." LAC 43.I.701(G)(14). In its Needs, Justification, and Alternatives Analysis, SCCF asserted the 218.6-acre St. Rose site possessed no known cultural resources, which served as part of its justification for selecting the site over other alternatives.⁸² The absence of known cultural resources, however, is not evidence of a lack of cultural resources, both where adequate investigatory efforts have not been taken and where the likelihood of the presence of cultural resources remains reasonable. As of this Comment's submission, the State Historic Preservation Office ("SHPO") has received a request for comment but has not commented yet.⁸³

Actual investigation into the IMTT property's potential for cultural resources has been scant: on record with the Louisiana Department of Archaeology is but a single 2020 archaeological survey conducted on a portion of the IMTT property.⁸⁴ In that survey, 31.36 acres, or 3.18 miles, of a corridor intended for the construction of a pipeline were investigated

⁸¹ Needs, Alternatives, Justification, p. 10.

⁸² *Id.*, p. 12 ("Upon review of the SHPO data this site has no known cultural resources site present."). SCCF asserted that the presence of known cultural resources was considered in its site selection but did not provide sources for its determination in the context of that application. *See generally id.*

⁸³ Email from DCRT Section 106 to Office of Coastal Management, Re: P20230672 – Notice (Mar. 28, 2024), attached as Exhibit I.

⁸⁴ *See generally* Phase I Intensive Archaeological Investigation of the St. Rose to Norco Pipeline, St. Charles Parish, Louisiana, Prepared for: International Matex Tank Terminals, LLC by Gulf South Research Corporation (May 2020), attached as Exhibit J.

via pedestrian surface inspection with shovel test pits and predictive modelling.⁸⁵ This survey of just 31.36 acres of IMTT's property does not fully address the question of cultural resources present at the 292-acre site under consideration here, further indicating that little to no actual archaeological investigation has been conducted on the site that SCCF seeks to affirmatively assert has no cultural resources. And SCCF's ArcGIS Web Map showing cultural resources near the St. Rose IMTT Site omits known historic and cultural resources, such as the Elkinsville Freetown cemetery.⁸⁶

Given what is known about the history of the site as a former plantation, there is a high probability that the site could contain cultural resources that have not yet been discovered. The St. Rose area has been inhabited since the 18th century, named for the plantation that no longer stands.⁸⁷ IMTT itself sits on the site of the Cedar Grove Plantation, which also appears to never have been explored by any available surveying investigations.⁸⁸ With recent excavations of former plantation sites revealing cultural resources, such as unmarked burial grounds of enslaved people, the St. Rose site selected by SCCF is ripe for excavation.⁸⁹

Elkinsville, founded in 1880 as Free Town and now existing as a subdivision of St. Rose, has a unique and important history.⁹⁰ Elkinsville-Freetown was founded in 1880 by Palmer Elkins, a freed slave who formed the "19th Company," a coalition of 19 Black families who

⁸⁵ *Id.* at i ("The entire corridor [that will serve as the location for the pipeline] measures 75.14 acres[,] though portions of the pipeline cross inundated swampland. Approximately 5.51 acres (ac) consists of plant facilities where no excavation was permitted to take place due to potential subsurface hazards. Portions of the corridor where Horizontal Directional Drilling (HDD) is proposed were also not surveyed. In total 31.36 acres along approximately 3.18 miles of pipeline corridor were surveyed.").

⁸⁶ Needs, Alternatives, Justification, p. 37.

⁸⁷ St. Charles Par. Virtual Museum, "St. Rose Town History," (Jan. 2000), available at <https://scphistory.org/st-rose-town-history/> (last visited Nov. 23, 2023).

⁸⁸ St. Charles Parish, "Town Histories – St. Rose," available at <https://www.stcharlesparish.gov/residents/economic-development-and-tourism/parish-history/town-histories> (last visited Nov. 23, 2023) ("[T]he present International Matex Marine Terminal (IMTT) [sits] on the site of the former Cedar Grove Plantation. The Cities Service Terminal Company came to St. Rose as an oil export terminal in 1922 on the plantation site, and IMTT took over in later years.").

⁸⁹ Tammy C. Barney, "Rest in Peace? Not for Many Buried in Black Cemeteries," *La. Illuminator* (Feb. 24, 2021), available at <https://lailluminator.com/2021/02/24/rest-in-peace-not-for-many-buried-in-black-cemeteries/> ("In Louisiana, Plaquemines Liquid Terminal, a joint venture of Tallgrass Energy and Drexel Hamilton Infrastructure Partners, has filed plans to build a \$20 million oil export facility over historic slave cemeteries in Plaquemines Parish. The cemeteries were part of St. Rosalie, a sugar plantation along the Mississippi River"); David Hammer, "Oil Company Files Plan to Build Tanks, Pipeline Over Historic Slave Cemeteries," *4WWL*, available at <https://www.wwltv.com/article/news/investigations/david-hammer/hammer-sweeps-wednesday/289-ed79f62d-be94-4021-b298-8dd5ab54f8bf> (last updated Feb. 11, 2021).

⁹⁰ St. Charles Par. Virtual Museum, "A Look Into the History of Elkinsville Subdivision in St. Rose," available at <https://scphistory.org/elkinsville-subdivision-st-rose/> (last visited Apr. 25, 2024) ("Approximately 40 years [after being founded as Free Town and then Elkinsville] . . . the name Elkinsville [sic] was undeniably shifted to the ST. ROSE name due to the St. Rose Post Office being located along the levee side across from First Street.").

founded the community after emancipation, in what was described as a “monumental task.”⁹¹ The town was a haven for freed, formerly enslaved people and remains historically emblematic of post-Emancipation resettlement by Black Americans.⁹² The community had its own post office, churches, and grocery store and became a thriving, close-knit neighborhood. But this was, in part, because of the discrimination that the community faced outside its bounds. Accounts on St. Charles Parish’s own website detail how the community was kept segregated, forced to remain within locked gates from 6 p.m. until 6 a.m., well into the 1940s.⁹³ The persistence of the community, which has been continuously occupied since its founding, is a testament to its people.

This rich cultural heritage could be compromised if residents—descendants of the town’s emancipated founders—are forced to move because of an industrial accident or the continued deterioration of environmental conditions. The SCCF application fails to acknowledge the history or demographics of the community located just a few hundred feet from its proposed facility, and as discussed above, its map of cultural resources conspicuously omits the Elkinsville cemetery, including only the Jefferson Memorial Gardens a full mile down the street.⁹⁴ However, as discussed above, **Guideline 701(H)** charges OCM with systematically considering the factors listed in **Guideline 701(F)** and balancing their relative significance. LAC 43.I.701(H). This includes social concerns. *Id.* OCM cannot in good faith do this analysis on the basis of a lack of information—particularly where, as discussed below, there is a specific area of social concerns.

Furthermore, the original Army Corps Section 404 Permit issued to IMTT suggests that the Chitimacha Tribe of Louisiana has been asserting that the project area is part of their aboriginal homelands since 2004.⁹⁵ SCCF makes no mention of this fact in their application, but OCM should undertake further consultation with the Tribe about potentially-impacted resources to ascertain the full scope of cultural resources.

Finally, as discussed below in Part III(C), SCCF’s analysis in the CUP application directly assesses and rules out each of the alternative sites in part because they contain known cultural resources.⁹⁶ In its alternatives analysis, SCCF’s minimum requirements for cultural resources were “sites with no known or low probability of encountering cultural resources.”⁹⁷

⁹¹ According to the most recent (2021) American Community Survey 5-year estimates from the U.S. Census Bureau, the community closest to SCCF’s proposed site (Block Group 1, Census Tract 622, St. Charles Parish), which includes Elkinsville, is 75% Black, available at data.census.gov; *see also* Thibodaux, Anna, “A historic move to bring back Elkinsville,” *St. Charles Herald Guide* (March 8, 2019), available at <https://www.heraldguide.com/lifestyles/a-historic-move-to-bring-back-elkinsville/>.

⁹² *See, supra* note 88.

⁹³ *Id.*

⁹⁴ February CUP Application, Alternative Sites analysis, Sheet AA-6c, St. Rose IMTT Site Cultural Resources

⁹⁵ “Special Conditions: Condition 7,” Excerpt from Army Corps Permit to IMTT, Permit No. MVN 2004-911 EKK, attached as Exhibit K (produced in response to a public record request from Commenters to the Army Corps of Engineers, January 16, 2024).

⁹⁶ Needs, Alternatives, and Justification at 10-12.

⁹⁷ *Id.* at 9.

What SCCF fails to consider—and what OCM must—is that the same reasoning should restrict the St. Rose site from consideration as a site for further industrial ammonia development. Elkinsville and the greater St. Rose community should be afforded the same consideration and protections suggested in connection with those other alternative sites, which were enacted to preserve and safeguard historic sites pivotal to the conservation of local history and cultural influence.

