



February 15, 2024

Cindy Smith
Permit Section Manager
Michigan Department of Environment Great Lakes and Energy
Air Quality Division
P.O. Box 30260
Lansing, MI 48909-7760

Re: Universal Coating Application for a Permit to Install, No. APP-2023-0147

Submitted via email to: EGLE-AQD-PTIPublicComments@Michigan.gov

Dear Ms. Smith,

Environmental Transformation Movement of Flint, Flint Rising, Foss Avenue Block Club, Michigan United, North Flint Neighborhood Action Council, Northland Gardens Neighborhood Association, R.L. Jones Community Outreach Center, Sharp Manor Neighborhood Association, St. Francis Prayer Center, 3rd Ward Flint City Council Member Quincy Murphy, and Former President and Chief Executive Officer of Mott Children’s Health Center Dr. Lawrence Reynolds (“Flint Community Groups and Leaders”) submit the following comments to the Michigan Department of Environment Great Lakes and Energy (“EGLE”) regarding Universal Coating’s application for a permit to install (APP-2023-0147). Universal Coating proposes to install two new tumble spray lines at its facility located at 5204 Energy Dr., Flint, MI.

Universal Coating is a facility that operates manufacturing lines that coat metal and plastic parts in adhesives, paint, resins, and other material for industrial customers, primarily the automotive industry.¹ Universal Coating is a major source of hazardous air pollutants such as acetone, ethylbenzene, xylene, and methyl isobutyl ketone.² The facility is located in an environmental justice community in Flint and Genesee Township and its emissions add to the cumulative pollution affecting residents.³

EGLE should deny this permit because of its impact on human health and welfare.⁴ Adding new tumble spray lines will increase the total emissions that this facility will create. While the facility is not asking EGLE to raise the limits in its permit, the new spray lines will increase

¹ [Technical Fact Sheet, Universal Coating PTI Application](#) (Jan. 9, 2024).

² See Universal Coating Application for a Permit to Install, at 5; See also Appendix A, Emissions Calculations.

³ Attachment A, EJScreen Report for One-mile Radius Around Universal Coating.

⁴ MCL 324.5510.

emissions and add to the burden on the surrounding community.⁵ The proposed installation of the new lines will add toxic air pollution in this area, which is already experiencing disproportionate exposures to environmental harm. Before EGLE determines whether it should grant the permit, it should first conduct a cumulative impact assessment. As is demonstrated in the coming pages, the rules governing EGLE and its air permitting programs allow for a cumulative impact analysis on a case-by-case basis. Simultaneously, federal civil rights laws demand it. Nowhere in the state are cumulative impact assessments more necessary for protecting the health of residents than for proposed actions in communities like Flint.

We expect that a cumulative impact assessment will demonstrate the appropriateness of permit denial to protect the community. If EGLE grants this permit, which it should not, it must add measures to mitigate the additional air pollution that Universal Coating's new equipment will create.

I. IMPACTED COMMUNITY

Universal Coating is located in a community that experiences disproportionate environmental exposures and rates of pollution-related illnesses, including cardiovascular disease and asthma.⁶ Genesee Township zoned this industrial district in the only Black census tract in the township.⁷ The pollution in this community has played a significant role in causing property values to remain stagnant or decline—some of the homes are worth less than what residents paid for them in the 1960s and 70s.⁸

According to EJScreen, EPA's tool for evaluating the environmental, demographic, and public health and socioeconomic indicators for a community, there are 589 households living within a 1-mile radius of Universal Coating's facility. A total of 70% of these residents are people of color.⁹ A portion of this population speaks Spanish in the home.¹⁰ Life expectancy is 54 years old.¹¹ Per-capita income is \$18,284.¹² A quarter of the populations has some form of disability.¹³ This area is also in the 99th percentile for asthma and in the 91st percentile for heart disease nationally.¹⁴ According to the Michigan Inpatient Database, the asthma hospitalization rate in the area in zip code 48505—where the proposed Plant is to be located—is 43.04 per 10,000 people, which is over three times the state average of 12.54 per 10,000 people.¹⁵

EJ Screen also measures community vulnerability by combining demographic and environmental risk information into a single environmental justice index number. The one mile

⁵ See Universal Coating Application for a Permit to Install, Table C-1: Air Toxics Analysis in Support of the Proposed Tumble Spray Lines Installations.

⁶ See Attachment A, EJScreen Report.

⁷ *Id.*

⁸ [Joint Letter from Flint Community Group to Imron Bhatti, et al., Dep't of Housing & Urban Dev.](#) (June 27, 2023).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ [Mich. Dep't of Health & Human Servs., *Age-Adjusted Hospitalization Rates per 10,000 People by Zip Code for Michigan and Detroit, 2012-2014*](#) (Oct. 2016).

area surrounding the Universal Coating facility is in the 93rd percentile for cancer risk from air toxics and in the 80th percentile for proximity to diesel particulates, among others.¹⁶ These indices are not surprising considering that there are eight sources of air pollution in this one-mile area.¹⁷ The combination of all of the emissions from these facilities contributes to the poor health indicators and poverty in this community. Universal Coating’s proposed additional toxic emissions will make these problems worse. The emissions from these numerous facilities, including Universal Coating, create cumulative impacts that affect residents’ health and welfare.

II. UNIVERSAL COATING’S PROPOSAL

Universal Coating proposes to install two additional tumble spray lines at its existing facility. Universal Coating is a major source of hazardous air pollutants (“HAPs”) and toxic air contaminants regulated under state and federal law. The facility currently emits many pollutants from the existing equipment at the facility. This includes two spray lines identical to the two Universal Coating proposes to install, seven spindle lines, and a roll coat line. Pollutants of concern associated with this permit include ethyl benzene, methyl isobutyl ketone, toluene, triethylamine, vinyltrimethoxysilane, and xylene. Ethyl benzene can cause throat and chest constriction and neurological damage. Animal studies also show impacts on the blood, kidney, and liver. Methyl isobutyl ketone (MIBK) has a variety of impacts including short term effects like headache, vomiting, and narcosis.¹⁸ MIBK can also cause liver enlargement and intestinal pain in humans. Toluene is a substance used in gasoline and paint thinners. Humans exposed to toluene experience many central nervous system impacts such as attention deficits and other developmental effects. Similar to toluene, xylene also has detrimental neurological effects. EPA notes that when combined with toluene, xylene’s impacts are compounded. Chronic inhalation can also cause irritation of the upper respiratory tract, arrhythmia, and cough. Finally, triethylamine and vinyltrimethoxysilane exposure primarily affects the eyes, causing swelling, blurred vision, and irritation.¹⁹ Universal Coating also emits volatile organic compounds (“VOCs”), which cause eye, nose, pulmonary issues and throat irritation, headaches, and loss of coordination.²⁰ Studies also show that ambient exposure to VOCs exacerbate cardiovascular disease risk.²¹ Universal Coating’s proposal would increase emissions of each of these harmful toxic air contaminants.

