

Attachment A

Nearby Sources to Ajax Facility, Dan McGeen

McGeen, Dan (EGLE)

From: McGeen, Dan (EGLE)
Sent: Monday, April 12, 2021 1:12 PM
To: Ethridge, Christopher (EGLE); Switzer, Annette (EGLE); Myott, Brad (EGLE); Brown, Ambrosia (EGLE); Mitchell, Mark (EGLE)
Cc: Dolehanty, Mary Ann (EGLE); Olaguer, Jay (EGLE)
Subject: RE: RESPONSE REQUESTED: Draft Bubble Up - Ajax
Attachments: P1171 distant view 04_12_2021 (002).png

You are very welcome Chris. I inadvertently omitted some industries in the south portion of the distant overview map, so am attaching an updated version. All industries on the map have either been the subject of inspections by AQD, or have had potential connections to complaints received by AQD.

Thanks,

Dan

From: Ethridge, Christopher (EGLE) <ETHRIDGEC@michigan.gov>
Sent: Monday, April 12, 2021 12:50 PM
To: McGeen, Dan (EGLE) <MCGEEND@michigan.gov>; Switzer, Annette (EGLE) <SWITZERA2@michigan.gov>; Myott, Brad (EGLE) <MYOTTB@michigan.gov>; Brown, Ambrosia (EGLE) <BrownA39@michigan.gov>; Mitchell, Mark (EGLE) <MITCHELLM7@michigan.gov>
Cc: Dolehanty, Mary Ann (EGLE) <DOLEHANTYM@michigan.gov>; Olaguer, Jay (EGLE) <OlaguerJ@michigan.gov>
Subject: RE: RESPONSE REQUESTED: Draft Bubble Up - Ajax

Thanks for these Dan. They are very helpful to understand the air concerns in the area.

From: McGeen, Dan (EGLE) <MCGEEND@michigan.gov>
Sent: Monday, April 12, 2021 9:54 AM
To: Switzer, Annette (EGLE) <SWITZERA2@michigan.gov>; Myott, Brad (EGLE) <MYOTTB@michigan.gov>; Brown, Ambrosia (EGLE) <BrownA39@michigan.gov>; Mitchell, Mark (EGLE) <MITCHELLM7@michigan.gov>; Ethridge, Christopher (EGLE) <ETHRIDGEC@michigan.gov>
Cc: Dolehanty, Mary Ann (EGLE) <DOLEHANTYM@michigan.gov>; Olaguer, Jay (EGLE) <OlaguerJ@michigan.gov>
Subject: RE: RESPONSE REQUESTED: Draft Bubble Up - Ajax

Hi all,

Attached are updated maps/satellite images which help show the concentration of industries existing in the Dort-Carpenter area.

Thanks,

Dan

From: McGeen, Dan (EGLE)
Sent: Friday, April 09, 2021 9:37 AM

To: Switzer, Annette (EGLE) <SWITZERA2@michigan.gov>; Myott, Brad (EGLE) <MYOTTB@michigan.gov>; Brown, Ambrosia (EGLE) <BrownA39@michigan.gov>; Mitchell, Mark (EGLE) <MITCHELLM7@michigan.gov>; Ethridge, Christopher (EGLE) <ETHRIDGEC@michigan.gov>
Cc: Dolehanty, Mary Ann (EGLE) <DOLEHANTYM@michigan.gov>; Olaguer, Jay (EGLE) <OlaguerJ@michigan.gov>
Subject: RE: RESPONSE REQUESTED: Draft Bubble Up - Ajax

Hi Annette,

Thank you for the opportunity to review and provide feedback. I have a few comments for consideration:

- It is my understanding that AJAX has purchased the single house on the north side of Carpenter Road. That was the closest residence to the proposed HMA plant location, at approx. 1000' distance. The next closest residences are on the south side of Carpenter Road, with one or more at approx.. 1100' distance. Please see updated map/satellite image, attached.
- Since May 2020, the AQD LDO has received 23 odor complaints from a Flint resident, concerning an indeterminate source or sources, in the vicinity of Dort and Carpenter Road and I-475. The LDO has been responding to these, and has tried to determine the responsible source(s). The alleged odors have ranged from sewer gases coming up through floor drains and household plumbing, and damaged city sewer lines (not regulated by AQD), to a repeated "chemical smell" and, more recently, "burnt rubber." The complainant has also reported odors on one occasion from driving by Genesee Power Station (GPS), and made 10 complaints of odors attributed to RJ Torching and/or smoke and odors from driving by RJ Torching. Health effects are attributed by the complainant to the odors, and their current doctor has suggested they may need to relocate to an area where they are not impacted by air pollution. A second complainant recently reported burning alleged to take place at RJ Torching.
- For the unknown odors at their residence, the complainant primarily suspects GPS as the source now, but hourly weather data frequently shows winds out of the wrong directions to clearly support GPS as the source. The LDO has verified level 3 odors from the GPS wood pile once, but has not been able to detect these odors in the complainant's neighborhood.
- The LDO has verified excess opacity from RJ Torching, but has not found torch cutting odors at the residence. AQD continues to work on the RJ Torching enforcement case with EPA, DOT, and the Michigan DAG, and it is standard to check for opacity from this source every time I am in Genesee County. A small scrapyards, nearby, may be the subject of an upcoming multi-media investigation, as a possible odor source.

I apologize for the length of some of my comments, above. Please feel free to edit anything for inclusion in the Bubble Up report.

Thank you,

Dan

From: Switzer, Annette (EGLE) <SWITZERA2@michigan.gov>

Sent: Friday, April 09, 2021 9:29 AM

To: Myott, Brad (EGLE) <MYOTTB@michigan.gov>; McGeen, Dan (EGLE) <MCGEEND@michigan.gov>; Brown, Ambrosia (EGLE) <BrownA39@michigan.gov>; Mitchell, Mark (EGLE) <MITCHELLM7@michigan.gov>; Ethridge, Christopher (EGLE) <ETHRIDGEC@michigan.gov>

Cc: Dolehanty, Mary Ann (EGLE) <DOLEHANTYM@michigan.gov>; Olaguer, Jay (EGLE) <OlaguerJ@michigan.gov>

Subject: RE: RESPONSE REQUESTED: Draft Bubble Up - Ajax

Correction, the meeting is **Monday, April 26th**. Sorry for any confusion.

Annette Switzer
NEW 517-643-3847

From: Switzer, Annette (EGLE)
Sent: Thursday, April 8, 2021 5:17 PM
To: Myott, Brad (EGLE) <MYOTTB@michigan.gov>; McGeen, Dan (EGLE) <MCGEEND@michigan.gov>; Brown, Ambrosia (EGLE) <BrownA39@michigan.gov>; Mitchell, Mark (EGLE) <MITCHELLM7@michigan.gov>; Ethridge, Christopher (EGLE) <ETHRIDGEC@michigan.gov>
Cc: Dolehanty, Mary Ann (EGLE) <DOLEHANTYM@michigan.gov>; Olaguer, Jay (EGLE) <OlaguerJ@michigan.gov>
Subject: RESPONSE REQUESTED: Draft Bubble Up - Ajax
Importance: High

Good afternoon,

A meeting has been scheduled for Monday, April 24th with EGLE Executive Office to discuss the Permit to Install application for the installation of AJAX's proposed new asphalt plant on Energy Drive in Flint Charter Township, Michigan. I have started the draft attached Bubble Up document which is meant to provide a very brief overview of the topic and some background. The document will be provided to the EGLE executive office prior to our discussion regarding AJAX.

Please review the document and provide any feedback or additional topics you think are important to include. I included attachments I thought you might find helpful in your review.

A response no later than Tuesday, April 13th would be greatly appreciated.

This document will be provided to Jay and Mary Ann for review after I have incorporated your comments.