- 4) *SCCF does not take into account its proposed Project's adverse effects on the residential community of St. Rose, especially Elkinsville-Freetown*

Guideline 701(F)(11) provides that OCM must consider the “extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited.” LAC 43.I.701(F)(11). **Guideline 701(F)(18)** provides that OCM should consider the “extent of compatibility with natural and cultural settings.” LAC 43.I.701(F)(18). **Guideline 701(G)(6)**, in turn, provides that the OCM must avoid “adverse disruption of existing social patterns.” LAC 43.I.701(G)(10). In addition to the wetlands and cultural impacts already addressed, the Project would adversely impact the area of St. Rose, a residential community. As discussed throughout this comment, the construction and operation of this Project would create substantial noise, odors, and viewshed. These impacts would be especially felt by the many residents who live on the fenceline in Elkinsville. Indeed, the Adjacent Landowners list provided by SCCF to OCM includes 12 property-owners who share a property line with the Facility on its East Side, where Elkinsville sits.⁹⁸ If built, they would feel the impacts of this Facility daily—when in their yards or using the community playground, when congregating at the local church or paying their respects in the cemetery. Moreover, the undeveloped wetlands that residents are accustomed to looking out into would be replaced with industrial tanks and the scent of ammonia. This alone could constitute an adverse disruption of existing social patterns, to say nothing of the impacts that site construction would have on traffic and noise.

- 5) *The proposed Project will not provide long term benefits, but instead will create a host of long term adverse impacts.*

Guideline 701(F)(19) provides that OCM must consider “the extent of long term benefits or adverse impacts.” LAC 43.I.701(F)(19), and under **Guideline 701(G)(2)**, the Project must avoid the “adverse economic impacts on the locality of the use and affected governmental bodies.” LAC 43.I.701(G)(2). The balance of costs and benefits for this proposed Project are weighed in greater detail in Part III(B) below, but for purposes of OCM’s analysis under the Coastal Use Guidelines, several critical costs bear scrutinizing:

First, there is a quantifiable cost to state and local government for loss of wetlands. The Coastal Protection and Restoration Authority estimates that if no action is taken by 2042, St. Charles Parish could face up to \$400 million in expected annual damage from a 100-year storm

⁹⁸ Attachment B: Additional Adjacent Landowners, February CUP Application, St. Charles Clean Fuels.

event, with this number skyrocketing to \$700 million by 2067.⁹⁹ These figures alone dwarf the economic promises that SCCF has made to the community. Additionally, it is estimated that every 2.7 miles of wetlands reduces a storm surge by one foot.¹⁰⁰ Data from past hurricanes indicates that the loss of every one-mile strip of wetlands along the coast results in an estimated \$5,752,816 average annual increase in property damage.¹⁰¹ It is estimated that between 25-35 square miles of wetlands are lost each year and more than 1,000,000 acres have been lost since the turn of the century.¹⁰² The estimated value of coastal wetlands in the state is between \$86,040/acre/year - \$143,400/acre/year.¹⁰³ Disappearing wetlands will have a major effect on oil and natural gas production, transportation and navigation, commercial fishing, and recreational activities.¹⁰⁴ This proposed Project would destroy a valuable and already disappearing resource to the surrounding community and entire state.

Second, the immense risks associated with the carbon capture buildout for this Facility will be borne by local government and Parish emergency responders. In its Needs, Alternative, and Justification Analysis, SCCF acknowledges that “[c]ommunity evacuations in response to fires, explosions, oil discharges, and hazardous material spills are the responsibility of local emergency managers, together with the municipal police and fire departments.”¹⁰⁵ SCCF provides for a “firefighting system” and workspace buildings for emergency vehicles.¹⁰⁶ But the application makes no mention of how the company would support local government with meeting the unique risks associated with its proposed Facility.

As previously emphasized, ammonia plants have a host of concerning possible emergency scenarios. These risks are compounded by SCCF’s proposed use of carbon capture technology. As previously discussed in Part II(A), but which bears repeating, examples in Satartia, Mississippi and Sulphur, Louisiana illustrate two critical issues: (1) local emergency personnel are often the first line of response when something goes awry with these technologies, and (2) local emergency personnel are not sufficiently equipped to respond to the hazards associated with CO₂ pipeline rupture. For instance, in Satartia, emergency responders could not even start their vehicles to respond to the scene of the accident.¹⁰⁷ And in Sulphur, there was

⁹⁹ St. Charles Parish Fact Sheet, Louisiana Coastal Protection and Restoration Authority (2017), <https://coastal.la.gov/wp-content/uploads/2017/04/St.-Charles.pdf>, Exhibit E.

¹⁰⁰ U.S. Dep’t of Agric. (USDA), Wetlands Values and Trends, at note 2 (RCA Issue Brief #4, Nov. 1995), <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/la/technical/cp/?cid=stelprdb1042133>.

¹⁰¹ *Id.*

¹⁰² Se. Louisiana Univ., Louisiana’s disappearing wetlands (2010), <https://www2.southeastern.edu/orgs/oilspill/wetlands.html#:~:text=While%20Louisiana%20has%2040%25%20of,the%20turn%20of%20the%20century.>

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Needs, Alternatives, and Justification at 19.

¹⁰⁶ *Id.* at 7.

¹⁰⁷ Julia Simon, “The U.S. is expanding CO₂ pipelines. One poisoned town wants you to know its story,” NPR, (Sept. 25, 2023), available at <https://www.npr.org/2023/05/21/1172679786/carbon-capture-carbon-dioxide-pipeline>

widespread confusion about whether residents should shelter in place or evacuate, and first responders had to wait over two hours for company officials to join them at the scene of the accident.¹⁰⁸ The costs associated with managing these risks will be absorbed by local and state government and, under **701(G)(2)**, should give OCM pause about approving this permit without substantial information from SCCF about how it will minimize these concerns to the maximum extent possible.

C. The proposed Project does not comply with the Guideline 705 for Linear Facilities because it does not minimize adverse effects on wetlands, and it depends on infrastructure that does not yet exist.

Under **Guideline 705(B)**, linear facilities, such as pipelines, involving the use of dredging or filling “shall be avoided in wetland and estuarine areas to the maximum extent practicable.” LAC 43.I.705(B). **Guideline 705(I)** provides that linear facilities “shall be planned, designed, located, and built . . . to minimize adverse impacts on wetlands.” LAC 43.I.705(I). As discussed above, SCCF has failed to comply with these two provisions: As a “blue” ammonia plant, the Facility requires multiple pipelines for, among other materials, natural gas, ammonia, and liquified CO₂, yet all but one of the alternative sites considered would have involved less intrusion into wetlands.¹⁰⁹

Additionally, SCCF has not provided enough detail on its proposed CO₂ linear facilities. It provides that “CO₂ from the production process will be sent via a third-party lateral to existing CO₂ pipelines and sequestered in Class VI wells.”¹¹⁰ It also notes that the St. Rose IMTT Site “does appear to have the potential for CO₂ offtake.”¹¹¹ However, it does not identify these sites or provide further information. This ambiguity in SCCF’s application fails to fulfill OCM’s December 29, 2023 request asking SCCF to include an alternative plan for CO₂ if a CO₂ line was not constructed or include wording that the project will not proceed without it.¹¹² SCCF’s response in its February 22, 2024 OCM Checklist Review Response Letter that “[i]n the event that the proposed CO₂ pipeline is not constructed, there are additional CO₂ pipelines under consideration that may be available” does not provide the level of specificity the OCM requested.

As discussed in Part II(A) above, it appears the only viable pipeline is the Denbury pipeline which is on the West Bank of the Mississippi River. If SCCF must run a pipeline under the Mississippi River to facilitate its carbon capture aspirations, this is a critical piece of information that OCM must analyze and one that OCM specifically asked SCCF to respond to.

¹⁰⁸ Nina Lakhani, “Wake-up call” pipeline leak exposes carbon capture safety gaps, advocates say,” The Guardian, (April 19, 2024), available at <https://www.theguardian.com/us-news/2024/apr/19/exxon-pipeline-leak-carbon-capture-safety-gaps>

¹⁰⁹ Needs, Alternatives, and Justification at 10.

¹¹⁰ *Id.* at 12.

¹¹¹ *Id.* at 19.

¹¹² SCCF Itemized Response to OCM Request, Response to OCM Comment 5 at p. 2, (Feb. 22, 2024).

Liquified CO₂ is highly corrosive.¹¹³ When mixed with water, it can create carbonic acid.¹¹⁴ The corridor of the Mississippi River where the proposed Facility would sit is a critical trade route.¹¹⁵ An underwater pipeline rupture could create serious harm, not only to shipping traffic but especially and importantly to human health and the environment. OCM has a duty to fully assess these risks, which it cannot do based on the current application before it.