While Universal Coating is not asking to increase the emissions limit in its permit, the proposed addition of two lines will nevertheless increase emissions. Importantly, Universal Coating has violated its existing permit multiple times, including by exceeding the existing emissions limits. As several groups explained in a letter to EPA on August 21, 2023:

In November 2015, EGLE inspected Universal Coating’s facility and determined that the company was not properly maintaining control technology meant to

¹⁶ See Attachment A, EJSscreen Report.

¹⁷ [Joint Letter from Flint Community Group to Imron Bhatti, et al., Dep’t of Housing & Urban Dev.](#) (June 27, 2023).

¹⁸ [EPA, Methyl Isobutyl Ketone \(Hexone\)](#) (last updated Jan. 2000).

¹⁹ [Nat’l Ctr. for Biotechnology Info., PubChem Compound Summary for CID 76004, Vinyltrimethoxysilane, Section 9 Safety and Hazards](#) (last visited Feb. 13, 2024).

²⁰ [Kyle L. Alford & Naresh Kumar, Pulmonary Health Effects of Indoor Volatile Organic Compounds - A MetaAnalysis, Int’l J. Env’t Res. Pub. Health](#) (Feb. 2021).

²¹ [Daniel W. Riggs, et al., Environmental Exposure to Volatile Organic Compounds is Associated with Endothelial Injury, Toxicology & Applied Pharmacology](#) (Sept. 2021).

mitigate harmful emissions from its spray lines. This resulted in illegal excess HAP emissions. Specifically, EGLE found that “the Company failed to maintain the minimum catalyst bed inlet temperature associated with the catalytic oxidizer, exceeded the volatile organic compound (“VOC”) emission limit for [its spray lines], exceeded the major source threshold for hazardous air pollutants (“HAP”) without obtaining a Title V Renewable Operating Permit (“ROP”), and exceeded the facility wide tons per year emission limit for a HAP,” likely for ethylbenzene. Attempting to remedy these compliance issues, EGLE and Universal Coating entered into an Administrative Consent Order in 2017 modifying the conditions for the spray lines.²²

Even after the 2017 Administrative Consent Order, Universal Coating continued to violate the operational and technology requirements of its permit.²³ None of the enforcement actions consider Universal Coating’s emissions in the context of the cumulative burdens facing the community.

Universal Coating’s emissions add to the emissions from the numerous facilities in the Dort-Carpenter Industrial Park and the surrounding area that diminish air quality and impact human health. For example, the nearby Genesee Power Station emits 15 tons per year of VOCs, and toxic air contaminants like mercury, lead, and acrolein. In fact, GPS has previously exceeded its emissions limit for acrolein. Acrolein is known to cause and exacerbate asthma.²⁴ GPS has also repeatedly violated opacity limits in its permit, which indicates that its control systems are not working efficiently. While emission testing for toxic air contaminants from GPS is limited to every five years, it’s possible that the opacity violations are indicative of increased emissions of toxic air contaminants which may exceed the facility’s emissions limits. A biomass incinerator and an asphalt plant also operate in this industrial park.²⁵ Ajax Asphalt also emits cobalt and other heavy metals. Additionally, there are numerous pollution sources along Dort Highway including scrap yards and railroad terminals.²⁶ Nearby scrap yards, as well, emit numerous heavy metals during the torch cutting process and because of open burning of rubber and metal. Universal Coating’s proposal must be understood in context. This proposal increases emissions over existing levels and adds emissions to an area that already has numerous sources of toxic air contaminants.

III. LEGAL BACKGROUND

Federal and state environmental and civil rights laws and guidance provide the framework for EGLE’s permitting decision.

²² [Letter from Flint Community Groups to Alan Walts, Eileen Furey, et al., EPA Region 5](#) (Aug. 21, 2023).

²³ The company violated its permit in 2019 by improperly training its staff and repeatedly failed to timely submit hazardous air pollutant reports in 2020 and 2021. In addition, between August 17, 2020 and August 30, 2021, Universal Coating did not maintain the appropriate temperature for its “Burnoff” emissions unit.

²⁴ See [B. Rey deCastro, Acrolein and Asthma Attack Prevalence in a Representative Sample of the United States Adult Population 2000-2009, PLoS One](#) (May 2014).

²⁵ See Flint Community Group Letter, *supra* note 17.

²⁶ *Id.*

A. The Clean Air Act and Michigan's Air Toxic Rules and Nuisance Rules

EGLE's decision to permit a new source of emissions is governed by the Clean Air Act ("CAA"), as amended, and its rules;²⁷ and Part 55 Air Pollution Control of the Michigan Natural Resources and Environmental Protection Act ("NREPA"), as amended, and its rules.²⁸ First passed by the United States Congress in 1970, the CAA serves as the foundation for regulating air pollution throughout the country. Under the CAA, the EPA is required to regulate the emission of pollutants that "endanger public health and welfare."

A primary means of regulating air pollution sources through the CAA has historically been through state enforcement of emission limits in State Implementation Plans ("SIPs"). Each SIP is an enforceable collection of environmental regulations approved by the EPA and used by the respective state to administer air pollution control programs fulfilling the requirements of the CAA. States are not allowed to have weaker air pollution controls than those outlined in the CAA. States are, however, allowed to have pollution controls stronger than those outlined by the CAA.

In Michigan, the authority to implement the CAA is granted to EGLE's Air Quality Division ("AQD") through Part 55 (Air Pollution Control) of Michigan's NREPA, as amended. EGLE's Part 55 Air Rules, approved by the EPA, regulate air emissions, and require permits for major sources of pollutants. Specifically, Rule 201 of the Michigan Air Pollution Control Rules requires a person to obtain an approved Permit to Install for any potential source of air pollution unless the source is exempt from the permitting process.²⁹

To receive a permit to install, a permit applicant must submit data demonstrating that the emissions from the process will not have an unacceptable air quality impact in relation to all federal, state, and local air quality standards.³⁰ State air quality standards include Michigan's Air Toxic Rules. These rules require two main things of permit applicants. First, permit applicants may not allow the emission of a toxic air contaminant from the proposed new or modified emission unit over the maximum allowable emission rate based on the best available control technology for toxics.³¹ Second, the permit applicant must demonstrate that it will not cause or allow the emission of any toxic air contaminant from the proposed new or modified emission unit above the maximum allowable emission rate that will result in a predicted maximum ambient impact that is more than an initial threshold screening level or an initial risk screening level.³²

Importantly, EGLE is granted latitude to require even lower emission rates on a *case-by-case basis* for specific toxic air contaminants. Specifically, Rule 228 grants EGLE the authority to do so where the Department determines that the requirements specified by Best Available Control Technology for Toxics (T-BACT) or the health-based screening level may not provide adequate protection of human health or the environment in a particular instance.³³ "In this case, the department shall establish a maximum allowable emission rate considering relevant scientific

²⁷ Clean Air Act ("CAA"), 42 U.S.C. 7401 et seq.