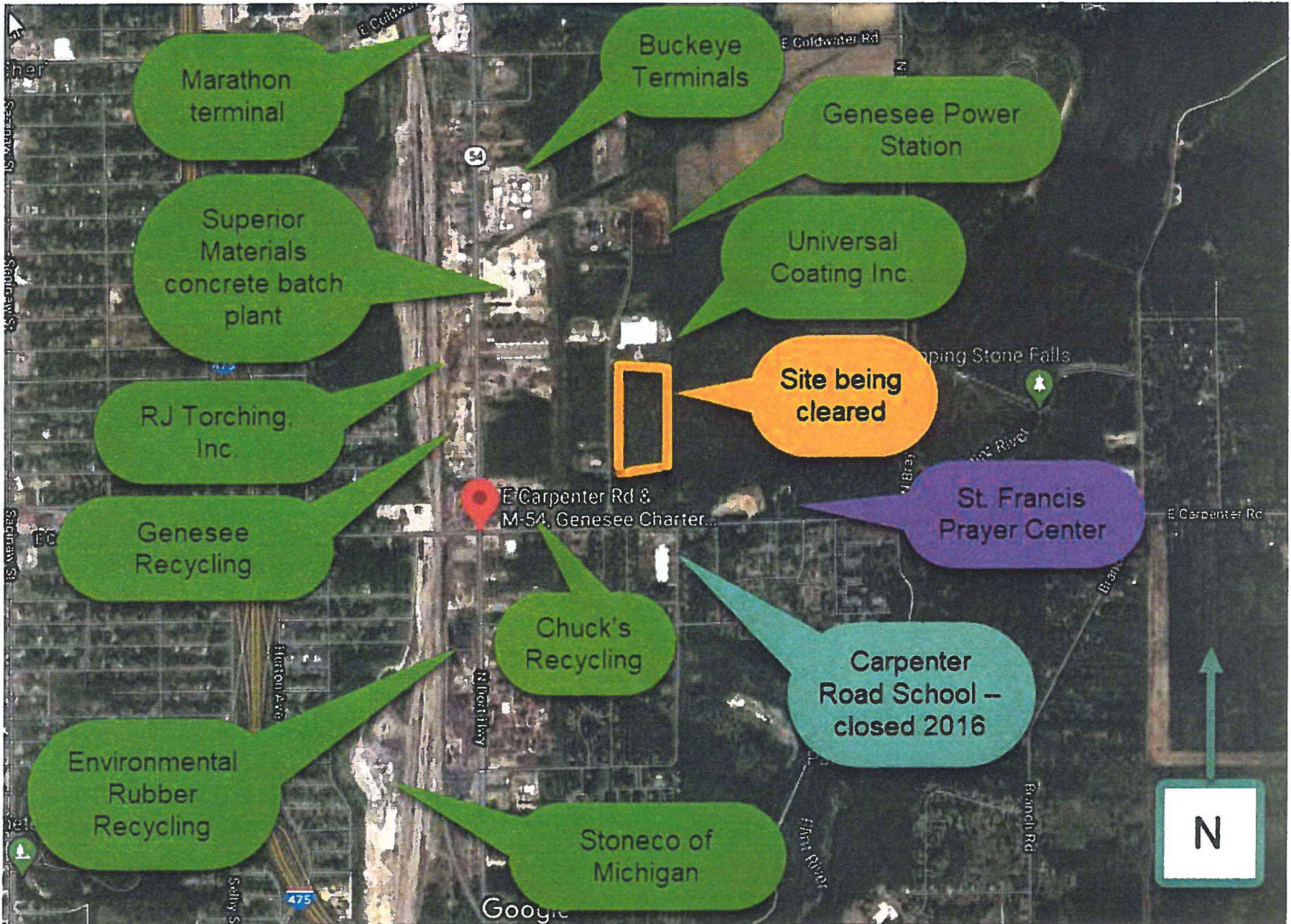
Feel free to call me with any questions.

Thank you for your help,
Annette

Annette Switzer, PE
Permit Section Manager
Air Quality Division
Michigan Department of Environment, Great Lakes, and Energy
NEW 517-643-3847 | switzera2@Michigan.gov
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LET'S STAY SAFE TOGETHER



Marathon terminal

Buckeye Terminals

Genesee Power Station

Superior Materials concrete batch plant

Universal Coating Inc.

RJ Torching, Inc.

Site being cleared

Genesee Recycling

Chuck's Recycling

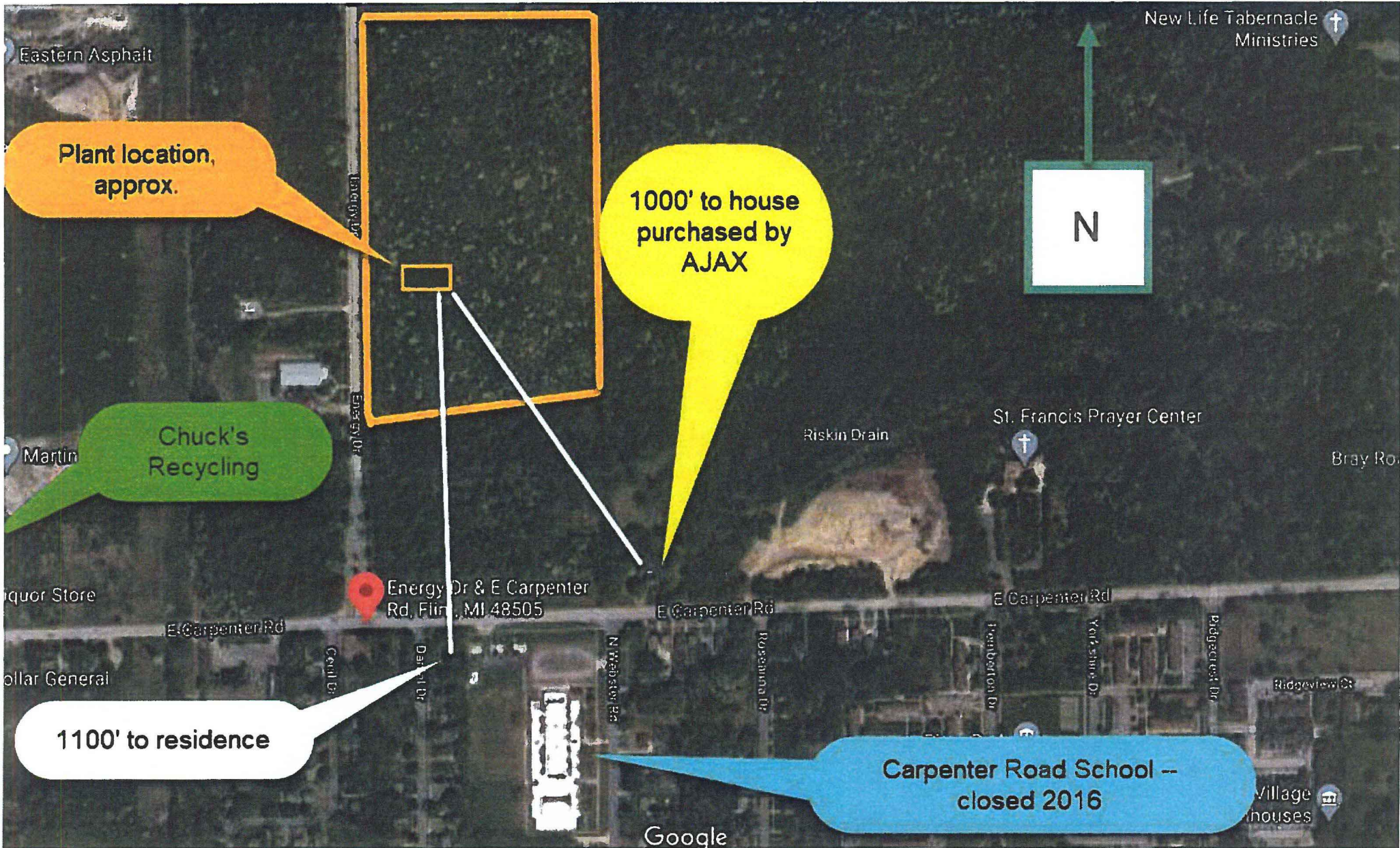
St. Francis Prayer Center

Environmental Rubber Recycling

Carpenter Road School - closed 2016

Stoneco of Michigan

N



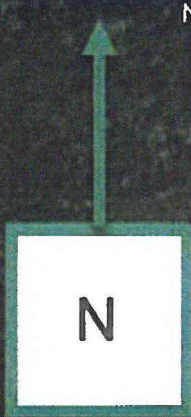
Plant location, approx.