D. The proposed Project would not comply with Guideline 717(B) regarding drainage into Coastal Waters.

The Project would alter the water flow, quantity, and quality draining into coastal waters to such an extent that OCM cannot lawfully find it would comply with **Guideline 717(B)**. **Guideline 717(B)**, regulating “Uses that Result in the Alteration of Waters Draining into Coastal Waters” provides that “[r]unoff from developed areas shall to the maximum extent practicable be managed to simulate natural water patterns, quantity, quality, and rate of flow.” LAC 43.I.717(B).

Here, the proposed Project would not manage water in a way that “simulate[s] natural water patterns, quantity, quality, and rate of flow.” *Id.* For example, in its Needs, Alternatives, and Justifications Analysis, SCCF admits that its runoff drains toward the Labranche wetlands.¹¹⁶ Those wetlands eventually link up with Lake Pontchartrain.¹¹⁷ This Facility runoff flow would carry new pollutants. State and federal agencies have been working on the LaBranche wetlands system for several decades to fight wetland degradation and loss of wetland habitat.¹¹⁸ Though the Facility does not quantify how it would impact water flow or what it would discharge into water, industrial construction on a site that has long been used for other industrial uses will undoubtedly involve the substantial release of pollutants. As is discussed in Part III(A) and in the paragraph below, the IMTT Facility has high levels of toxic substances in soil. Those pollutants could harm the significant restoration efforts that have been dedicated to that wetlands system. These restoration efforts have specifically sought to provide a suitable habitat to regional animals

¹¹³ Kahyarian et. al., Carbon Dioxide Corrosion, Case Studies of Material Corrosion Prevention for Oil and Gas Values, Science Direct, (2022), available at <https://www.sciencedirect.com/topics/engineering/carbon-dioxide-corrosion>.

¹¹⁴ *Id.*

¹¹⁵ Water Transportation, St. Charles Parish Government, available at <https://www.stcharlesparish.gov/residents/economic-development-and-tourism/information-for-businesses/transportation> (emphasizing that the Parish’s location on the Mississippi River connects it with major trade routes).

¹¹⁶ Needs, Alternatives, and Justification at 18.

¹¹⁷ LaBranche Marsh Creation Project Media Tour (Guides & Instructions), U.S.D.A., available at: [LaBranche Marsh Creation Project Media Tour \(Guides & Instructions\) | Natural Resources Conservation Service \(usda.gov\)](https://www.usda.gov/natural-resources-conservation-service/la-branche-marsh-creation-project-media-tour-guides-instructions) (noting that these wetlands touch the south shore of Lake Pontchartrain).

¹¹⁸ Audrina Lange, Helping People Help the (Marsh) Land, U.S.D.A. Natural Resources Conservation Service, available at <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/louisiana/news/helping-people-help-the-marsh-land> (last visited January 24, 2024).

and plants.¹¹⁹ The discharge of pollutants through these wetlands would undoubtedly disturb and potentially degrade this habitat, and would fly in the face of progress made to improve the quality of water in the region and to restore local wetlands.¹²⁰

If the Project is built, it will almost certainly lead to the dispersion of pollutants into the Mississippi River as well. The facility's proximity to the Mississippi River engenders a risk of diminished water quality not only in the area immediately surrounding the facility, but downstream. The River is St. Charles Parish's—and other downstream parishes like Jefferson and Orleans—primary source of drinking water,¹²¹ and habitat to many species of fish and other wildlife. With the entirety of the Facility being built in wetlands or on the River, the potential for water contamination is extremely high. This is especially so considering the fact that IMTT recently conducted an environmental site assessment of the proposed Project site and found significant soil contamination from past oil and gas extraction activity on the site.¹²² That assessment found mercury, arsenic, cadmium, chromium, lead, selenium, and zinc present in soil on the site.¹²³ Arsenic, barium, chromium, lead, and zinc were all found in concentrations exceeding state regulatory limits.¹²⁴ Disturbing this contaminated soil, on top of wetlands and in proximity to the Mississippi River, could cause harm to human health and welfare and harm wildlife and aquatic ecosystem diversity.

Additionally, the impacts of ammonia on stormwater runoff are well-known—and potentially deadly. “Ammonia is a common cause of fish kills.”¹²⁵ In elevated concentrations, it affects gill condition, fish growth, organ weights, and hematocrit (the percentage by volume of red cells in blood).¹²⁶ It can cause hyperventilation, convulsions, liver and kidney stress, and fish fin erosion.¹²⁷ It can lead to reduced feeding activity and reproductive success, too.¹²⁸ Ammonia can also cause a foul odor that gives off an organic-waste or septic smell.¹²⁹ It can cause heavy plant production, like algal blooms, and runs

¹¹⁹ *Id.*; see also Robert A. Thomas, A Naturalist's Drive Across the LaBranche Wetlands, Louisiana, Occasional Papers of the Loyola Center for Environmental Communication (Dec. 23, 2022), https://lucec.loyno.edu/sites/default/files/2023-01/Naturalist%20Drive%20Across%20LaBranche%20Wetlands%2012-23-22%20version%202.4%20reduced%20size_0.pdf.

¹²⁰ *Id.* see also Mark Schleifstein, LaBranche East marsh project offers drive-by view of \$56.9 million coastal restoration effort, Nola.com (Jun. 21, 2023) https://www.nola.com/news/environment/labranche-marsh-project-showing-off-coastal-restoration/article_eed11d10-070c-11ee-b0db-47365c7a7e98.html.

¹²¹ St. Charles Parish, “Water Quality Report 2022,” available at <https://www.stcharlesparish.gov/home/showpublisheddocument/6857/638230368850870000>.

¹²² Phase II Environmental Site Assessment Investigation Work Plan, AI No. 4885, EDMS Doc. No. 13805305 (April 28, 2023).

¹²³ *Id.*

¹²⁴ *Id.* at 29.

¹²⁵ Causal Analysis/Diagnosis Decision Information System (CADDIS): Ammonia, EPA, available at <https://www.epa.gov/caddis/ammonia>.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

the risk of producing harmful algal blooms (HABs) that produce toxins that kill fish, birds, and mammals.¹³⁰ Other types of HABs absorb all of the oxygen in the water as they decay, clog the gills of aquatic species, smother aquatic vegetation, discolor water, and contaminate drinking water.¹³¹

SCCF omits key details concerning the composition, number, and quantity of pollutants expected in its stormwater runoff discharges and how such discharges will alter drainage into Coastal Waters.¹³² Without such information, no agency can determine the alteration of drainage into Coastal Waters caused by the proposed Project, let alone conduct “a systematic consideration of all pertinent information regarding the use.” *See* LAC 43:I.701 H.1(c).

There is also the risk of accidental releases into the water —comparable ammonia plants in Louisiana have recently had unexpected releases of anhydrous ammonia into surrounding waters.¹³³ And the CO₂ pipelines required to implement the proposed CCS technology for this Project could also pose risks to water quality.¹³⁴ A CO₂ leak from carbon capture infrastructure into the groundwater could create carbonic acid, which causes potentially toxic metals to leach out of surrounding sand and rock.¹³⁵ The construction of significant natural gas infrastructure through unstable wetlands poses serious risk of releases as well. For instance, methane leakage from natural gas pipelines can generate dangerous, potentially explosive conditions when dissolved in water.¹³⁶

¹³⁰ *Id.*; *see also*, “What is a harmful algal bloom?” Noaa.gov (last updated April 27, 2016), available at: <https://www.noaa.gov/what-is-harmful-algal-bloom#:~:text=Under%20the%20right%20conditions%2C%20algae,even%20death%20in%20extreme%20cases.>

¹³¹ *Id.*

¹³² *See generally* SCCF Hydrologic Modification Impact Analysis, OCM permit P20230672 (Feb. 29, 2024).

¹³³ Chad Calder, “Heard a loud noise on the west bank this morning? It was an explosion at this plant,” Nola.com (Feb. 17, 2022), available at https://www.nola.com/news/heard-a-loud-noise-on-the-west-bank-this-morning-it-was-an-explosion-at/article_85515894-900e-11ec-8c7a-839efec78a07.html.

¹³⁴ Bruce Robertson, Carbon Capture has a Long History of Failure, Bulletin of the Atomic Scientists, (Sept. 1, 2022), available at <https://thebulletin.org/2022/09/plagued-by-failures-carbon-capture-is-no-climate-solution/> (last accessed January 24, 2024).

¹³⁵ Catherine M. Cooney, Study Charts How Underground CO₂ Can Leach Metals into Water, Inside Climate News (Dec. 7, 2010) <https://insideclimatenews.org/news/07122010/study-charts-how-underground-co2-can-leach-metals-water/>; *see also* Leaks from CO₂ Stored Deep Underground Could Contaminate Drinking Water, Nicholson School of the Environment, Duke University (Nov. 8, 2010) <https://nicholas.duke.edu/news/leaks-co2-stored-deep-underground-could-contaminate-drinking-water>.