²⁸ Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451.

²⁹ Mich. Admin. Code R. 336.1201.

³⁰ Mich. Admin. Code R. 336.1203(1)(h).

³¹ Mich. Admin. Code R. 336.1224(1).

³² Mich. Admin. Code R. 336.1225(1).

³³ Mich. Admin. Code R. 336.1228.

information, such as exposure from routes other than direct inhalation, synergistic or additive effects from other toxic air contaminants, and effects on the environment.”³⁴ Further, the Michigan Constitution requires that the legislature protect the environment³⁵ and the Michigan Environmental Protection Act (“MEPA”) requires EGLE to consider the effect of the permit on the environment and it must not authorize conduct that will “pollute, impair, or destroy air, water other natural resources” if there is a “feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.”³⁶

Rule 901(a) also provides EGLE with the authority to require a cumulative impacts analysis. Rule 901 provides—

[A] person shall not cause or permit the emission of an air contaminant or water vapor in quantities that cause, alone or in reaction with other contaminants, either of the following:

- a. injurious effects to human health or safety, animal life, plant life of significant economic value or property, or
- b. unreasonable interference with the comfortable enjoyment of life and property.³⁷

To determine whether a proposed permit will comply with Rule 901(a), a permit term, EGLE must have a better understanding of how the permit will contribute to the injurious effects to human health or safety. As explained in EGLE’s guidance, “Application of Rule 901(b) in the Permit to Install Review Process” (“Rule 901(b) Guidance”), the Air Quality Divisions staff and the source of pollution have the responsibility to proactively reduce the likelihood that the facility will generate a nuisance.

In addition to the specific provisions that allow EGLE to adapt permits to site-specific conditions, Rule 203 provides, “[t]he department may require additional information necessary to evaluate or take action on the application”³⁸

These statutes and rules mandate that EGLE ensure that Universal Coating’s proposal will not cause injurious effects to the health and welfare of the surrounding community.

B. Civil Rights and Environmental Justice

1. Title VI of the Civil Rights Act

Title VI of the Civil Rights Act of 1964 (Title VI) is a federal law that prohibits any federally funded program or activity from discriminating on the basis of race, color, or national origin, and provides a statutory basis for relief for victims. Section 602 of Title VI requires agencies distributing federal funds to issue regulations implementing the prohibition of

³⁴ *Id.*

³⁵ Mich. Const. 1963, art. 4, § 52.

³⁶ Mich. Comp. Laws § 324.1705(2).

³⁷ Mich. Admin. Code R. 336.1901 (Rule 901).

³⁸ Mich. Admin. Code R. 336.1203(2).

discrimination.³⁹ It also requires these agencies to create mechanisms for processing complaints of discrimination based on race, color, and national origin.

EPA's regulations implementing Title VI, as well as agency authority under other laws, are subject to the Presidential Executive Orders concerning environmental justice. Executive Order 12898 requires each Federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."⁴⁰ Additionally, on January 21, 2021, President Biden signed Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*. This order requires agencies to analyze the cumulative environmental impacts and the disproportionate health consequences of their decisions on environmental justice communities.⁴¹ This order places justice at the heart of federal agencies' environmental governance. President Biden also signed Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, on April 21, 2023.⁴² That order requires each federal agency to "address historical inequities, systemic barriers, or actions related to any Federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment." Federal agencies may implement policies that affect their funding activity to accomplish the goals of EO 12898.⁴³ Agencies can use their Title VI authority, when appropriate, as well as their authority under various laws to achieve goals of the Executive Order.⁴⁴

EPA's Implementing regulations, "Nondiscrimination in Programs or Activities Receiving Federal Assistance from EPA,"⁴⁵ require "[e]very EPA grant recipient, including each state environmental agency receiving financial assistance from EPA, is subject to the terms of 40 CFR Part 7."⁴⁶ As a recipient of EPA financial assistance, EGLE submits regular assurances that it complies with EPA's Title VI implementing regulations along with its funding applications.⁴⁷ Accepting EPA funds also served as EGLE's acceptance of the obligation to comply with the agency's Title VI implementing regulations.⁴⁸ Under EPA's Title VI implementing regulations, EGLE is prohibited from using "criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin."⁴⁹

EPA has also provided on point guidance to address civil rights and environmental justice in permitting.⁵⁰ In its EJ In Permitting document, EPA recommends that permitting authorities use

³⁹ 42 U.S.C. 2000d-1.

⁴⁰ Exec. Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

⁴¹ Exec. Order 14008, 86 Fed. Reg. 7619 (Jan. 21, 2021).

⁴² Exec. Order 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

⁴³ [EPA Off. of Env't Just., Title VI and Executive Order 12898 Comparison](#) (Apr. 3, 2014).

⁴⁴ *Id.*

⁴⁵ 40 C.F.R. § 7.35.

⁴⁶ [EPA, Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs](#), 65 Fed. Reg. 39650 (June 27, 2000).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 40 C.F.R. § 7.35.

⁵⁰ See [EPA Off. of Gen. Counsel, EPA Legal Tools to Advance Environmental Justice](#), 2 (May 2022); see also [EPA, EJ in Air Permitting](#) (Dec. 2022).

their power to promote fair treatment by tailoring permit terms and conditions in environmental justice communities:

When a permitting action may result in disproportionately high and adverse human health or environmental effects on a community, including one with environmental justice concerns, permitting authorities can promote fair treatment by fully examining all relevant statutory and regulatory authorities, including discretionary authorities, to develop permit terms and conditions to address or mitigate identified air quality impacts to the extent feasible. Examples of potential legal discretion under existing authorities may be found in EPA Legal Tools to Advance Environmental Justice. EPA and other air permitting authorities may also consider whether other federal, state, tribal or local entities have authority that may be used to address or mitigate effects and engage with those entities, where feasible, to implement solutions.⁵¹