1000' to house purchased by AJAX

Chuck's Recycling

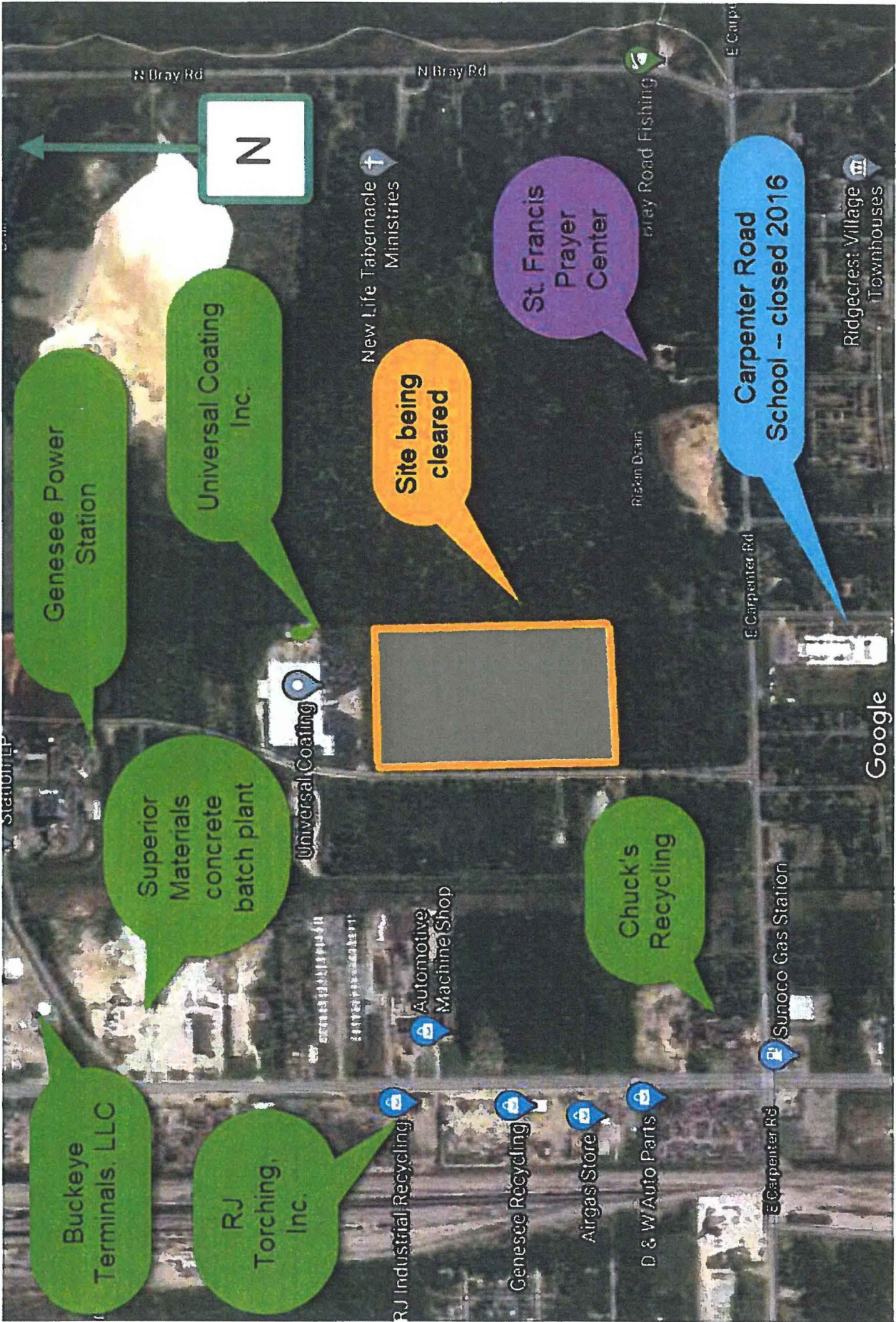
1100' to residence

Carpenter Road School -- closed 2016



Energy Dr & E Carpenter Rd, Flint, MI 48505

Google



Genesee Power Station

Universal Coating Inc.

Site being cleared

St. Francis Prayer Center

Carpenter -- closed 2016

Superior Materials concrete batch plant

Chuck's Recycling

Buckeye Terminals, LLC

RJ Torching, Inc.