¹³⁶ Methane in Groundwater, Illinois Department of Public Health, available at [https://dph.illinois.gov/topics-services/environmental-health-protection/private-water/fact-sheets/methane-groundwater.html#:~:text=Methane%20also%20can%20leak%20from,methane%20can%20enter%20you%20home;see%20also,Renee%20McVay,Methane%20Emissions%20From%20U.S.%20Gas%20Pipeline%20Leaks,Environmental%20Defense%20Fund,\(Aug.%202023\),https://www.edf.org/sites/default/files/documents/Pipeline%20Methane%20Leaks%20Report.pdf](https://dph.illinois.gov/topics-services/environmental-health-protection/private-water/fact-sheets/methane-groundwater.html#:~:text=Methane%20also%20can%20leak%20from,methane%20can%20enter%20you%20home;see%20also,Renee%20McVay,Methane%20Emissions%20From%20U.S.%20Gas%20Pipeline%20Leaks,Environmental%20Defense%20Fund,(Aug.%202023),https://www.edf.org/sites/default/files/documents/Pipeline%20Methane%20Leaks%20Report.pdf).

Furthermore, SCCF and IMTT would share substantial water-related infrastructure. IMTT has been responsible for several accidents that have adversely affected the environment, one such instance having taken place within the past calendar year.¹³⁷ IMTT has a recent history of incidental releases and spills of pollutants into waters and soils surrounding its facilities.¹³⁸ Without more complete information about the quantity and characteristics of the toxic pollutants that will be discharged during the construction and operation of the proposed Facility, OCM cannot determine whether or not the Project will abide by **Guideline 717(B)**.

E. The Project also fails to meet the requirements of 701(H).

Even if OCM were poised to approve the Project despite its non-compliance with the aforementioned Guidelines, it would lack basis or information sufficient to show any avoidance or compliance to the “maximum extent practicable.” Under **Guideline 701(H)**, to meet the “maximum extent practicable” standard, OCM must find, “after a systematic consideration of all pertinent information regarding the use,” among other things, that “the site and the impacts of the use as set forth in [Guideline 701(F)], and a balancing of their relative significance, that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and there are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the modified standard.” LAC 43.I.701(H); *see also Pardue v. Stephens*, 558 So.2d 1149, 1164-68 (La. Ct. App. 1989). Under the Coastal Use Guidelines, **Guideline 701(H)** provides separate obligations—ones that are not to be weighed, but require denial. As discussed above, the benefits must outweigh adverse impacts, and there must be no feasible and practical alternatives. LAC 43.I.701(H)(1). However, one of the three following standards must also be met: 1) the use must result in “significant public benefits”; 2) the use must “serve important regional, state, or national interests”; or 3) the use must be “coastal water dependent.” LAC 43.I.701(H)(1)(a)-(c). None of these is met here.

As a threshold matter, the Project’s adverse impacts are not outweighed by the its purported benefits. LAC 43.I.701(H)(1). As discussed in several of the subsections above, *see, e.g.* Part II(B) and the public trust analysis below in Part III, the Project will cause significant harm to wetlands, flooding and stormwater drainage capacity, and human well-being and health

¹³⁷ Eleanor Tabone, “Fire Reported at IMTT chemical storage facility in St. Charles Parish,” WWLTV (April 3, 2023), available at <https://www.wvlv.com/article/news/local/st-charles/fire-imtt-st-charles-parish/289-2a24016a-bb02-4d48-9dc3-2fc2b518bc47>.

¹³⁸ *See, e.g.*, IMTT Incident Report, AI 4885, EDMS Doc. No. 14014068, Aug. 18, 2023 (field interview form regarding grease spill), <https://edms.deq.louisiana.gov/app/doc/view?doc=14014068>; IMTT Incident Report, AI 4885, EDMS Doc. No. 14131349, Jan. 11, 2024 (report from testing of soils around previous oil spill on site), <https://edms.deq.louisiana.gov/app/doc/view?doc=14131349>; IMTT Incident Report, AI 4885, EDMS Doc. No. 13982580, July 5, 2023 (report of diesel leak into Mississippi River), <https://edms.deq.louisiana.gov/app/doc/view?doc=13982580>.

in St. Rose. Indeed, the quantifiable cost of lost wetlands to the Parish alone would far outweigh the tax revenue this Project promises.¹³⁹ *See* Part II(B)(5). Additionally, the human toll would be stark—the public health impacts of additional air pollution in this already-overburdened community cannot be offset by any purported benefits.

Second, the Needs Alternatives and Justification analysis suggests that there are in fact feasible and practical alternative locations which might be in compliance with the standard, *see* Part III(C); *see also* LAC 43.I.701(H)(1). Moreover, the alternative sites analysis is inadequate. Its bases for rejecting alternative sites are conclusory, making any reliance by OCM on those conclusions arbitrary and capricious. For instance, it is not clear how or why any of the individual site factors is weighed more heavily, and why, for instance, federal Prime Farmlands would be a relevant consideration for a state agency whose mandate it is to protect wetlands.

Additionally, the Project will not result in significant public benefits. LAC 43.I.701(H)(1)(a). As discussed at length in Part III (B) below, the benefits of this Project in tax dollars and jobs are dubious at best and have not been promised to local residents.

Nor will it serve important regional, state, or national interests. LAC 43.I.701(H)(1)(b). As is discussed more fully below in Part III(C), this Project does not meet the need it purports to fill—there are already sufficient ammonia production facilities in Louisiana, with many new “blue” ammonia facilities already proposed, and the greenhouse gas promises this Project makes are not borne out in science. In fact, there are no substantiated market or science-based reasons to build this Facility, especially not in the backyards of an already over-burdened community. *See* Part III(C).

Additionally, the use is not coastal water dependent. LAC 43.I.701(H)(1)(c). The Coastal Use Guidelines define “coastal water dependent uses” as “those which must be carried out on, or adjacent to coastal water areas or wetlands because the use requires access to the water body or wetland or requires the consumption, harvesting or other direct use of coastal resources, or requires the use of coastal water in the manufacturing or transportation of goods.” LAC 43.I.700. SCCF’s application emphasizes its preference for Mississippi River access—however, under the Guidelines, it remains just that: a preference.¹⁴⁰ There is no reason stated in the application for why the ammonia that the Facility produces couldn’t be transported by pipeline, rail, or other means. As such, the OCM’s duty of systematic consideration under **Guideline 701(H)** could draw no other conclusion than permit denial.

¹³⁹ *See, e.g.* Part II(2)(e).

¹⁴⁰ Needs, Alternatives, and Justification Analysis at 9.

F. Were OCM To Move Forward to Approve the CUP, It Must Also Evaluate the Need for Compensatory Mitigation.

OCM regulations prohibit OCM from granting a Coastal Use Permit unless its permitting process includes an evaluation of the “requirement for compensatory mitigation to offset any net loss of coastal resources ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts.” LAC 43.I.724(B)(1)(c). Indeed, compensatory mitigation is required for all projects unless a project “would not result in a net loss of coastal resources’ ecological values.” LAC 43.I.724(B)(1)(c) (emphasis added). Thus, OCM cannot legally issue a permit for *any* activity until the need for compensatory mitigation has been fully evaluated.¹⁴¹ Accordingly, SCCF is also subject to the guidelines outlined in LAC 43.I.724 of the Code and OCM must ensure that these requirements are met. Broadly speaking, SCCF must avoid and minimize the Project’s ecological impacts and restore and provide compensation for those same ecological losses and coastal resource values. LAC 43.I.724(B). Specifically, the Code requires that the permit process evaluate any “locations, designs, practices, and techniques” both to “avoid and minimize adverse impacts identified during permit review” and “to restore impacted sites.” LAC 43.I.724(B)(a)(b).

It is important to note that compensatory mitigation applies to instances of *unavoidable* adverse impacts. LAC 43.I.724(A). The impacts described by SCCF in its application are wholly avoidable. For instance, among the many reasons discussed in this Comment, the Project does not need to be built on a site that impacts over 180 acres of wetlands—especially where alternatives appear to exist—and it does not meet a scientific or market need for “blue” ammonia to justify its construction in the first instance. Because the impacts are avoidable, they cannot be mitigated away. Additionally, because the Project could involve substantial impacts to the LaBranche wetlands and other nearby ecosystems that are not quantified in its permit application, OCM could not collect sufficient information to evaluate the need for compensatory mitigation.

Even if OCM requires SCCF to submit a mitigation plan, the company would need to purchase credits from an approved in-lieu fee mitigation program, implement an individual mitigation program, or purchase credits from a mitigation bank. LAC 43.I.724.E.(1)(a)-(d). It is not clear that any of these options would sufficiently offset the net losses to wetlands, especially because there do not appear to be any credits in mitigation banks within close proximity to the proposed facility. LAC 43.I.724.E.(1)(b). If SCCF cannot adequately mitigate its environmental impact, OCM should not grant the permit.