In addition to these overarching civil rights obligations, EPA and EGLE entered into an Informal Resolution Agreement on August 8, 2023, in response to a Title VI administrative complaint filed by Environmental Transformation Movement of Flint, Flint Rising, and St. Francis Prayer Center with EPA challenging EGLE’s air permitting program as discriminatory. That agreement requires EGLE to improve its public participation practices, undertake a community health assessment, and explain how it uses MiEJScreen to “review areas surrounding the location of a new Permit to Install or modification of an existing air permit, in order to better understand and protect communities”⁵²

2. Michigan Law and Policies Relevant to Environmental Justice

EGLE’s authority under its permitting rules, specifically its rules governing toxic air contaminants, provide the agency with ample authority to consider a wide range of issues and it should exercise that authority in this case. EGLE’s discretion is guided, in part, by the principles the agency has established for itself. Governor Gretchen Whitmer’s order creating the Department of Environment Great Lakes and Energy makes achieving environmental justice core to EGLE’s mission.⁵³ EGLE defines environmental justice as the equitable treatment and meaningful involvement of all people, regardless of race, color, national origin, ability, or income and is critical to the development and application of laws, regulations, and policies that affect the environment, as well as the places people live, work, play, worship, and learn. Equitable treatment, in turn, means that “no group of people bears a disproportionate share of the negative consequences resulting from governmental, industrial, or commercial operations and policies.”⁵⁴ Additionally, in Policy and Procedure No. 09-024, EGLE states:

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and does not intimidate or retaliate against any individual or group

⁵¹ [EPA, EJ in Air Permitting](#), *supra* note 50 at 4.

⁵² [Final Informal Resolution Agreement Between Michigan EGLE and USEPA](#) (Aug. 8, 2023).

⁵³ Executive Order 2019-02.

⁵⁴ [EGLE, Learn About Environmental Justice](#) (last visited Feb. 15, 2024).

because they have exercised their rights to participate in or oppose actions protected by applicable laws and regulations, or for the purpose of interfering with such rights, and claims of intimidation and retaliation will be handled promptly if they occur.⁵⁵

Further, case law supports the need for an analysis of the site-specific conditions of each permit application, including environmental justice considerations. A court considering the status of the neighboring Ajax asphalt plant agreed that EGLE may strengthen permit requirements to address environmental justice concerns.⁵⁶ EGLE must not dismiss the comments of residents as “a bunch of loud noise” and must carefully consider them in determining appropriate emissions limits and permit conditions. Indeed, “every permit must be considered within the context of its own unique situation.”⁵⁷ This includes considering the impact of nearby sources and the environmental and public health conditions in the surrounding community and “it is also important to consider [the permit to install application] in the context of the larger historical and societal issues affecting Flint and Genesee County.” This includes considering the role of the permitting process in “racial segregation and injustice [and] rampant poverty.”

IV. COMMENTS AND REQUESTED CHANGES

EGLE’s decision on Universal Coating’s permit application has the potential to exacerbate existing health disparities in this community. For this reason, EGLE should undertake a cumulative impact analysis. We expect that the cumulative impact analysis will support a decision to deny Universal Coating’s application. In the alternative, EGLE must exercise its discretion to strengthen this permit substantially.

A. EGLE Should Have Prepared a Description of the Environmental Justice Indicators for the Impacted Community in its Public Notice for this Application and It Should Prepare One Now.

The EJScreen data for the surrounding community, as discussed above and extensively in the Ajax asphalt plant permitting process, should have been explicitly described and considered in this permitting process. The EJScreen assessment reveals that the site of the Universal Coating facility is “in an area with identified air quality concerns and important health indicators.”⁵⁸ Indeed, the area within a one-mile radius from Universal Coating is in the 99th percentile for asthma and in the 91st percentile for heart disease nationally.⁵⁹ In addition, the EJ Index information across all environmental exposures is notably high for the state.⁶⁰

Instead of using EJScreen to provide an accurate picture of the demographic and environmental indicators of the impacted community, EGLE merely looked to EJScreen to determine what steps it should take to increase accessibility for residents with Limited English Proficiency. While language access is a necessary step, it is not sufficient to address environmental

⁵⁵ EGLE, Policy and Procedure No. 09-024 (last updated Jan. 21, 2020).

⁵⁶ [City of Flint v. Mich. EGLE, et al., No. 2022-116871-AA](#) (Mich. Genesee Cnty. Ct. June 20, 2023), 10-11.

⁵⁷ *Id.*

⁵⁸ See [Comment Letter from EPA to EGLE regarding Ajax Asphalt Plant PTI](#) (Sept. 16, 2019). For a description of this community, see Section I, *supra*, Impacted Community.

⁵⁹ See Attachment A, EJScreen Report.

⁶⁰ See *id.*

justice issues. EGLE needs to look at the cumulative impacts that the additional emissions will have on this community.

B. EGLE Should Assess the Cumulative Impacts of Universal Coating’s Permit to Install Application Because the Proposed Additional Tumble Spray Lines Create Toxic Pollution Harmful to Human Health and Welfare.

As described above, state and federal civil rights law, regulations, and policies require the agency to take meaningful action to eliminate environmental injustices in communities like Flint, especially when residents live in close proximity to major industrial sources. Further, EGLE has the independent authority, under Rule 228 and Rule 203, to undertake a cumulative impact analysis for toxics. Yet, EGLE neither required the permit applicant Universal Coating to prepare the community profile and potential environmental justice concerns associated with the facility’s emissions of toxic air contaminants nor undertook this analysis on its own. Across the board, EGLE is inconsistent, at best, in its preparation of an environmental justice or cumulative impact analysis. For example, after EPA and commenters urged EGLE to prepare such an analysis with regard to the Ajax Asphalt plant, EGLE did so but missed the point: Despite EJScreen’s recognition of the importance of the interaction between a community’s makeup and its environmental exposures, EGLE’s Environmental Justice Summary⁶¹ separated the environmental exposures from the demographics, which minimized the problem. EGLE has failed to even prepare an environmental justice summary in almost all, if not all, other permitting situations.

EGLE must ensure that it uses all the legal tools at its disposal to reduce the unhealthy effects of air pollution for residents who will live with the pollution created by Universal Coating’s modifications. In particular, EGLE should follow the recommendations provided by EPA in the Ajax Asphalt permitting process, where EPA urged EGLE to conduct “a cumulative analysis of the projected emissions from all emission units at the proposed facility, fugitive emissions from the proposed facility, and emissions from nearby industrial facilities, to provide a more complete assessment of the ambient air impacts of the proposed facility on this community.”⁶² EGLE should include an analysis of this community’s profile and potential environmental justice concerns. This analysis should have been carried out in the first instance and before the comment period, and EGLE should make it a practice going forward to ensure that proposed permits include information related to environmental justice.