RJ Industrial Recycling

Genesee Recycling

Airgas Store

D & W Auto Parts

Automotive Machine Shop

Sunoco Gas Station

Ridgecrest Village Townhouses

New Life Tabernacle Ministries

N Bray Rd

N Bray Rd

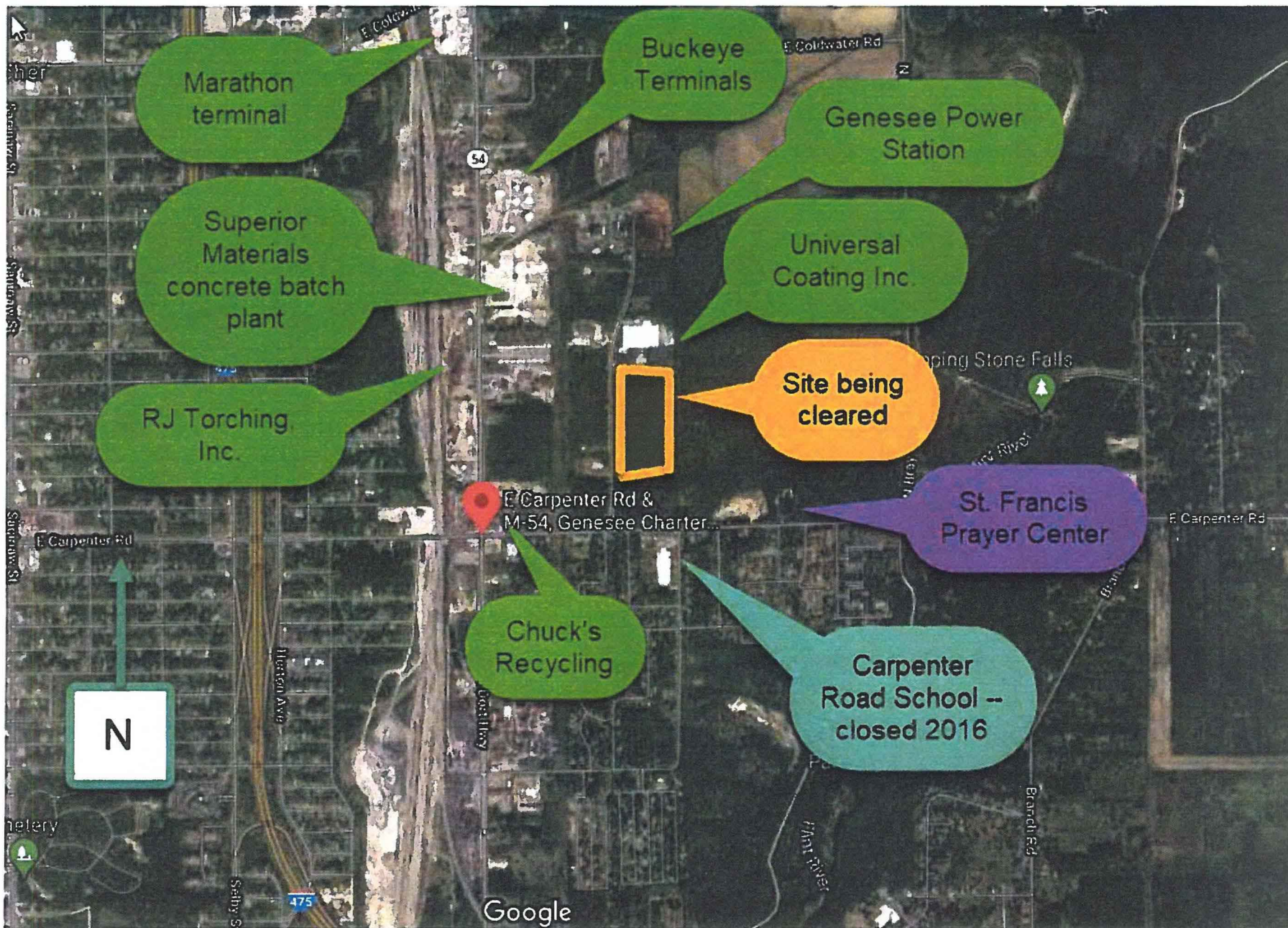
Riskyin Drain

E Carpenter Rd

E Carpenter Rd

E Carpenter Rd

Google



Marathon terminal

Superior Materials concrete batch plant

RJ Torching Inc.

Buckeye Terminals

Genesee Power Station

Universal Coating Inc.

Site being cleared

St. Francis Prayer Center

Chuck's Recycling

Carpenter Road School -- closed 2016



Google

Attachment B

Flint Facilities Inspection Summary, AQD -
Lansing

McGeen, Dan (EGLE)

From: Myott, Brad (EGLE)
Sent: Tuesday, April 13, 2021 12:47 PM
To: Switzer, Annette (EGLE); McGeen, Dan (EGLE); Brown, Ambrosia (EGLE); Mitchell, Mark (EGLE); Ethridge, Christopher (EGLE)
Cc: Dolehanty, Mary Ann (EGLE); Olaguer, Jay (EGLE)
Subject: RE: RESPONSE REQUESTED: Draft Bubble Up - Ajax
Attachments: LDO GenCo.SourceUpdate2021.docx

Hi Annette, I just want to pass along the attached document that the Lansing District has updated over the years summarizing some of the facilities in the Flint area that are located near the proposed site for AJAX. Let me know if you have any questions or want to discuss. Thanks, Brad.

Brad Myott
Lansing District Supervisor
AQD/EGLE
517-294-9394

From: Switzer, Annette (EGLE) <SWITZERA2@michigan.gov>
Sent: Thursday, April 08, 2021 5:17 PM
To: Myott, Brad (EGLE) <MYOTTB@michigan.gov>; McGeen, Dan (EGLE) <MCGEEND@michigan.gov>; Brown, Ambrosia (EGLE) <BrownA39@michigan.gov>; Mitchell, Mark (EGLE) <MITCHELLM7@michigan.gov>; Ethridge, Christopher (EGLE) <ETHRIDGEC@michigan.gov>
Cc: Dolehanty, Mary Ann (EGLE) <DOLEHANTYM@michigan.gov>; Olaguer, Jay (EGLE) <OlaguerJ@michigan.gov>
Subject: RESPONSE REQUESTED: Draft Bubble Up - Ajax
Importance: High

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Please review the document and provide any feedback or additional topics you think are important to include. I included attachments I thought you might find helpful in your review.

A response no later than Tuesday, April 13th would be greatly appreciated.

This document will be provided to Jay and Mary Ann for review after I have incorporated your comments.

Feel free to call me with any questions.

Thank you for your help,
Annette

Annette Switzer, PE
Permit Section Manager
Air Quality Division

Michigan Department of Environment, Great Lakes, and Energy

NEW 517-643-3847 | switzera2@Michigan.gov

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LET'S **STAY SAFE** TOGETHER

Flint Area, Genesee County

Genesee Power Station is a 35 Megawatt (MW) power plant which consists of one stoker boiler with a maximum heat input rating of 523 MMBtu/hr. The boiler is permitted to fire wood-waste including demolition wood, animal bedding, natural gas (for startup), and tire derived fuel (TDF). The facility has not combusted animal bedding as a fuel since December 3, 2013, and references to it will be removed from the renewable operating permit (ROP) upon renewal. Emissions from combustion of the fuels are controlled by a multi-cyclone separator, an electrostatic precipitator (ESP) and a selective non-catalytic reduction system (SNCR). The wood-waste fuel which primarily consists of brush and tree trimmings is stored uncovered on seven acres at the site and is managed in a two-pile system to minimize any potential odors.

The Genesee Power Station (GPS) is located in the Dort Carpenter Industrial Park, Genesee Township, Flint. The industrial park is joined by commercial and industrial property at its western boundary. To the north and east is agricultural and residential property. The southern boundary begins the city of Flint, which is urban residential. The now closed Carpenter elementary school is located 3500 feet directly south of the plant.

There are **Environmental Justice** concerns associated with the Genesee Power Station. In December 1992 following a lengthy and controversial public participation process the Air Quality (AQD) approved an air use permit to Install (PTI) for the facility. As part of that public participation process a local citizens group sent letters to the United States (US) Environmental Protection Agency (EPA) urging denial of the permit and alleging environmental racism and civil rights violations. Based on these allegations, US EPA Office of Civil Rights initiated a civil rights investigation of the Michigan Department of Environmental Quality (MDEQ). On July 15, 2015 environmental justice advocacy groups represented by Earthjustice sued EPA in the U.S. District Court for the Northern District of California over the agency's failure to resolve long-lingering complaints including Genesee Power alleging violations of Title VI of the Civil Rights Act of 1964.

In a letter dated January 19, 2017, the US EPA External Civil Rights Compliance Office (former Office of Civil Rights) resolved and closed the case. In the letter EPA claimed that discriminatory treatment of African Americans occurred during the 1992-1994 public participation process for the PTI. However, many of the public participation deficiencies referenced in the January 19, 2017 findings have since been addressed, enhanced, and revised by the MDEQ-AQD. It is worth noting that EPA did not find sufficient evidence to support allegations of harm with respect to public health.

AQD has conducted 10 full compliance evaluations and inspections at the facility in the past 15 years and discovered 3 violations. The violation in 2007 was associated with improper ash handling and another in 2012 was due to an untimely submittal of a report. In 2019 they received a violation for monitor downtime. All violations were resolved timely. The facility was last inspected on May 16, 2019 and was found to be in compliance with the applicable air quality rules and regulations, and ROP No. MI-ROP-N3570-2012. AQD has visited the facility at least 20 times in the past 15 years to conduct inspections, observe stack tests and follow up on complaints. The primary fuel during these inspections was non-demolition wood waste and a small percentage (less than 2%) of TDF. Information on the facility such as permits, inspection reports, and the latest testing results can be found on the AQD website under DEQ – Air Quality Source Information at:

http://www.michigan.gov/deq/0,4561,7-135-3310_70317-313032--,00.html

Emission testing of the biomass boiler was conducted on the day of the inspection in 2016. The emission testing was for particulate matter (PM), mercury (Hg), and hydrogen chloride (HCl) while combusting 100% wood fuel. PM results were 0.0013 pound per Million British Thermal Unit (lb/MMBtu) which was 3.5% of the standard. Hg results were 2.8×10^{-7} lb/MMBtu which was 4.9% of the standard. HCl results were 0.013 lb/MMBtu which was 59% of the standard.

The biomass boiler was also tested on July 19, 2016 and the fuel combusted was TDF mixed with wood. PM results were 0.0011 lb/MMBtu which was 3.0% of the standard. Hg results were 3.7×10^{-7} lb/MMBtu which was 6.5% of the standard. HCl results were 0.010 lb/MMBtu which was 45% of the standard.