¹⁴¹ See LDENR website, “Compensatory Mitigation in the Louisiana Coastal Zone,” *available at* <https://www.dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=95> (stating “the secretary shall not grant a Coastal Use Permit for an individual activity unless authorization is conditioned to include a requirement for compensatory mitigation to offset any net loss of ecological value that is anticipated to occur”).

III. LDENR would violate its duty as a public trustee if it approved this facility.

In its role overseeing the coastal zone and the natural resources within, OCM acts as the trustee for the people in the coastal zone, and in that role has a constitutional responsibility to “act with diligence, fairness and faithfulness to protect this particular public interest in the resources” and in its role as representative, is not permitted to “act as an umpire passively calling balls and strikes for adversaries appearing before it.”¹⁴² As such, “the rights of the public must receive active and affirmative protection.”¹⁴³ This duty derives from Article IX, section 1 of the Louisiana Constitution. OCM “breache[s] its constitutional duty when it issue[s a] Coastal Use Permit without considering the potential and real adverse environmental impacts of the [p]roject.”¹⁴⁴

To meet its public trust duty, LDENR must satisfy five issues when taking action that affects the environment:

- (1) Have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible?
- (2) Does a cost benefit analysis of the environmental impacts balanced against the social and economic benefits of the proposed facility demonstrate that the latter outweighs the former?
- (3) Are there alternative projects which would offer more protection to the environment than the proposed facility without unduly curtailing nonenvironmental benefits?
- (4) Are there alternative sites which would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits?
- (5) Are there mitigating measures which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits?¹⁴⁵

Taking each of these question in turn:

A. The Potential and Real Adverse Environmental Effects of the proposed SSCF Ammonia Facility Have not Been Avoided to the Maximum Extent Possible.

The real and potential adverse environmental effects of the proposed project have been described extensively in this Comment, but include potential leaks and explosions of toxic or noxious ammonia gas, the expansion of pipelines, the disturbance of toxic soils, the construction of ammonia storage tanks, ammonia and natural gas pipelines, and other industrial infrastructure on wetlands—a foundation condition insufficient to support the use—and where there are significant flood and storm hazards that cannot be sufficiently protected against and public safety

¹⁴² *Save Ourselves, Inc. v. La. Env'tl. Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984).

¹⁴³ *Id.*

¹⁴⁴ *Save Lake Peigneur v. DNR*, No. 122358, slip op., p. 6 (16th La. Jud. Dist. Ct., 9/23/14).

¹⁴⁵ *Blackett v. LDEQ*, 506 So. 2d 749, 754 (La. App. 1 Cir. 1987) (citing *Save Ourselves v. La. Env'tl. Control Comm'n*, 452 So. 2d 1152 (La. 1984)).

is endangered, and the concomitant loss of flood protection from the loss of wetlands due to construction on wetlands around a historic residential community. The information available makes it plain that these effects have not been avoided to the maximum extent possible. Moreover, and as previously discussed in Part II(B)(1), the present conditions of the community make the cumulative impacts of this Project extremely significant. Among the potential and real adverse effects that have not been avoided are the following:

Risks from Ammonia: Operating an ammonia facility within such close proximity to a residential area could have disastrous consequences. Although SCCF did not provide any projections of the potential impacts of an accident at the facility, ammonia facilities present a range of substantial risk to surrounding residents, including most basically the risk of ammonia leakage in excess of permitted levels, *see* Part II(B)(1). As previously explained, accidents including spills, leaks, fires and other malfunctions can create serious hazards for neighboring residents and industry, *see* Part II(A). The permit application does not adequately account for the significant potential environmental and community costs from accidents, disasters, or other emergencies, let alone the routine operations of the proposed Facility.

Risks from New CCS Pipelines: The “blue” part of this process is the capture, sequestration and transport of the carbon emissions associated with ammonia production. SCCF, as noted above, has not provided any plans for the required pipeline portion of this operation. This should not be an excuse for OCM to ignore those impacts, however; instead, OCM should evaluate the potential environmental harms from a new pipeline development through wetlands and potentially under the Mississippi River.

Risks from Disturbance of Toxic Soil: The SCCF application fails to note that its proposed footprint will lie, at least in part, on what IMTT refers to as its “North Oil & Gas Field,” which IMTT has been testing for potential contamination.¹⁴⁶ A study conducted in January of 2023 found abandoned equipment and production pits, and soil testing found several contaminants present on site in concentrations exceeding the state RECAP standards.¹⁴⁷ SCCF’s construction will disturb the soils and production pits in this area, and any later stormwater or floodwater runoff will move those disturbed soils, potentially flowing into surrounding neighborhoods and endangered wetlands. OCM must weigh these additional environmental harms.

Furthermore, for all the extensive reasons asserted above in the discussion of **Guideline 7II(A)** in Part II (A), this project’s function as a blue ammonia facility is grossly outweighed and overshadowed by the adverse impacts it would have on wetlands.

Cumulative Effects. The cumulative impacts of this Facility are discussed at length in Part II (B)(1) above. According to EJSscreen, St. Rose is already a community whose health is severely compromised from the existing industry and ongoing effects of being situated along

¹⁴⁶ Phase II Environmental Site Assessment Investigation Work Plan, AI No. 4885, EDMS Doc. No. 13805305 (April 28, 2023).

¹⁴⁷ *Id.*

Cancer Alley.¹⁴⁸ Among other troubling metrics, St. Rose is in the 81st percentile nationally for Wastewater Discharge and 83rd for Hazardous Waste Proximity.¹⁴⁹ Wastewater Discharge refers to wastewater, treated or untreated, that flows out of a treatment plant, sewer, or industrial outfall.¹⁵⁰ Hazardous Waste Proximity refers to the concentration of hazardous waste management facilities within a 5 kilometer radius.¹⁵¹ The addition of the proposed facility would only further exacerbate already-existing health inequities and further reduce the quality of life of St. Rose inhabitants.

In its own application, SCCF concedes that the St. Rose IMTT site is in the “67th percentile for the supplemental demographic index” and that communities surrounding the St. Rose site “have high levels of EJ concerns.”¹⁵² The application, however, makes no effort to dive deeper into these metrics and ignores the impact that this additional facility will have on them. Beside the categories of Wastewater Discharge and Hazardous Waste Proximity, the index also includes percentages for Air Toxics Cancer Risk, Air Toxics Respiratory Hazard Index, and Toxic Releases to Air.¹⁵³ St. Rose is in the 94-97th percentiles nationally for each of these toxic release categories, and it is plain that the inclusion of yet another facility in close proximity will only increase these values.¹⁵⁴ As discussed in Part II (B)(1) above, St. Rose residents currently complain about poor air quality and chemical smells permeating the air that wake them up at night. OCM must weigh the impact of adding yet another facility—one involving noxious and toxic chemicals—to this neighborhood. The adverse environmental impacts have not been offset to the maximum extent possible.

B. A Cost Benefit Analysis Reveals That the Environmental Impact from the Ammonia Facility Far Outweigh Any Social or Economic Benefits.

OCM’s analysis “requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors.”¹⁵⁵ SCCF’s purported social and economic benefits do not outweigh the environmental impacts. The environmental impacts have been carefully detailed and even monetarily quantified throughout this Comment, most especially in Part II (B)(5) above.¹⁵⁶

The benefits of this Project do not outweigh its high costs to wetlands, St. Rose as a whole, and, in particular, the fenceline community of Elkinsville. For instance, in its Environmental Assessment Statement submitted to the LDEQ for its minor source air permit

¹⁴⁸ See generally EJSscreen Report, attached as Exhibit C.

¹⁴⁹ *Id.* at 2.

¹⁵⁰ EJSscreen Map Descriptions, EPA (last updated Jan. 3, 2024), available at <https://www.epa.gov/ejscreen/ejscreen-map-descriptions#ejin>.

¹⁵¹ *Id.*

¹⁵² Needs, Alternatives, Justification p. 15.

¹⁵³ See Exhibit C, EJSscreen Report at 2.

¹⁵⁴ *Id.*

¹⁵⁵ *Save Ourselves v. La. Env'tl. Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984).

¹⁵⁶ See Parish Fact Sheet: St. Charles Parish, Coastal Protection and Restoration Authority, available at <https://coastal.la.gov/wp-content/uploads/2017/04/St.-Charles.pdf>, attached as Exhibit G.

application, SCCF asserts summarily that “[t]here will be no significant adverse impacts on historical, archeological, wetland, estuarine, wildlife habitat or prime agricultural areas,” yet it is simultaneously planning to apply for mitigation bank credits to offset its environmental impacts, with a mitigation plan to follow.¹⁵⁷ In acknowledging the need for mitigation bank credits and mitigation planning, SCCF necessarily admits there will be adverse impacts on the over 180 acres of wetlands on the grounds of the proposed Facility. However, SCCF makes no attempt to truly evaluate or quantify the cost of the adverse impacts flowing from the proposed Facility. It is OCM’s duty to closely analyze SCCF’s analysis because “[t]he economic benefits derived from the industry must be balanced against our need for protection of natural resources.”¹⁵⁸ In another similarly dubious assessment, SCCF declares that “the permitting of the Facility will not adversely affect property values.”¹⁵⁹ However, adding additional industry, and in particular, a facility that will add ammonia into the local air and increase flood risk will not improve market conditions.