Universal Coating’s proposed new additions to its facility will add cumulative pollution to this already heavily polluted area. EGLE and Universal Coating’s assessment of health risks in this area does not assess the cumulative impact of Universal Coating’s emissions on human health. Rather, the assessment of Universal Coating’s emissions narrowly “focus[] on single cause-effect pathways that involve a single chemical and single identified adverse effect.”⁶³ For instance, in the industrial park where Universal Coating sits, there are multiple sources of VOCs that should be considered in aggregate. This type of analysis had “limited applicability to the real world,” and this is especially so when a source proposes emissions in a community like Flint.⁶⁴ Residents of

⁶¹ [EGLE, Environmental Justice Summary for Ajax Materials Corp. \(PTI No. 90-21\)](#) (Nov. 2021).

⁶² [Comment Letter from EPA](#), *supra* note 58.

⁶³ See [National Research Council, Science and Decisions: Advancing Risk Assessment](#) 68 (2009).

⁶⁴ *Id.*

this area are suffering from the deleterious effects of air pollution that results from multiple sources and exposure pathways.

Universal Coating’s new tumble spray lines will create new emissions of hazardous air pollutants that have detrimental effects. Specifically, Universal Coating’s two spray lines will markedly increase levels of ethylbenzene, methyl isobutyl ketone, vinyltrimethoxysilane, triethylamine, and 1,1,2-trichloroethane.⁶⁵ These hazardous air pollutants—even in small concentrations—can increase cancer, respiratory, cardiovascular, renal, and nervous system problems.⁶⁶ The area surrounding Universal Coating is home to many sources of these contaminants and their effects on the population are reflected in the poor health indicators for asthma, cardiovascular disease, and life expectancy.⁶⁷

The cumulative impact of these pollutants threatens the health, welfare, and safety of this community. EPA defines cumulative impacts as the totality of exposures to combinations of chemical and nonchemical stressors and their effects on health, well-being, and quality of life outcomes.⁶⁸ A cumulative impact assessment is a wholistic review of this community’s current public health and environmental situation, which assists EGLE’s analysis of Universal Coating’s compliance reflect real world conditions. The assessment should include, at a minimum, the following:

1. “A detailed written description of the municipal and neighborhood setting of the facility, including the location of community and residential dwellings, hospitals, nursing homes, playgrounds, parks, schools, and comprehensive demographic, economic zoning, and physical descriptions.”⁶⁹
2. A list of all required federal, state, or local permits.⁷⁰
3. An assessment of the facility’s impact on each environmental and public health stressor, identified in EJ Screen, for the impacted community.⁷¹

Under Title VI of the Civil Rights Act and EPA guidance, EGLE must undertake an assessment of Universal Coating impact in the context of nearby pollution sources and existing

⁶⁵ Universal Coating, Permit to Install Application (June 2023).

⁶⁶ See [Am. Lung Ass’n, Volatile Organic Compounds](#) (last updated Nov. 2, 2023).

⁶⁷ See Attachment A, EJScreen Report.

⁶⁸ See [EPA, Cumulative Impacts Research: Recommendations for EPA’s Office of Research and Development](#) (Sept. 2022). (“Cumulative Impacts are defined as the totality of exposures to combinations of chemical and nonchemical stressors and their effects on health, well-being, and quality of life outcomes. The WHO defines health as “a state of complete physical, mental, and social well-being and not merely the absence of disease and infirmity.” Cumulative impacts include contemporary exposures to multiple stressors as well as exposures throughout a person’s lifetime. They are influenced by the distribution of stressors and encompass both direct and indirect effects to people through impacts on resources and the environment. Cumulative impacts can be considered in the context of individuals, geographically defined communities, or definable population groups. Cumulative impacts characterize the potential state of vulnerability or resilience of a community.” *Id.* at 4-5.)

⁶⁹ See New Jersey Environmental Justice Rule, N.J.A.C. 7:1C-3.2(a)(2).

⁷⁰ *Id.*

⁷¹ *Id.* The assessment should evaluate the “conditions of maximum usage or output, and a correlation of such impacts with various stages of the site preparation, facility construction and operation, including the amounts, concentrations, and pathways of any contaminants or pollution that will be associated with the facility.”

health disparities in the community. If properly conducted, a cumulative impact assessment will likely show that additional pollutants in this community are a substantial danger to the residents' health and welfare and therefore this permit must be denied. If EGLE chooses not to undertake a cumulative impact analysis, we expect that EGLE's response to comments will provide a detailed explanation of the legal support for that decision.

C. At a Minimum, EGLE Should Exercise its Discretion to Strengthen This Permit in Light of Environmental Justice Concerns.

The Michigan Circuit Court's decision in the Ajax Asphalt permit appeal supports EGLE's exercise of its discretion to lower Universal Coating's emissions limits and require fuel switching or materials switching to protect public health in this vulnerable area.⁷² Further, EPA's EJ in Air Permitting guidance provides, "permitting authorities can promote fair treatment by fully examining all relevant statutory and regulatory authorities, including discretionary authorities, to develop permit terms and conditions to address or mitigate identified air quality impacts to the extent feasible."⁷³ Rule 901 and MEPA also provide support for additional measures to protect air and public health. EGLE explicitly incorporated Rule 901(b) into Universal Coating's permit, but there is no indication that EGLE took measures to "proactively reduce the likelihood that the facility will generate a nuisance."⁷⁴ Additional restrictions on Universal Coating's operation are warranted and will mitigate some of the impact of the facility's new proposed emissions.

First, considering the site-specific conditions, EGLE should use its authority to require Universal Coating to model not only the proposed additional pieces of equipment, but the whole facility's emissions to confirm that it complies with the applicable screening level. To receive a permit to install, a permit applicant must submit data demonstrating that the emissions from the process will not have an unacceptable air quality impact in relation to all federal, state, and local air quality standards.⁷⁵ Further, "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."⁷⁶

Second, EGLE should lower Universal Coating's permitted emissions limits for toxics because of the impact of Universal Coating's toxic emissions on residents' health. Rule 228 permits EGLE to lower the maximum allowable emissions rate for any toxic air contaminant because a proposed emissions rate does not sufficiently protect human health.⁷⁷ EGLE may consider the synergistic effects of other toxic air contaminants, all relevant environmental and land use data, and data relating to exposure scenarios. Universal Coating's process involves using numerous toxic contaminants that will emit into the ambient air. Universal Coating's proposal

⁷² [City of Flint v. Mich. EGLE, et al., No. 2022-116871-AA](#) (Mich. Genesee Cnty. Ct. June 20, 2023), 10-11.

⁷³ [EPA, EJ in Air Permitting](#), *supra* note .