In the past citizens were concerned about potential lead emissions from the burning of painted demolition wood. Previous inspections have indicated that GPS has not fired any type of demolition wood for the past several years and previous stack testing results for lead confirm this. Lead emissions from the biomass boiler were last tested on July 22, 2015. Lead emissions were measured at 0.00273 pounds per hour which was 0.55% of the permit limit. If GPS decides to burn demolition wood the facility is required to follow a comprehensive wood waste procurement plan to assure the clean demolition wood fuel contains less than 3% painted wood.

AQD has received a total of seven GPS complaints since 2007. The most recent complaint on November 24, 2020 was for odors in the area believed to be identified or associated with the wood fuel pile. Previous odor complaints in 2016 and 2015 were also associated with the wood fuel pile due to low boiler utilization resulting in a larger than normal wood pile. None of the complaints resulted in violations.

Located in the same industrial park as Genesee Power is Universal Coating, Inc. The owner and operator relocated an existing miscellaneous metal parts coating facility from Mount Morris to the Dort Carpenter Industrial Park in 2005. The parts produced are for industries such as automotive, military aerospace, appliance, furniture, and motor sports. The relocation was controversial due to the Environmental Justice concerns at the new location and was not helped by past non-compliance issues at the Mount Morris facility. A PTI modification by the company in 2014 resulted in a controversial public hearing where citizens voiced their displeasure about allowing additional air emissions in the area.

The facility has received 1 odor complaint in the last 10 years. The facility has been inspected 5 times in the past 10 years and has received 3 violation notices over that time period. The inspection conducted on November 2015 resulted in 2 violation notices for exceeding emission limits and not having proper monitoring data for their air pollution control device. The facility entered into a consent order with the DEQ to resolve the past violations and applied for a permit to install (PTI) modification for new equipment and to raise their emission limits.

Since the violations in 2015, the facility has replaced the old control device (catalytic oxidizer) with a newer more efficient control device (regenerative thermal oxidizer) to better control VOC emissions. The facility also installed a new monitoring system to help ensure continuous compliance. Testing of the new monitoring equipment and the thermal oxidizer on January 30th and 31st, 2017 indicated compliance. The PTI and consent order associated with these violations were public noticed and a public hearing was held on February 9, 2017 due to the facility being located near Genesee Power Station.

In addition, the facility is now a major source of Organic Hazardous Air Pollutants and has applied for an initial Renewable Operating Permit (ROP) with the AQD. The ROP will include all applicable state and federal air quality regulations and will require more monitoring, recordkeeping and reporting than in the past. Information on the facility such as permits, inspection reports, public comment documents and the latest testing results can be found on the AQD website under DEQ – Air Quality Source Information at:

http://www.michigan.gov/deq/0,4561,7-135-3310_70317-313032--,00.html

RJ Torching

RJ Torching is a metal recycler located in an industrious area of Flint at G-5167 North Dort Highway. Residential areas are located just over 0.5 miles to the north, less than 0.25 miles to the west, south, and south-west, with sporadic homes to the east near CS Mott Lake; Carpenter Road Elementary School is located approximately 0.6 miles to the south east from RJ Torching. The company accepts product from individuals and businesses of various sizes and metallurgical properties for the purpose of further marketing. Metal components that are large in size are either cut by torch or crushed. Certain metals, when cut by torch, create excessive visible emissions (VE's). Since 2007, AQD has logged 42 complaints for odor, opacity (VE's), open burning, and fallout. The complaints resulted in six letters of violation. During this time RJ Torching developed a device to filter smoke and reduce the visible emissions from torch cutting. They called the device the Smoke Particulate Air Reduction Cyclone System (SPARCS). This system was evaluated by AQD staff and found to be an ineffective compliance option.

In 2010, due to a lack of cooperativeness by the company, the violations were referred to US EPA. The EPA issued Administrative Consent Order (ACO) EPA 5-15-113(a)-MI-02 on April 1, 2015. Part of the consent order required training of employees on ways to mitigate opacity and the use of alternative methods to torch cutting and the use of the SPARCS unit when torch cutting metals that create high opacity. In July and August of 2015, the AQD received four complaints for odor and opacity. A subsequent complaint investigation conducted by the AQD resulted in violations of DEQ Rules 301 (opacity > 20%), 310 (open burning), 901 (odor), and paragraphs 8, 10, 13, 17, 19, and 23 of the ACO. These violations were referred to EPA and on December 18, 2015, EPA issued a notice of violation using the information provided by AQD. Subsequent discussions between EPA, AQD, and the company in 2017 did not resolve these outstanding violations.

The EPA enforcement case remains ongoing and was referred to the Department of Justice (DOJ) in late Decemeber of 2018. The AQD continues to work with EPA and DOJ to resolve the enforcement case. AQD continues to receive and respond to complaints regarding smoke from RJ Torching.

Fritz Enterprises of Flint (former Spooner Metals, LLC) is a metal recycling facility located on North Dort Highway approximately 1 mile to the South of the Dort Carpenter Industrial Park. The facility has been at this location since 1985. In September 2000, the facility was issued a PTI by MDEQ for a scrap metal shredder controlled by cyclone collectors and a wet scrubber. The permit process included an additional review of lead emissions due to concerns previously expressed in the Flint area. The potential lead emissions from this facility, and deposition of lead to soil were evaluated and it was determined that these potential exposures would not significantly affect children's total exposures or be harmful to children. Also, the air level would be several hundred times lower than the national air quality standard. The PTI went through a public participation process that included a controversial hearing where citizens voiced their concerns over the allowed particulate and toxic air contaminants from the scrap metal shredder.

Attachment C

EGLE Response to Ajax Asphalt Title VI Complaint



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



LIESL EICHLER CLARK
DIRECTOR

May 20, 2022

VIA EMAIL

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Director Dorka:

SUBJECT: Complaint Nos. 01RNO-22-R5 and 03DRr-22-R5

On March 11, 2022, the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) notified the Michigan Department of Environment, Great Lakes, and Energy (EGLE) of its acceptance of two complaints, Complaint No. 01RNO-22-R5 and Complaint No. 03DRr-22-R5, for investigation. The complaints allege discrimination under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulations, 40 C.F.R. Part 7, regarding permit issuance, the public participation process, and enforcement related to the Ajax asphalt plant (Ajax Asphalt Plant) in Flint, Michigan.

ECRCO indicates it has opened an investigation regarding the following matters:

1. Whether EGLE discriminated on the basis of race, color, and national origin in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7, when it approved Permit to Install (PTI) No. APP-2021-00192^[1] for the Ajax Asphalt Plant;
2. Whether EGLE discriminated on the basis of race, color, or national origin, disability, and age in violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 and EPA's implementing regulation at 40 C.F.R. Part 7, by failing to provide meaningful public participation in connection with the approval of the application for PTI No. APP-2021-00192^[2] for the Ajax Asphalt Plant; and

¹ The EPA appears to be citing to the Permit to Install's application number in the Acceptance Letter. That application number is APP-2021-0019. The Permit to Install is No. 90-21.

² The EPA appears to be citing to the Permit to Install's application number in the Acceptance Letter. That application number is APP-2021-0019. The Permit to Install is No. 90-21.

3. Whether EGLE's criteria and methods of administering its air permit program, including its exercise of authority under Rule 228, has the intent and/or effect of subjecting persons to discrimination [on] the basis of race, color, and national origin in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7. [The EPA Acceptance of Administrative Complaints Letter, p 2.]

On April 4, 2022, ECRCO granted EGLE's request for an extension to file a response to the complaints, which extended the deadline to May 20, 2022. On April 8, 2022, EGLE informed ECRCO that it had opted to proceed on both issues to informal negotiation. On April 18, 2022, ECRCO confirmed that as of April 8, it had suspended its 180-day investigatory timeframe, pending informal negotiations.

For the reasons stated more fully below, EGLE denies that its actions violated Title VI, the Rehabilitation Act, the Age Discrimination Act, or the EPA's implementing regulations with respect to the three issues identified above. EGLE requests that ECRCO determine, prior to proceeding with negotiations, that EGLE did not fail to provide meaningful public participation in connection with the approval of the permit to install.