The purported economic benefits of the Facility are not substantiated or sufficient to outweigh costs. SCCF’s Needs, Alternatives, Justification analysis suggests that the Facility would have a “permanent workforce of about 216-on-site personnel,”¹⁶⁰ but its application for the Louisiana Industrial Tax Exemption Program (ITEP), submitted to St. Charles Parish for tax exemption approval, projects only 129 new, direct jobs to the community.¹⁶¹ Furthermore, the analysis is silent on whether it will commit to hiring and training local residents for that workforce. Because of the ITEP approval that SCCF applied for and received, the Facility would save \$260,103,190 over ten years which otherwise would have been due to the parish in taxes.¹⁶² These exempted funds might have otherwise gone to the Parish’s schools, its Sheriff’s office, its roads, and other public infrastructure—now, they will not. The justification for the ITEP is that the benefits of certain industrial projects outweigh the costs to taxpayers. A recent report done by the Ohio River Valley Institute, however, thoroughly challenges this narrative by demonstrating how industry in Louisiana has fallen chronically short on job promises to communities.¹⁶³ The

¹⁵⁷ Environmental Assessment Statement, LDEQ, Mar. 27, 2024, EDMS Doc. No. 14230800, p. 50. Attached as Exhibit L; *see* Letter from Andrew Knight, CK Associates, to Brad Laborde, USACE, and Keith Lovell, LDNR, re: Permittee Responsible Mitigation Site for MVN 2004-911-EKK and MVN 2006-0944-EKK CK Associates Project No. 20486 (Oct. 2, 2023), attached as Exhibit M, (noting that the mitigation site “is completely within a facility proposed for development by St. Charles Clean Fuels”); Comment from Sharon M. Pecquet, OCM, CUP application P70230672 (Apr. 5, 2024) (“The proposed project is anticipated to have permanent impacts to 10.42 acres of forested wetland restoration required as compensatory mitigation under P20190311 which, if approved through the NAJ process, will require compensatory mitigation.”).

¹⁵⁸ *In re Dravo Basic Materials Co., Inc.*, 604 So.2d 630, 636 (La. App. 1 Cir. 1992).

¹⁵⁹ Environmental Assessment Statement, *supra* note 154, at 29.

¹⁶⁰ Needs, Alternatives, Justification p. 8.

¹⁶¹ Industrial Tax Exemption Program Application for St. Charles Clean Fuels, LLC, to St. Charles Parish, 2023-0199-Application at 2 (July 31, 2023), available at <https://stcharlesgov.legistar.com/LegislationDetail.aspx?ID=6299518&GUID=29D4BB28-A073-4677-BAA7-A94BBE7B2A59&Options=&Search=>.

¹⁶² *Id.* at 5.

¹⁶³ Nick Messenger, Chemical Coastline: Has Investment in the Petrochemical Industry Brought Shared

report carefully traces how Louisiana's ITEP program has harmed many parishes more than it has benefitted them. OCM must critically evaluate these patterns when considering whether economic benefits from this project would accrue to the public's interest.

SCCF also cannot demonstrate economic need for this project. There are several planned blue ammonia plants underway in close proximity on the Mississippi. CF Industries has started obtaining permits for two projects: a \$198.5 million plan to add carbon capture and sequestration capability to its existing ammonia production facility in Donaldsonville and a proposed \$2 billion world-scale low-carbon ammonia production facility in Ascension Parish.¹⁶⁴ Air Products has obtained investment approval to build the Louisiana Clean Energy Complex, a plant located in Darrow, Ascension Parish, that will produce blue ammonia for international buyers.¹⁶⁵ On April 1, 2024, the Army Corps of Engineers issued a public notice and comment period for a pipeline extension to a Clean Hydrogen Works plant planned for Donaldsonville.¹⁶⁶ That same day, the Army Corps issued a public notice and comment period for a PCS Nitrogen ammonia plant in Geismar, Louisiana.¹⁶⁷ Additional projects have been announced and are in early stages. Existing ammonia plants are not announcing shutdowns, meaning the market for ammonia will be flooded as newer and larger projects come online. Without a reasonable economic analysis that accounts for the explosive growth in the ammonia market, this Project lacks justification.¹⁶⁸

Finally, SCCF asserts broadly that it will be providing the social benefit of "low-carbon" ammonia.¹⁶⁹ The application goes so far as to say that the "proposed Project will help Louisiana to achieve the net-zero CO₂ emission goal set forth in Louisiana's Climate Action Plan."¹⁷⁰ This is a red herring and "bluwashes" the true impacts of this Project. Although the Facility will ostensibly reduce its own CO₂ emissions, this does not advance the State's goals. At best, there will not be as many CO₂ emissions from this particular facility, which will nevertheless emit significant amounts of ammonia and other pollutants, as discussed above in Part II (B)(1). It is

Prosperity to Louisiana's Residents? Ohio River Valley Institute (November 2023). Attached as Exhibit N.

¹⁶⁴ CF Industries Proposes New \$2 Billion Low-Carbon Ammonia Production Facility in Ascension Parish, Louisiana Economic Development (Sept. 14, 2023), available at <https://www.opportunitylouisiana.gov/news/cf-industries-proposes-new-2-billion-low-carbon-ammonia-production-facility-in-ascension-parish#>.

¹⁶⁵ Louisiana Clean Energy Complex, Air Products, available at <https://www.airproducts.com/energy-transition/louisiana-clean-energy-complex>.

¹⁶⁶ Public Notice [Denbury Gulf Coast Pipelines], Army Corps of Engineers, available at https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/202300900_Pnall_04012024.pdf?ver=Du3Hx662J-rJEY-erP-UVw%3d%3d.

¹⁶⁷ Public Notice [PCS Nitrogen Fertilizer], Army Corps of Engineers, available at https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2018_00991_PNall_04012024.pdf?ver=lv_Po.

¹⁶⁸ If the Project is permitted and built, then fails due to these market conditions, the result is still dire: the wetlands will have been destroyed, impervious surfaces will have been added, and St. Rose will face greater flooding risks.

¹⁶⁹ Needs, Alternatives, Justification p. 5.

¹⁷⁰ *Id.*

also not clear that the carbon capture technology SCCF proposes to use is actually feasible at scale and will safely and effectively transport and store CO₂ for millennia, as would be required to meet the state's climate goals.¹⁷¹ Moreover, this representation omits the fact that the Facility relies on natural gas, which has substantial methane emissions. Methane is a potent greenhouse gas that, in the short term, causes greater atmospheric warming than CO₂.¹⁷² Finally, the emphasis on "clean" ammonia production begs the question: clean for whom? Clean for the people of Elkinsville, who will be subjected to contaminated waters and air? Clean for the first responders of St. Charles Parish, who will have to respond to highly toxic conditions if there is a facility failure? It is critical that OCM carefully examine the veracity of these purported social benefits for the people who live in the immediate vicinity of the Facility and who will be most impacted by its harms.

Because the social and economic benefits of this Project do not outweigh the environmental impacts, OCM should deny this permit under its public trust duty.

C. SCCF's Alternative Sites Analysis Is Inadequate and Arbitrary.

The alternative sites analysis provided by SCCF is an exercise in reverse engineering, with each subsequent iteration making the company's preferred site seem like the only viable option. But careful review of these alternatives highlights that the selected IMTT St. Rose location is a uniquely bad location for this Facility, most especially because of its wetlands impacts. The Project does not require placement in wetlands, as discussed in Part II (E) above, and the company's alternative sites analysis indicates that other sites may be practicable. At the very least, the selected St. Rose IMTT site gives rise to many, if not all, of the criteria for rejection that SCCF used for the alternative sites. The alternative sites analysis fails the public trust analysis for the following reasons:

SCCF listed four alternative sites to that of the St. Rose IMTT plot in its application to OCM: the Noel site, the River-Plex site, the St. Charles Intermodal site, and the Welham site.¹⁷³ SCCF rejected all four potential sites, citing some combination of a lack of existing infrastructure, the presence of wetlands, and the presence of "known cultural resources."¹⁷⁴ Each of these factors, however, applies to the St. Rose IMTT site as well.¹⁷⁵

¹⁷¹ Whitney Jones et al., *The Landscape of Carbon Dioxide Removal and US Policies to Scale Solutions*, Rhodium Group (Apr. 10, 2024), attached as Exhibit O; *see also* Justine Calma, *Taking CO₂ Out of the Air Would Be an Absurdly Expensive Way to Fight Climate Change*, *The Verge* (Apr. 11, 2024), available at <https://www.theverge.com/2024/4/11/24127331/carbon-dioxide-removal-costs-rhodium-group-report>.