⁷⁴ Application of Rule 901(b) in the Permit to Install Review Process ("Rule 901(b) Guidance"); *see also* [EGLE Policy and Procedure AOD-021](#) (July 2, 2013). For instance, knowing that exposure to VOCs cause ear, nose, and throat irritation, EGLE should have considered the increased VOCs emissions likelihood to interfere with nearby residents' ability to enjoy their property and time outside.

⁷⁵ Mich. Admin. Code R. 336.1203(1)(h).

⁷⁶ *Id.*

⁷⁷ Mich. Admin. Code R. 336.1228.

would allow the facility to emit ethylbenzene up to 20% of the screening level, MIBK up to 20% of the screening level, and Vinyltrimethoxysilane up to 40% of the screening level.⁷⁸ Universal Coating’s proposed new emissions of these pollutants add to the emissions by other sources in the Dort-Carpenter Industrial Park.⁷⁹ Considering the air pollution and the current health burdens faced by this community, such as asthma and cardiovascular disease, EGLE should exercise its discretion to lower Universal Coating’s emissions limits such that no pollutant exceeds 10% of the screening level. This will provide additional safeguards to the community against unnecessary pollution exposure and provide a feasible alternative to protect air under MEPA. In addition, EGLE should require the installation of ambient air monitors so that EGLE and the community can better track emissions from the facility.

Third, considering Universal Coating’s record of non-compliance and VOCs emissions exceedances, EGLE should (1) require additional pollution controls to protect the community from the increased emissions, and (2) increase the frequency of VOCs testing from the current timeframe of once every five years.⁸⁰

Fourth, EGLE should require Universal Coating to use the *least polluting fuel* to power its facility and restrict the use of nonessential industrial agents that increase pollution. EGLE previously required Ajax Asphalt, a source adjacent to Universal Coating, to use fuel switching and materials restrictions due to environmental justice concerns in the nearby community.⁸¹ Ajax Asphalt was not permitted to burn recycled used oil as part of its industrial process because of the fuel’s toxic air emissions and their potential impact on nearby residents. A court upheld these restrictions with the community’s support and over Ajax’s objections. Here, Universal Coating’s permit currently allows it to use any subcategory 1 fuel type to power its equipment. EGLE should revise this requirement such that Universal Coating is permitted to burn only gas and the least polluting fuel as a backup. Furthermore, Universal Coating intends to employ a variety of chemical agents as part of its industrial process. It is unclear if each agent is essential, and to what degree, to Universal Coating’s process. If there are nonessential coating agents that do not significantly affect Universal’s operation but will increase pollution, then EGLE should restrict the use of those agents as part of Universal’s process to minimize the facility’s potential pollution impact. This materials-switching requirement is within the agency’s authority and should be exercised here because of the poor health and environmental justice indicators in the surrounding area.

D. EGLE Should Continue to Improve Public Notification Regarding Air Permits in Environmental Justice Communities.

The Flint community groups appreciate the increased communication between EGLE staff and community group leaders designed to improve the accessibility of the public meeting that was scheduled regarding the Universal Coating proposed permit. For example, the use of co-created

⁷⁸ [Universal Coating, Permit to Install Application](#) (June 1, 2023).

⁷⁹ [EGLE, Renewable Operating Permit Staff Report: Genesee Power Station LP](#) (Oct. 2, 2023).

⁸⁰ See [Draft Permit to Install for Universal Coatings, 11](#) (Jan. 9, 2024) (“Within 5 years of the most recent performance test, and once every five years, thereafter, the permittee shall verify the VOC capture efficiency across FG-RTO, by testing at owner's expense, in accordance with Department requirements, unless the permittee has submitted to the AQD District Supervisor an acceptable demonstration that the most recent acceptable test remains valid and representative.”).

⁸¹ [Ajax Permit to Install](#) (Nov. 15, 2021); see also [EGLE Response to Comments on Ajax Permit](#) (Nov. 15, 2021).

slides regarding air permitting reflected enhanced collaboration. There is still room for improvement. First, as our community group leaders have noted in the past, participation in the meeting by zoom should include access to seeing the names of all the participants; that change is needed to increase transparency and engagement.

Second, many residents still did not receive actual notice because they are not on social media and do not have access to email. It was only due to the hard work of residents and activists that others learned about the hearing. EGLE must do better by mailing notice to all residents within at least a one-mile radius of the facility seeking a permit.

V. CONCLUSION

EGLE must do everything that it can to ensure Flint residents breathe clean air. This proposal has the potential to worsen public health disparities, and EGLE has not fully analyzed the risks. We urge EGLE to require a cumulative impact assessment, deny the permit on the basis of that assessment in the very likely event it shows a substantial impact on health and welfare, and, if the agency decides to approve this permit, strengthen the permit's conditions to reduce its impacts.

Sincerely,

SUBMITTED: February 15, 2024.

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Attachment A



EJScreen Community Report

This report provides environmental and socioeconomic information for user-defined areas, and combines that data into environmental justice and supplemental indexes.

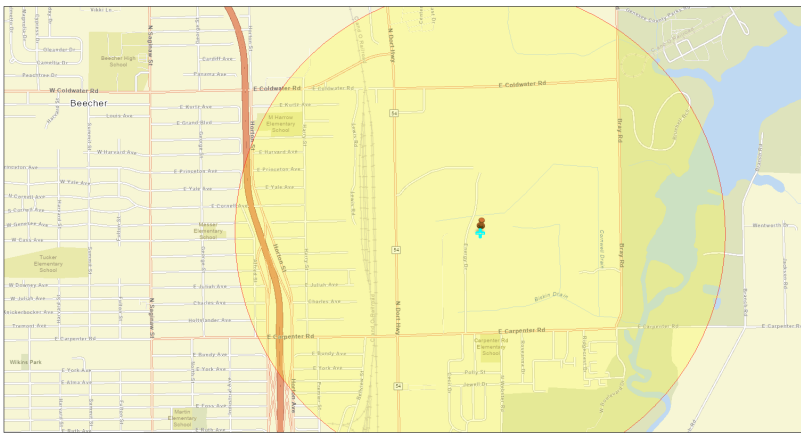
Genesee County, MI

1 mile Ring Centered at 43.081908,-83.667559

Population: 1,348

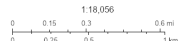
Area in square miles: 3.14

A3 Landscape



February 13, 2024

Project 1

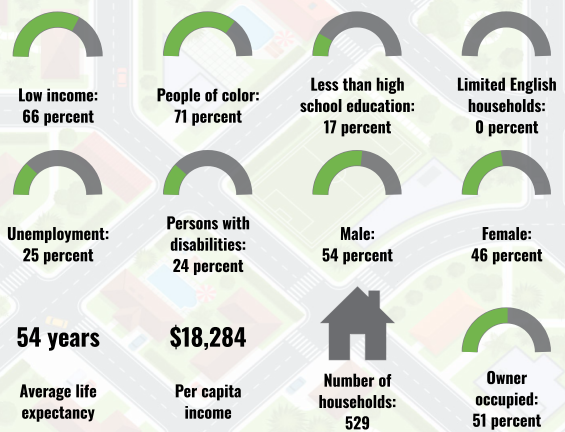


Map Courtesy: Aerial Contributions, Province of Ontario, Esri, Shutterstock, Google, Landsat, GeoNames, In, METRIUM, USGS, EPA, NPS, US Census Bureau, NOAA, USFWS