Background on the State of Michigan's Environmental Justice Efforts

Before addressing the specific allegations in the administrative complaint, it is important to note that EGLE takes its responsibility for administering the federal Clean Air Act and complying with Title VI and 40 C.F.R. Part 7 seriously. EGLE has been and remains committed to meaningfully engaging in the process of ensuring civil rights obligations are met and that environmental justice principles are applied to agency actions. In early 2019, the State of Michigan created the Office of Environmental Justice Public Advocate within EGLE to serve as an external and internal advocate and catalyst for ensuring environmental justice throughout the state. Led by the Environmental Justice Public Advocate, the Office works collaboratively across state government to advance environmental justice and equity in Michigan, as well as addressing environmental justice concerns and complaints.

Notably, on January 5, 2021, the EPA documented that EGLE had fulfilled its commitments in a December 2019 agreement between the EPA and EGLE regarding EGLE's commitments under Title VI. The requirements in that agreement went above and beyond the specific requirements in Title VI and its implementing regulations and included implementation of commitments by EGLE with respect to public participation, notice of nondiscrimination, grievance procedures, access for persons with disabilities, access for persons with limited-English proficiency, designation of a nondiscrimination compliance coordinator, and the training of all EGLE staff on its nondiscrimination policies and procedures and federal nondiscrimination obligations. Under this agreement, EGLE built on its existing framework of policies. Specifically, EGLE finalized

the following: Policy No. 09-007 (Attachment A); Nondiscrimination in EGLE Programs, Policy No. 09-024 (Attachment B); and developed, with a public comment period, a Limited English Proficiency Plan (Attachment C).

Currently, EGLE regularly hosts meetings of its multiagency internal Environmental Justice Response Team and the external stakeholder Michigan Advisory Council on Environmental Justice to guide and advise the State of Michigan's work to advance environmental justice. EGLE has developed a draft Michigan-specific Environmental Justice Screening Tool that has been released for public comment.³ EGLE continues to work with community partners to improve how it communicates with and engages Michiganders. In addition, EGLE staff regularly engage with the EPA and the Michigan Department of Health and Human Services and other state agencies to strategize how it can best serve the people of the State of Michigan.

In issuing the Ajax PTI, EGLE frequently conferred with the EPA Region 5 permitting staff prior to issuance of the permit to ensure it complied with federal law. Additionally, in a November 15, 2021, letter, EGLE detailed its compliance with state and federal law and asked the EPA for specific guidance on implementation of federal standards in environmental justice communities.

These actions represent only a small portion of the efforts that EGLE is making to advance environmental justice. EGLE is committed to its continued efforts to promote and integrate into its work civil rights and environmental justice principles.

Allegation that EGLE discriminated on the basis of race, color, or national origin in violation of Title VI and 40 C.F.R. Part 7 when it issued PTI No. 90-21

EGLE denies that it discriminated on the basis of race in violation of Title VI and 40 C.F.R. Part 7 when it issued PTI No. 90-21 (Ajax Permit).

On December 28, 2020, Ajax Materials Corporation (Ajax) submitted a permit application to install a hot mix asphalt plant at 5088 Energy Drive, Flint, Michigan, to EGLE's Air Quality Division (AQD). A hot mix asphalt plant mixes aggregates and heated asphalt cement to produce asphalt ready to be used. The project requires a permit to install under Part 55, Air Pollution Control, MCL 324.5501 *et seq.* (Part 55), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) because the new asphalt plant would create some air pollution by burning fuel during the process of making the asphalt and by storing and moving raw materials and finished products, as well as releasing fumes from the asphalt mix materials.

³<https://egle.maps.arcgis.com/apps/webappviewer/index.html?id=b100011f137945138a52a35ec6d8676f>

Because this proposed installation had high public interest, EGLE held a public notice and comment period. The extensive public engagement during the public comment period is discussed in detail in the next section of this response. EGLE's AQD also engaged with EGLE's Office of Environmental Justice Public Advocate throughout the permitting process. EGLE completed screening of the area using the EPA's EJScreen as part of its analysis of the project.

EGLE's review and analysis of Ajax's permit application included modeling per AQD guidance; met the statutory requirements; went above and beyond the minimum required of EGLE during public participation in response to comments it received about the participation process; and ensured the public's concerns about health and safety were addressed, while still being consistent with the limits of EGLE's authority granted by law. The issued permit was both consistent with Part 55, Air Pollution Control, MCL 324.5501 *et seq.* (Part 55), and tailored to protect public health and welfare and ensure the public's concerns were addressed.

The EPA has developed health-protective standards for specific air pollutants under the federal Clean Air Act. These standards are called the National Ambient Air Quality Standards (NAAQS). The federal Clean Air Act requires a proposed project to meet the NAAQS for Prevention of Significant Deterioration in attainment areas. The NAAQS set two types of standards: primary and secondary. "Primary standards provide public health protection, including protecting the health of 'sensitive' populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings."⁴ The Ajax Asphalt Plant is sited in an attainment area, meaning the geographic area meets or is cleaner than the NAAQS. The EPA and state law also require that a proposed project comply with toxic air contaminant emissions limits.

EGLE undertook extensive review of the application for the Ajax Permit. Though the proposed permit was minor and not subject to major source permitting, EGLE routinely models minor sources in attainment areas, which is more extensive than the modeling required under federal law, which only requires such modeling for major sources or Prevention of Significant Deterioration sources. Per AQD guidance, EGLE conducted an evaluation of emissions for the Ajax Permit to determine compliance with the NAAQS for NO₂, SO₂, CO, PM₁₀, and PM_{2.5} through use of air dispersion modeling. (Attachment D, AQD-022: Dispersion Modeling Guidance for Federally Regulated Pollutants.) EGLE also evaluated the emissions of air toxics from the proposed project against Michigan's health-based values for air toxics using air dispersion modeling. These evaluations found the proposal from Ajax met both the NAAQS and the state air

⁴ EPA, *NAAQS Table*, available at <https://www.epa.gov/criteria-air-pollutants/naaqs-table#:~:text=Primary%20standards%20provide%20public%20health,crops%2C%20vegetation%2C%20and%20buildings> (accessed May 9, 2022).

toxics requirements. Both evaluations considered a cumulative approach. The criteria pollutant modeling included background concentrations and nearby sources. The toxics review included a limited cumulative risk assessment because the mixture of asphalt fumes is regulated using a health-based screening level for the combined risk of cancer from multiple polycyclic aromatic hydrocarbons.

Compliance with the federally-set NAAQS means that, in the determination of the EPA, the level of emissions from a facility for a pollutant are expected to “protect the public health” with “an adequate margin of safety” and “to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.” 42 U.S.C. § 7409(b).⁵ Compliance with the air toxic requirements means that a project is both using the best available control technology and that emissions from the project of the toxic contaminant cannot result in a maximum ambient concentration that exceeds the applicable health-based screening level. Mich. Admin. Code, R 336.1224, R 336.1225.

In circumstances where a proposal met applicable NAAQS requirements, like the Ajax Asphalt Plant, the EPA has specifically rejected an allegation of disparate impacts under Title VI for a permit that allowed volatile organic compounds and lead emissions that complied with the NAAQS because the NAAQS “has been set at a level presumptively sufficient to protect public health and allows for an adequate margin of safety for the population within the attainment area.” (Attachment E, p 4.) The EPA therefore concluded that “there is no affected population which suffers ‘adverse’ impacts within the meaning of Title VI.” (Attachment E, p 3.)