¹⁷² David Schlissel & Dennis Wamsted, *Carbon Capture's Methane Problem*, Institute for Energy Economics and Financial Analysis (Aug. 1, 2022), available at <https://ieefa.org/resources/carbon-captures-methane-problem>, attached as Exhibit P.

¹⁷³ Needs, Alternatives, Justification p. 10.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

First, each of the alternative sites would damage fewer acres of wetlands. This alone should disqualify the St. Rose site. Each rejected alternative site has over 220 acres of non-wetlands available for development.¹⁷⁶ And the IMTT St. Rose facility is the only proposed site that would require the placement of nearly the entire facility in wetlands. Not only would the IMTT St. Rose site contribute to greater wetlands degradation, but it would put surrounding residents at greater risk because of the unstable nature of wetlands and the potential for accidents when siting heavy industry in such areas, as explained above in Part II (A).

Although some of the alternative sites lack existing infrastructure, each has the purportedly necessary requisite Mississippi River access, natural gas access, and CO2-tie-in access necessary for the core functions of the Facility.¹⁷⁷ Additionally, the Welham site has railroad access.¹⁷⁸ SCCF cites a lack of water and sewerage infrastructure and the absence of dock access reasons for rejecting the alternative locations.¹⁷⁹ At the same time, however, SCCF states in its Needs, Alternatives, and Justification analysis that it would still need to construct utility line extensions, natural gas pipeline extensions, waterline extensions, and roads and bridges at the St. Rose IMTT site.¹⁸⁰ Furthermore, SCCF contends that it will be able to utilize the existing sewage system at St. Rose, one of the reasons why the St. Rose site was chosen.¹⁸¹ However, SCCF openly admits that “sewage designs are still being finalized” and states that if the existing sewage mains are unable to handle the transportation of the combined waste volume from both IMTT and SCCF, then it will be forced to use vacuum trucks to bring the waste to different lift stations within the parish.¹⁸² To assert that truck transportation equates to utilizing the “existing parish sewer system” is both false and misleading.¹⁸³

Additionally, SCCF’s alternative sites analysis is incomplete, and some omissions raise questions about the accuracy of the information provided. For instance, the proposed alternative River-Plex Site cannot actually be considered as a viable alternative because it is currently the proposed site of the new CF Industries “blue” ammonia complex.¹⁸⁴ The alternative sites analysis also does not discuss whether there are proximate residential areas to the other alternative sites and if those communities are already overburdened by pollution, as the Elkinsville community is.¹⁸⁵ Indeed, based on the maps SCCF provided in its application, the IMTT St. Rose site appears to be far more proximate to residential areas than some of the alternative sites.¹⁸⁶ In its Needs, Alternatives, and Justification analysis, SCCF writes that

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 17-18.

¹⁸¹ *Id.* at 18.

¹⁸² *Id.* at 14.

¹⁸³ *Id.*

¹⁸⁴ CF Industries Application for Major Source Air Permit to LDEQ, AI No. 149544, EDMS Doc. No. 13983993, at pdf page 165 (Sept. 11, 2023) (showing map of proposed facility site on the same plot as SCCF’s “River-Plex site”).

¹⁸⁵ *See* Needs, Alternatives, Justification pp. 11-12, 15.

¹⁸⁶ *Id.* at Appendices B-F.

portions of the IMTT St. Rose site are “strategically located, away from any existing public areas.”¹⁸⁷ But maps showing the 2,000-foot residential offset line indicate that the Facility would be even closer than 2,000 feet to residential parcels in some places.¹⁸⁸ The Noel, River-Plex, and Welham sites, in contrast, appear to have no such residential proximity.¹⁸⁹ As discussed further in Part III (D), the buffer zone requirements at the IMTT St. Rose site are barely met and at times appear to be within 2,000' of homes, churches, playgrounds, and a cemetery.

Another deceptive use of alternatives sites in the SCCF application is in the use of “prime farmlands” as a factor in its site selection. SCCF concludes in its February Needs, Alternatives, and Justification analysis that it eliminated the Noel, River-Plex, St. Charles Intermodal Terminal, and Welham Sites because they contained large areas of Prime Farmland under the Farmland Protection Policy Act (FPPA).¹⁹⁰ The purpose of the FPPA is to “minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion to nonagricultural uses.” 7 U.S.C. § 4201(b). It has absolutely nothing to do with an alternative sites analysis under Louisiana’s coastal zone program and guidelines. Importantly, the Act does not “authorize the Federal Government in any way to regulate the use of private or non-Federal land, or in any way affect the property rights of owners of such land.” 7 U.S.C. § 4208(a). SCCF acknowledges this fact in its February Needs, Justification, and Alternatives analysis, admitting that the Act does not typically apply to privately funded projects like this Facility.¹⁹¹ It justifies its use of prime farmland as one of its alternative sites factors by stating that “there is currently no requirement to mitigate the conversions of Prime Farmland to nonagricultural uses. . . . When Prime Farmlands are developed, they are not mitigated or returned to native habitats but are instead lost, in most cases in perpetuity.”¹⁹² Here, Prime Farmlands is a trivial factor at best for the alternative site analysis, if not an outright wholly inconsequential one. OCM has no duty to protect prime farmland, and its conversion into grounds for development are not relevant to OCM’s regulations regarding the protection of natural resources. Additionally, SCCF’s dismissal of the alternative sites that contain large areas of prime farmland contradicts the fact that each site is already zoned industrial (and in the case of the River-Plex site, partly industrial and partly commercial).¹⁹³ None of them are zoned for agricultural use.¹⁹⁴ This fact further weakens SCCF’s emphasis on the presence of prime farmlands at these sites, as the parishes of each site has already set it aside for industrial or commercial use.

¹⁸⁷ *Id.* at 13.

¹⁸⁸ Public Notice [SCCF CWA Permit], Army Corps of Engineers, Overall Area Map, Sheet A-3; also attached to SCCF’s Feb. 2, 2024 CUP application, available at https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2022_00623_PNALL_122523_2.pdf?ver=ESAOK7FimoUsbu8Rgb6Idg%3d%3d.

¹⁸⁹ Needs, Alternatives, Justification at Sheet AA-2c (Noel); AA-3c (River-Plex); AA-5c (Welham).

¹⁹⁰ *Id.* at 20.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 10.

¹⁹⁴ *See id.*

Regardless, SCCF did not actually rely on the farmlands issue when selecting the site; earlier iterations of its CUP application did not include this factor at all.¹⁹⁵ SCCF's February alternatives analysis identifies prime farmlands under the FPPA as a significant—if not *the* most significant—reason it selected the St. Rose site.¹⁹⁶ Indeed, SCCF dedicates an entire paragraph to prime farmlands as justification for selecting the St. Rose site in its conclusion, relegating its summary of other factors to another (smaller) paragraph.¹⁹⁷ By the time it submitted its December CUP application, SCCF had already selected the St. Rose site instead of the Noel, River-Plex, St. Charles Intermodal Terminal, and Welham Sites—with no mention of the presence of prime farmlands. SCCF worked backwards to justify its selection of St. Rose, instead of working prospectively to balance the merits of each alternative site.

Thus, SCCF places great weight on attributes of the IMTT St. Rose site that there is no guarantee it can actually provide; one of the other “potential” sites is not a real alternative as it is already in development by a competing blue ammonia project; and the St. Rose site fulfills several criteria for rejection that SCCF used to justify its dismissal of the alternative sites. OCM's alternatives analysis under the public trust doctrine should weigh these factors heavily; the analysis shows that SCCF did not conduct an actual, valid alternatives sites analysis but rather a post facto justification for a predetermined location for this Facility. In short, OCM's public trust duty mandates the denial of this permit application as written.

D. SCCF's Mitigating Measures Are Insufficient to Be Protective.

The final factor in the public trust analysis is a determination of whether there are “mitigating measures which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits.”¹⁹⁸

As discussed above in Part II (F), a similar analysis in the OCM regulations prohibit OCM from granting a Coastal Use Permit unless its permitting process includes an evaluation of the “requirement for compensatory mitigation to offset any net loss of coastal resources ecological value that is anticipated to occur despite efforts to avoid, minimize, and restore permitted/authorized impacts.”¹⁹⁹ Thus, OCM cannot legally issue a permit for any activity until the need for compensatory mitigation has been fully evaluated under both its public trust duty and the applicable regulations. OCM would have to quantify the “unavoidable net losses of coastal resources' ecological value” that would result from the Project's construction and life span.²⁰⁰

¹⁹⁵ Needs, Alternatives, and Justification, December CUP Application (Dec. 11, 2023) p. 10.