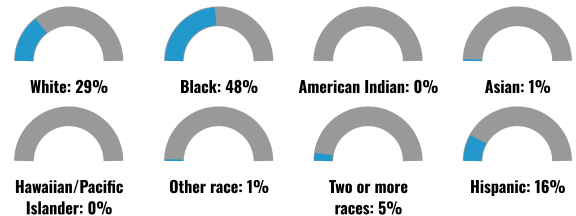
LANGUAGES SPOKEN AT HOME

| LANGUAGE | PERCENT |
|-------------------------------|---------|
| English | 96% |
| Spanish | 1% |
| German or other West Germanic | 2% |
| Total Non-English | 4% |

COMMUNITY INFORMATION



BREAKDOWN BY RACE



BREAKDOWN BY AGE



LIMITED ENGLISH SPEAKING BREAKDOWN



Notes: Numbers may not sum to totals due to rounding. Hispanic population can be of any race. Source: U.S. Census Bureau, American Community Survey (ACS) 2017-2021. Life expectancy data comes from the Centers for Disease Control.

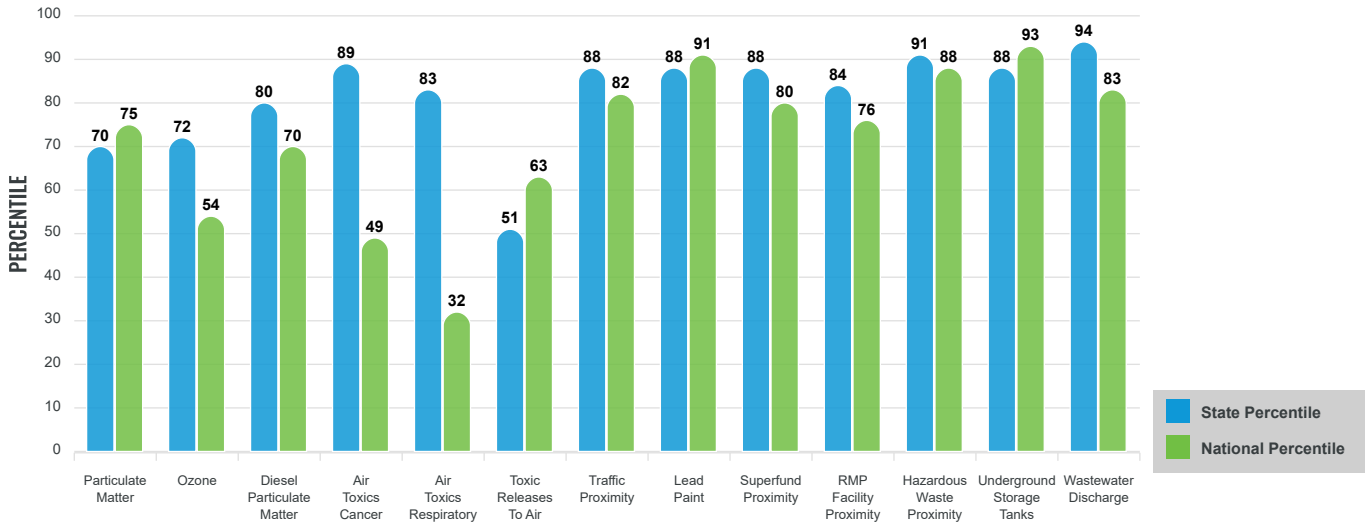
Environmental Justice & Supplemental Indexes

The environmental justice and supplemental indexes are a combination of environmental and socioeconomic information. There are thirteen EJ indexes and supplemental indexes in EJScreen reflecting the 13 environmental indicators. The indexes for a selected area are compared to those for all other locations in the state or nation. For more information and calculation details on the EJ and supplemental indexes, please visit the [EJScreen website](#).

EJ INDEXES

The EJ indexes help users screen for potential EJ concerns. To do this, the EJ index combines data on low income and people of color populations with a single environmental indicator.

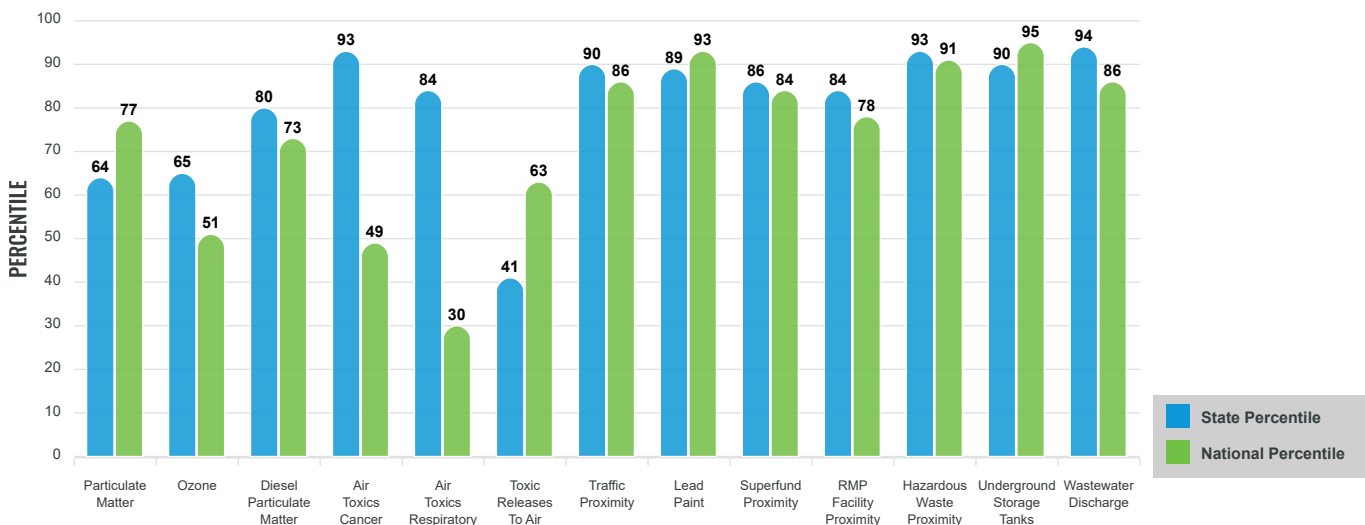
EJ INDEXES FOR THE SELECTED LOCATION



SUPPLEMENTAL INDEXES

The supplemental indexes offer a different perspective on community-level vulnerability. They combine data on percent low-income, percent linguistically isolated, percent less than high school education, percent unemployed, and low life expectancy with a single environmental indicator.