One of the complainants in this Title VI case raised a concern about EGLE’s use of a monitor in Lansing rather than Flint to complete its analysis of Ajax’s impact on air quality. EGLE’s monitor in Flint only records the pollutants ozone and fine particulate, and the Flint monitor was used in EGLE’s analysis of fine particulate. As is explained in more detail in the Response to Comments, p. 49 (Attachment F), the Lansing and Grand Rapids monitors used were chosen for the other pollutants because those pollutants are not recorded at the Flint monitor, and the Lansing and Grand Rapids monitors were deemed representative based on the EPA guidance. The Lansing monitor used in the NO_x analysis and the Grand Rapids monitor used for PM₁₀ and SO₂ are considered representative since the monitors are both located upwind of the proposed facility, have similar geography, and with a predominant southwest wind flow over the region, the monitors represent regional transport of more distant sources, and background attributable to natural sources, traveling into the Flint region.

⁵ If the EPA no longer believes the standards set by federal law are protective of public health, EGLE supports the EPA’s updating of these legal standards.

In addition to requiring compliance with health-based standards, EGLE included multiple health and public-welfare provisions in the permit. The original permit review and draft conditions included the following provisions that remained in the issued permit:

- At wind speeds 12 miles per hour and lower, no visible emissions are allowed from unactive aggregate storage piles. This was added to the conditions based on computer modeling. Accompanying requirement to monitor and record wind speed based on modeling.
- Pressure drop across the baghouse to be continuously monitored and recorded; pressure drop alarm system required.
- In addition to the federal particulate matter testing, the following tests are required upon startup:
 - Particulate Matter
 - Nitrogen Oxides
 - Lead
- Wind speed monitor and continuous recording.
- Silt content limit for materials stored on-site.

In response to extensive and useful public comments, EGLE made substantial changes to the permit conditions, discussed in more detail in the Response to Comments, pp. 6-18, including:

- Removal of the use of recycled used oil as a fuel.
- Added language restricting sulfur content of fuels.
- Installation of rumble strips at the facility exit to lessen materials carried out by trucks.
- Requirement for the emissions collected from the top of the storage silo be routed to the control device.
- Requirements to limit site access.
- Additional visible emission requirements.
- Additional and more frequent stack testing.
- More frequent recordkeeping on amount of recycled asphalt material.
- Volatile organic compound emissions limit and associated recordkeeping.
- The additional installation of a bag leak detection system.
- Additional requirements in the fugitive dust plan.

While certain issues, such as zoning and siting decisions, are not within EGLE's authority, EGLE undertook significant review and analysis to ensure that the permit issued to Ajax was protective of public health and welfare. The thorough analysis of the project and the permit requirements ensure that Ajax's compliance with the permit will make sure it meets the applicable air quality requirements, which have been determined by the EPA and EGLE to be protective of public health and welfare. Because the permit is protective of public health and welfare, there is no disparate harm caused by

issuance of this permit. For these reasons, EGLE's issuance of the Ajax Permit is not a violation of Title VI or its implementing regulations.

Allegation that EGLE discriminated on the basis of race, color or national origin, disability, and age in violation of Title VI, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 40 C.F.R. Part 7, with respect to its public participation process for PTI No. 90-21

Public participation and receipt of public comments are a cornerstone of EGLE's work. EGLE provided an open and inclusive process, where community members could comment on the proposed permit action. During the 83-day comment period, which is 53-days longer than required in the NREPA, EGLE hosted two virtual hearings and one in-person comment session. During these opportunities, EGLE received verbal and written comments. As part of the public participation process, EGLE provided information for the public to review, including: a high-level summary of the proposed project (Attachment G), a technical fact sheet (Attachment H), and proposed permit terms and conditions (Attachment I).

EGLE's AQD engaged early with EGLE's Office of Environmental Justice Public Advocate regarding the location of Ajax's proposed new asphalt plant. This included identification of the proposed site as being within an existing environmental justice community. EGLE followed EGLE's Limited English Proficiency Plan to determine whether translation services would be required by using the EPA's EJScreen. EGLE evaluated a one-mile radius around the proposed Ajax Plant and found 0% of people living in linguistically isolated households. (Attachment J.)⁶ Translation services are always available upon request, and EGLE did not receive any requests for translation services during the pendency of the application process.

The public comment period began on July 1, 2021. The announcement for the start of the comment period was posted in the Flint Journal as required by statute, with information about how to comment. (Attachment K.) When the comment period started, EGLE also notified those interested via email or postal mail to its internal "interested parties list," the EGLE subscription email list, the Environmental Justice subscription email list, and the EGLE calendar an announcement for the start of the comment period. (The EGLE subscription emails reach approximately 9,000 subscribers.) (Attachments L, M.)

During the entirety of the comment period, EGLE posted on its Public Participation Website (Michigan.gov/EGLEAirPublicNotice) a listing of ways to provide comment, which included:

⁶ Please note that the environmental justice and translation evaluation was initially performed in May 2021, prior to the start of the public comment period on July 1, 2021, as reflected in the email, though the attached reports were saved in August.

- A voicemail call-in
- An email address
- A mailing address
- Information about the first hearing

After the first comment session on August 3, 2021, the community asked for extensions of the comment period as well as an additional hearing. EGLE was responsive to both requests by extending the comment period ultimately until September 22, 2021, and holding a second virtual hearing on September 1, 2021.

Both the virtual informational sessions and public hearings held on August 3, 2021, and September 1, 2021, were accessible by phone and online. EGLE's AQD staff gave a presentation about the Ajax proposal and the permit review. EGLE made efforts to ensure those joining by phone were able to get as much information as possible. This included verbally reading information and repeating key information visually presented to online attendees. Each meeting began at 6 p.m. Jenifer Dixon was the Hearings Officer, and the decision maker, Mary Ann Dolehanty, attended both hearings. Approximately 44 individuals attended the first public hearing and 57 attended the second public hearing. The public hearings concluded only after everyone who wanted to submit a verbal comment had spoken. Recordings of the informational sessions and public hearings are posted online at [YouTube.com/c/MichiganEGLE](https://www.youtube.com/c/MichiganEGLE). The slides from the first hearing are posted on the public information page.

Community members expressed the need for an in-person hearing based on lack of internet access. Due to the on-going COVID-19 pandemic, EGLE was not able to hold an in-person hearing. Instead, EGLE provided an in-person comment opportunity on August 11, 2021, where staff were available to answer questions and help the public submit comments. EGLE staff who attended this comment opportunity in person include:

- Chris Ethridge
- Mark Mitchell
- Ambrosia Brown
- Dan McGeen
- Keisha Williams
- Laura Gramza
- Jenifer Dixon
- Regina Strong
- Jill Greenberg

EGLE staff who attended online were Annette Switzer, Susan Kilmer, and Stephanie Hengesbach.

The options were:

- A comment form was created and provided so handwritten comments could be received
- These comment forms were also left with the St. Francis Prayer Center and EGLE offered to pick up the comments at the close of the comment period, so they did not need to be mailed
- Computer stations were set up for individuals to provide comment via email
- Cell phones were available for individuals to call the public comment voicemail

The comment opportunity was held at the Genesee Township Hall, 7244 North Genesee Road, Genesee, Michigan. This meeting was an opportunity for those who may not have internet or phone access to be able to use EGLE phones and computers to leave comments. The township hall was selected due to its proximity to the facility, its availability, and access to power/internet. Approximately 54 people attended the in-person comment opportunity. The event began at 6 p.m. and concluded at approximately 8 p.m.

Each time the comment period was extended, or an additional event was announced, EGLE updated its web language and sent notifications to:

- Interested parties list – email or postal mail (same flier, digital and printed)
- EGLE subscription email
- Environmental Justice subscription email
- EGLE Calendar
- Twitter
- EGLE also dropped off fliers to nearby residents' apartment offices for distribution to announce the final extension

One of the Title VI complaints noted that the documents on the webpage were not updated. The notice of hearing and other final documents were not updated because they were originals and needed to retain the original information to demonstrate compliance with statutory requirements. EGLE did, however, post the relevant information in many places online and send out individual notifications.

Over 340 comments were received, a chart showing the approximate number of comments received and how EGLE received them is in the attached Environmental Justice Summary (Attachment N).