¹⁹⁶ Needs, Alternatives, Justification p. 20.

¹⁹⁷ *Id.*

¹⁹⁸ *Blackett v. LDEQ*, 506 So. 2d 749, 754 (La. App. 1 Cir. 1987) (citing *Save Ourselves v. La. Envtl. Control Comm'n*, 452 So. 2d 1152 (La. 1984)).

¹⁹⁹ LAC 43.I.724(B)(1)(c).

²⁰⁰ LAC 43.I.724(C)(1).

The full scope of construction impacts from the new Facility are insufficiently detailed for Commenters and OCM to assess the true environmental impacts. For instance, although SCCF asserts that their laydown yard will be "temporary" and the wetlands will be restored afterward, there is scant detail about the timeline or means for doing so.²⁰¹ SCCF thus offers an inadequate analysis of whether there are mitigating measures that will offer more protection to the environment or surrounding community. The application notes that its operations will adhere to all applicable laws. However, the Facility's application reveals that it will barely meet the buffer zone requirements and at times, appear to even cross the 2,000-foot line.²⁰² The Parish's local ordinance requires a 2,000-foot buffer zone between major operations of heavy manufacturing and industry (zoned M-2), and residential or certain commercial areas (zoned R, CR-1, or CR-2).²⁰³

IMTT appears to have sought rezoning of certain parcels of the property from residential to M-2 to accommodate the future construction of this ammonia facility.²⁰⁴ This suggests that the site was originally intended for residential use, and it is dangerously close to the homes of St. Rose residents. But without a clear site plan or analysis of the buffer zone from SCCF or OCM, Commenters cannot fully assess this. OCM should give special consideration to mitigation that would protect Elkinsville. As previously discussed, this Project could threaten its status as a historic cultural site. This is exemplified by a visit to the physical site of the proposed project, where the historic plaque detailing Elkinsville's rich cultural history and significance sits just over the levee, mere feet from the existing IMTT docks which SCCF plans to refit for further industrial use.²⁰⁵ SCCF's CUP application details how it intends to install extensive metal decks along the length of the dock as well as numerous "liquid ammonia product and vapor return loading arms."²⁰⁶ The construction and subsequent operations of this piece of the Facility would have substantial daily noise, odor, and air impacts felt at that very marker site, as discussed above in Parts II (B)(1) and (4). Without proper mitigation of adverse impacts to residential life in Elkinsville, the SCCF project risks harm to an important site of African American history in St. Charles Parish.

²⁰¹ Needs, Alternatives, Justification p. 16.

²⁰² The 2,000-ft buffer zone line is more clearly delineated in the public notice documents for the Army Corps of Engineers' Section 404 Permit. *See* Excerpt from Army Corps Public Notice for SCCF Section 404 Permit Application, Site Plan, attached as Exhibit Q, available at https://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2022_00623_PNALL_122523_2.pdf?ver=ESAOK7FimoUsbu8Rg6Idg%3d%3d.

²⁰³ St. Charles Par. Code Ord. Appendix A, Section VI, II (4)(b).

²⁰⁴ *See* Email from Tim Vial, President, St. Charles Parish Industrial Board (April 20, 2023), produced in response to Commenters' Public Record Request (Oct. 9, 2023), attached as Exhibit R; *see also* St. Charles Parish Council Meeting Recording, (Feb. 6, 2023) (approving IMTT rezone request) available at <https://www.youtube.com/watch?v=4PYCQF5IJRU>.

²⁰⁵ Historic Marker Database, Elkinsville-Freetown Map, available at: <https://www.hmdb.org/map.asp?markers=100384,85525,51606,200721,51607,109564,109613,85817,85770>.

²⁰⁶ Needs, Alternatives, Justification p. 12.

Importantly, part of the current site that SCCF intends to develop includes land purportedly designated as mitigation by IMTT for a prior Section 404 permit with the Army Corps of Engineers.²⁰⁷ There is no indication that this mitigation bank would be preserved if SCCF builds on the site, and there is no plan for how it would be replaced with comparable credits in another mitigation bank.²⁰⁸

Ultimately, the public trust analysis requires OCM to consider whether there are mitigating measures that would offer more protection to the environment than the Facility as proposed. Here, a legitimate alternative sites analysis could provide an answer to that inquiry—but SCCF has not provided one. The selected IMTT St. Rose shares many of the qualities for which other potential sites were eliminated, such as cultural resources, as discussed in Part II(B)(3) above. Indeed, based on the limited criteria presented, those other sites could potentially offer significantly more protection for the human and natural environment. However, it is clear that the footprint of the St. Rose site directly on undeveloped natural wetlands will inevitably cause irreversible damage that will be difficult to mitigate.

In conclusion, all the factors required in the public trust analysis call for the rejection of this permit application as written. The environmental effects of the proposed Facility are quite serious, will be both permanent and immediate, and there are few, inadequate efforts to avoid or minimize the negative effects. A cost benefit analysis would demonstrate that the costs outweigh purported benefits—illustrating the need for another site that is not in such close proximity to residential areas and not built primarily upon natural wetlands. Further, the completion of a legitimate alternatives sites analysis is crucial. Finally, mitigating measures are incomplete and largely consist of vague promises to purchase credits elsewhere, away from the impacted residential area and therefore of little to no use to the residents and existing industrial neighbors of the Facility.

CONCLUSION

SCCF has presented a substantially inadequate application for a Coastal Use Permit. The materials before OCM present a project in violation of several critical Coastal Use Guidelines, the purported benefits of which do not outweigh its adverse impacts to the wetlands and the already endangered, overburdened environmental justice community of Elkinsville and St. Rose as a whole. Additionally, approval would violate OCM's duty under the public trust. The residents of St. Rose do not want another factory in their backyard; and they want their voices to be heard. For the reasons set forth both here and in previous comments, Commenters respectfully request OCM grant a public hearing and deny a Coastal Use Permit for the proposed Facility.

²⁰⁷ Letter from Andrew Knight, CK Associates, to Brad Laborde, USACE, and Keith Lovell, LDNR, re: Permittee Responsible Mitigation Site for MVN 2004-911-EKK and MVN 2006-0944-EKK CK Associates Project No. 20486 (Oct. 2, 2023), attached as Exhibit M.

²⁰⁸ *See id.*

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Exhibit List

- A. Letter from Gaynell Ellis and Refined Community Empowerment to LDENR Re: Public Hearing for SCCF CUP Application, April 11, 2024.
- B. Petition for Public Hearing with over 200 signatures.
- C. EJ Screen Community Report for St. Rose, LA (Blockgroup 22089062201), Downloaded April 18, 2024.
- D. National Wetlands Inventory Screenshot for IMTT Site, US Fish and Wildlife Service, (April 15, 2024).
- E. December 20, 2024, Comment from Refined Community Empowerment to LDEQ.
- F. Based on a WebofScience search on Nov 30, 2023 using the keywords “ammonia” AND “exposure” AND “respiratory.”
- G. Coastal Protection and Restoration Authority, St. Charles Parish Fact Sheet (2017).

- H. Letter from Stephen Clark, LDWF, to Kyle Balkam, LDENR, Feb. 12, 2024, Re Application Number, P20230672.
- I. Email from DCRT Section 106 to Office of Coastal Management, Re: P20230672 – Notice (Mar. 28, 2024).
- J. Phase I Intensive Archaeological Investigation of the St. Rose to Norco Pipeline, St. Charles Parish, Louisiana, Prepared for: International Matex Tank Terminals, LLC by Gulf South Research Corporation (May 2020).
- K. “Special Conditions: Condition 7,” Excerpt from Army Corps Permit to IMTT, Permit No. MVN 2004-911 EKK.
- L. Environmental Assessment Statement, LDEQ, Mar. 27, 2024, EDMS Doc. No. 14230800, p. 50.
- M. Letter from Andrew Knight, CK Associates, to Brad Laborde, USACE, and Keith Lovell, LDNR, re: Permittee Responsible Mitigation Site for MVN 2004-911-EKK and MVN 2006-0944-EKK CK Associates Project No. 20486 (Oct. 2, 2023).
- N. Nick Messenger, Chemical Coastline: Has Investment in the Petrochemical Industry Brought Shared Prosperity to Louisiana’s Residents?, Ohio River Valley Institute (November 2023).
- O. Whitney Jones et al., The Landscape of Carbon Dioxide Removal and US Policies to Scale Solutions, Rhodium Group (Apr. 10, 2024).
- P. David Schlissel & Dennis Wamsted, Carbon Capture’s Methane Problem, Institute for Energy Economics and Financial Analysis (Aug. 1, 2022).
- Q. Excerpt from Army Corps Public Notice for SCCF Section 404 Permit Application, Site Plan.
- R. Email from Tim Vial, President, St. Charles Parish Industrial Board (April 20, 2023), produced in response to Commenters’ Public Record Request (Oct. 9, 2023).