SUPPLEMENTAL INDEXES FOR THE SELECTED LOCATION



These percentiles provide perspective on how the selected block group or buffer area compares to the entire state or nation.

Report for 1 mile Ring Centered at 43.081908,-83.667559

EJScreen Environmental and Socioeconomic Indicators Data

| SELECTED VARIABLES | VALUE | STATE AVERAGE | PERCENTILE IN STATE | USA AVERAGE | PERCENTILE IN USA |
|---|--------|---------------|---------------------|-------------|-------------------|
| POLLUTION AND SOURCES | | | | | |
| Particulate Matter (µg/m ³) | 7.77 | 8.51 | 24 | 8.08 | 39 |
| Ozone (ppb) | 57.4 | 60 | 27 | 61.6 | 20 |
| Diesel Particulate Matter (µg/m ³) | 0.161 | 0.183 | 43 | 0.261 | 34 |
| Air Toxics Cancer Risk* (lifetime risk per million) | 20 | 19 | 14 | 25 | 5 |
| Air Toxics Respiratory HI* | 0.2 | 0.2 | 11 | 0.31 | 4 |
| Toxic Releases to Air | 150 | 2,500 | 15 | 4,600 | 28 |
| Traffic Proximity (daily traffic count/distance to road) | 110 | 120 | 67 | 210 | 59 |
| Lead Paint (% Pre-1960 Housing) | 0.49 | 0.38 | 66 | 0.3 | 73 |
| Superfund Proximity (site count/km distance) | 0.058 | 0.15 | 48 | 0.13 | 49 |
| RMP Facility Proximity (facility count/km distance) | 0.14 | 0.31 | 51 | 0.43 | 42 |
| Hazardous Waste Proximity (facility count/km distance) | 1.5 | 1.1 | 74 | 1.9 | 69 |
| Underground Storage Tanks (count/km ²) | 8.4 | 8 | 67 | 3.9 | 86 |
| Wastewater Discharge (toxicity-weighted concentration/m distance) | 0.0017 | 0.13 | 67 | 22 | 53 |
| SOCIOECONOMIC INDICATORS | | | | | |
| Demographic Index | 68% | 28% | 91 | 35% | 89 |
| Supplemental Demographic Index | 28% | 14% | 95 | 14% | 92 |
| People of Color | 71% | 26% | 88 | 39% | 78 |
| Low Income | 66% | 31% | 91 | 31% | 92 |
| Unemployment Rate | 25% | 7% | 96 | 6% | 97 |
| Limited English Speaking Households | 0% | 2% | 0 | 5% | 0 |
| Less Than High School Education | 17% | 9% | 86 | 12% | 76 |
| Under Age 5 | 7% | 5% | 71 | 6% | 68 |
| Over Age 64 | 16% | 18% | 45 | 17% | 50 |
| Low Life Expectancy | 19% | 20% | 33 | 20% | 42 |

*Diesel particulate matter, air toxics cancer risk, and air toxics respiratory hazard index are from the EPA's Air Toxics Data Update, which is the Agency's ongoing, comprehensive evaluation of air toxics in the United States. This effort aims to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that the air toxics data presented here provide broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. Cancer risks and hazard indices from the Air Toxics Data Update are reported to one significant figure and any additional significant figures here are due to rounding. More information on the Air Toxics Data Update can be found at: <https://www.epa.gov/haps/air-toxics-data-update>.

Sites reporting to EPA within defined area:

| | |
|--|----|
| Superfund | 0 |
| Hazardous Waste, Treatment, Storage, and Disposal Facilities | 0 |
| Water Dischargers | 14 |
| Air Pollution | 8 |
| Brownfields | 0 |
| Toxic Release Inventory | 3 |

Other community features within defined area:

| | |
|-------------------------|---|
| Schools | 0 |
| Hospitals | 0 |
| Places of Worship | 2 |

Other environmental data:

| | |
|--------------------------|-----|
| Air Non-attainment | Yes |
| Impaired Waters | Yes |

| | |
|--|-----|
| Selected location contains American Indian Reservation Lands* | No |
| Selected location contains a "Justice40 (CEJST)" disadvantaged community | Yes |
| Selected location contains an EPA IRA disadvantaged community | Yes |

Report for 1 mile Ring Centered at 43.081908, -83.667559

EJScreen Environmental and Socioeconomic Indicators Data

| HEALTH INDICATORS | | | | | |
|---------------------------|-------|---------------|------------------|------------|---------------|
| INDICATOR | VALUE | STATE AVERAGE | STATE PERCENTILE | US AVERAGE | US PERCENTILE |
| Low Life Expectancy | 19% | 20% | 33 | 20% | 42 |
| Heart Disease | 8.8 | 6.6 | 90 | 6.1 | 91 |
| Asthma | 15.7 | 11.6 | 94 | 10 | 99 |
| Cancer | 5.8 | 6.6 | 24 | 6.1 | 39 |
| Persons with Disabilities | 22.6% | 14.6% | 90 | 13.4% | 91 |

| CLIMATE INDICATORS | | | | | |
|--------------------|-------|---------------|------------------|------------|---------------|
| INDICATOR | VALUE | STATE AVERAGE | STATE PERCENTILE | US AVERAGE | US PERCENTILE |
| Flood Risk | 4% | 7% | 41 | 12% | 35 |
| Wildfire Risk | 0% | 0% | 0 | 14% | 0 |

| CRITICAL SERVICE GAPS | | | | | |
|--------------------------|-------|---------------|------------------|------------|---------------|
| INDICATOR | VALUE | STATE AVERAGE | STATE PERCENTILE | US AVERAGE | US PERCENTILE |
| Broadband Internet | 30% | 14% | 91 | 14% | 88 |
| Lack of Health Insurance | 4% | 5% | 39 | 9% | 27 |
| Housing Burden | Yes | N/A | N/A | N/A | N/A |
| Transportation Access | Yes | N/A | N/A | N/A | N/A |
| Food Desert | Yes | N/A | N/A | N/A | N/A |

Report for 1 mile Ring Centered at 43.081908,-83.667559