EGLE considers each comment received equally, regardless of whether it is submitted through the mail, email, on the public comment voicemail, or at a public hearing (virtual or in-person). EGLE must base a permit decision on a proposed project's ability to meet

all applicable state and federal air quality rules and regulations in place to protect public health. As discussed above, EGLE made multiple changes to the permit based on public comments it received. See Response to Comments (Attachment F); see also Permit Decision Summary (Attachment O).

EGLE took substantial steps to ensure that the public had an opportunity for meaningful engagement in the permit application process, regardless of race, color, or national origin, disability, and age and complied with the Department's EPA-approved Limited English Proficiency Plan, Nondiscrimination in EGLE Programs Policy, and Policy on Public Involvement in Department Programs and Activities. When the public requested more time and additional opportunities to be engaged, EGLE provided those opportunities. For these reasons, EGLE requests that ECRCO find that the public participation process for issuance of the Ajax Permit did not violate Title VI, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, or their implementing regulations.

Allegation that EGLE discriminated on the basis of race, color, or national origin in violation of Title VI and 40 C.F.R. Part 7 with respect to EGLE's criteria and methods of administering its air permit program, including its exercise of authority under Rule 228

Finally, EGLE denies that it discriminated on the basis of race, color, or national origin in violation of Title VI and 40 C.F.R. Part 7 with respect to EGLE's criteria and methods of administering its air permit program, including its exercise of authority under Rule 228.

Oversight and Enforcement at Ajax Asphalt Plant

EGLE's AQD conducts unannounced inspections to determine compliance with state and federal air pollution requirements. "Construction" as defined under the Clean Air Act regulations (40 CFR 52.21) and installation of a process or process equipment, under Michigan Air Pollution Control Rule 201, are not allowed to take place until issuance of a permit to install. The AQD Lansing District Office conducted the following site visits at the Ajax Asphalt Plant prior to the November 15, 2021, issuance date of the Ajax Permit, to determine if any prohibited activities had taken place:

- January 29, 2021 (unannounced inspection)
- February 17, 2021 (unannounced inspection)
- March 5, 2021 (unannounced inspection)
- March 19, 2021 (unannounced inspection)
- April 14, 2021 (unannounced inspection)
- June 16, 2021 (unannounced inspection)
- August 11, 2021 (unannounced inspection)
- September 14, 2021 (complaint investigation)
- October 6, 2021 (unannounced inspection)

- October 12, 2021 (unannounced inspection)
- October 27, 2021 (unannounced inspection)
- October 28, 2021 (unannounced inspection)

The above complaint investigation and unannounced site visits found that although earth-moving and aggregate-moving activities had taken place, and concrete pipes and culverts, as well as metal rebar and molds, were stored at the site, these did not trigger the EPA definition of construction, and did not constitute installation of a process or process equipment, under Michigan Air Pollution Control Rule 201.

Following the issuance of the Ajax Permit on November 15, 2021, the AQD Lansing District office conducted the following unannounced site visits to check on the site, and/or address track out and fugitive dust issues.

- January 3, 2022 (unannounced inspection)
- February 9, 2022 (unannounced inspection)
- March 2, 2022 (complaint investigation)
- March 28, 2022 (unannounced inspection)
- April 11, 2022 (unannounced inspection)
- April 13, 2022 (unannounced inspection)
- April 19, 2022 (unannounced inspection)
- April 20, 2022 (unannounced inspection)
- May 5, 2022 (unannounced inspection)

On January 3 and February 9, 2022, EGLE did not observe fugitive dust at the site or on Energy Drive. However, on February 15, 2022, the EPA staff advised EGLE that as part of a Title VI complaint, fugitive dust issues had been raised. On March 2 and 28, and on April 11, 13, 19, and 20, and May 5, 2022, EGLE returned to the site. On these dates, track out of mud onto Energy Drive was observed. On each date, some level of fugitive dust was also observed, as the dried mud on the roadway was stirred up by vehicle traffic. Each time, EGLE contacted either Ajax's Operations Manager or the company's consulting firm, Axis Environmental Consulting, and advised that the roadway be cleaned. EGLE was informed that this would be done, with a contracted vacuum sweeper service, on the same day, except for the date of March 2, when EGLE was informed it would be cleaned up on March 3, 2022.

Application of Rule 228

ECRCO's acceptance letter questions EGLE's use of Rule 228, Mich. Admin Code, R 336.1228, of Part 55 of NREPA rules.

The relevant portion of Rule 228 states:

The department may determine, on a case-by-case basis, that the maximum allowable emission rate determined in R 336.1224(1) or R 336.1225(1) to (3) does not provide adequate protection of human health or the environment. In this case, the department shall establish a maximum allowable emission rate considering relevant scientific information, such as exposure from routes other than direct inhalation, synergistic or additive effects from other toxic air contaminants, and effects on the environment. In performing these evaluations and determinations, the department shall utilize relevant environmental data, land use, and exposure scenarios, and reasonably anticipated environmental impacts and exposures from the proposed new or modified emission unit or units.

The intent of Rule 228 is to enable the agency to evaluate additional concerns for emission of an air toxic and, if justifiable, to restrict its emissions beyond the restrictions required by Toxics Best Available Control Technology (Rule 224, Mich. Admin Code, R 336.1224) or the screening levels (Rule 225, Mich. Admin Code, R 336.1225). In applying Rule 228, EGLE is to consider all relevant scientific information in evaluating the impacts of an individual pollutant while considering other exposures, such as deposition of air emissions. EGLE disagrees it has the authority under Rule 228 to assess cumulative impacts from a source in a manner that includes all other potential sources of contamination and impacts to health. EGLE has, on a limited basis, used its authority under Rule 228 to conduct analyses to look at the aggregate effects of a single pollutant, for example the bio accumulative effects of mercury. This is done to evaluate whether a more protective emission limit should be established. To date, these limited heightened risk assessments have not resulted in lower allowable emission rates but have been helpful in verifying there is not an unacceptable risk and that further restrictions are not needed in response to concerns raised by the public or by EGLE staff. EGLE contends there is limited authority, methodology, and applicable standards for a broader cumulative risk approach under Rule 228.

Additionally, Michigan's Air Toxic program and rules, which EGLE applies to all relevant permits, including the Ajax Permit, are already significantly more comprehensive than the federal rule. The federal rule only applies to a specific list of hazardous substances, whereas the EGLE rule applies to any air contaminant, excluding those with established NAAQS, emitted from a facility, which EGLE refers to as Toxic Air Contaminants. (Mich. Admin. Code, R 336.1225.)

EGLE has thoroughly undertaken inspections and promptly responded to complaints regarding the new Ajax Asphalt Plant. EGLE did not use Rule 228 in this case because there was no indication the toxics screening levels did not provide adequate protection of human health or the environment. This thorough and careful permit issuance and oversight of the Ajax Asphalt Plant does not violate Title VI and its implementing regulations.

Conclusion

While EGLE can only act under the authority it has been granted by state law, it has taken substantial efforts to ensure the Ajax Permit was protective of public health and welfare, to ensure every person had the opportunity for meaningful engagement in the permit process, and that its ongoing oversight of the Ajax Asphalt Plant is thorough and addresses any violations of the law. EGLE denies the allegations made in the complaints that its actions discriminated on the basis of race, color, or national origin, disability, or age in violation of Title VI, the Rehabilitation Act, the Age Discrimination Act, or 40 C.F.R. Part 7.

EGLE is in the process of gathering documents in addition to those provided in this response and those documents can be made available to ECRCO at its request.

Thank you for your attention to this matter. Should you have any questions or require any additional information on the issues discussed in this response, please contact me. We look forward to your proposal for resolution of this matter.

Sincerely,



Liesl Eichler Clark
Director
517-284-6712

cc: Jack Pantziris, EPA
Anhthu Hoang, EPA
Johahna Johnson, EPA
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