

June 27, 2023

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Dear Mr. Meltesen, Mr. Bhatti, Ms. Dorka, and Ms. Hoang,

We would like to thank the HUD and EPA representatives who joined us in Flint, Michigan on February 28th. We appreciated the opportunity to meet with HUD and the EPA and share our observations on how this community has become a sacrifice zone due to the discriminatory policies and practices of Genesee Township and the State of Michigan’s Department of Environment, Great Lakes, and Energy (EGLE).

Summary of Feb. 28 tour and site visit

As we discussed and observed on Feb. 28, 2023, due to the actions of EGLE and Genesee Township heavy industry was concentrated in one majority Black census tract in Genesee Township and directly adjacent to northeast Flint. This case is a clear example of environmental racism. This concentration places the families and individuals who reside in federally supported low-income housing, manufactured housing, private rental housing, and single-family homes in a constant state of exposure to a host of environmental toxins, noxious smells, unclean air and water, and noise pollution. This concentration interferes with their ability to use and enjoy their homes, including outdoor green space, and reduces indoor and outdoor air quality. Lives are literally cut short, including a young man from River Park found dead on the side of the road from an apparent asthma attack. As noted by Rev. Deb Hawley, “our neighborhood is blocked on every side.”

As the tour demonstrated, the hot-mix asphalt plant will emit harmful contaminants, such as particulates, sulfur dioxide and lead that contribute to high rates of cancer, asthma, and other

respiratory illnesses.¹ The plant sits across the street from two federally subsidized housing developments that are home to nearly 400 families and where close to 3,000 people live within a one-mile radius of the plant site in an area already overburdened with industrial pollutants.² The \$300 million reconstruction of I-475, which may take up to five years to complete, will mean that the asphalt plant will be actively in use.³

In addition to the proposed Ajax asphalt facility, the tour demonstrated how EGLE and Genesee Township have inundated the community with heavy industrial facilities, including Genesee Power Station, Universal Coating, Ace Saginaw Paving Company, Buckeye Terminals, Superior Materials, RJ Industrial Recycling, Genesee Recycling, Environmental Rubber Recycling, Emterra Environmental USA, and Lake State Railway Company.⁴ Despite repeated warnings and assertions that their combined actions were discriminatory and profoundly harmful to the health, housing, and financial security of nearby residents, EGLE and Genesee Township have stayed resolute in their commitment to supporting industrial growth over people and ignoring the cumulative impact on residents of their actions. As is described in greater detail below, because HUD and the EPA have not acted, EGLE and Genesee Township can freely operate within the gaps of enforcement. The concern over interfering with business development or the growth of a locality's revenue repeatedly takes priority over the needs, health, and civil rights of people. Ajax is also not the end of this environmental racism story, as more pollution may come with the redevelopment of Buick City as 3.5 million square feet (more than 400 acres) of industrial space in North Flint.⁵

As both agencies heard, many homeowners have invested in their homes but property values remain depressed, with little to no increase in the value of the home decades after the initial purchase. Industrial activity in this area also spurred disinvestment in the surrounding neighborhoods, schools and business sectors. On the other hand, moving further north and east into Genesee Township where the township trustees live, there is open green space, neighborhood investments, and minimal industrial sites.

Residents in the area surrounding the Ajax plant noted how they once also enjoyed green space, largely a wooded area, with trees, wildlife, and raspberry bushes. There were also some local businesses. Residents have fond memories of recreating outside, gardening, riding bikes down Energy Drive, foraging for berries, and watching fireworks over the trees. Without their consent and at the expense of their home values, wealth, and health, Genesee Township's elected to re-zone the land for heavy and light industry. Parents now have to limit how much time their children spend outside and cannot safely grow their own fruits and vegetables due to concerns over airborne pollution. Even modest community improvements are impacted by EGLE and

¹ See *generally* Ajax Materials Corporation, Permit to Install, available [here](#) (2021)

² Environmental Justice Summary, Ajax Materials Corporation, available [here](#) (2021).

³ *MDOT to reveal plan for massive I-475 rebuild on June 28*, M Live, March 6, 2023, <https://www.mlive.com/news/flint/2022/05/mdot-to-reveal-plan-for-massive-i-475-rebuild-at-june-28-meeting.html>.

⁴ See Email from EGLE Inspector Dan McGeen Concerning Sources Close to Ajax, (April 12, 2021) (Attachment A).

⁵ City of Flint, MI, *State support for the redeveloping the Buick City site paves the way for building in-demand, move-in ready facility in Flint*, Nov. 11, 2022, <https://www.cityofflint.com/state-support-for-redeveloping-buick-city-site-paves-way-for-building-in-demand-move-in-ready-facility-in-flint/>.

Genesee Township's actions. For example, a tributary to C.S. Mott Lake, a local recreational area, is also a receiving water from the industrial stormwater runoff from Ajax.

As recognized by the Biden Administration and HUD, homeownership is the primary way American families build wealth and pass it on to the next generation.⁶ But opportunities for homeownership have been deeply unequal in our country.⁷ Because of systemic discrimination in this nation's housing and credit markets, including by the federal government itself, homeownership rates are much lower for Black households and other people of color than for their White counterparts.⁸ Indeed, the Black-White homeownership gap is wider today than it was in 1968 when the Fair Housing Act became law.⁹ HUD and EPA should not take actions or omissions contrary to these goals, especially when federal funding recipients under their jurisdiction increase those disparities and strip wealth from Black communities.

Summary of the Resident Interviews

Erma Barnes. Erma Barnes has lived at 5130 Inland St. in Flint, Michigan since 1969. After her divorce and years as a renter faced with poor housing conditions, Ms. Barnes sought to move to a single-family home in a safe, quiet neighborhood where she could raise her four children. After a bank refused to give her a loan, Ms. Barnes was introduced to HUD's 225 program through Childrens, a Black-owned real estate company in the community who was trying to help Black residents become home owners. HUD offered her a 30-year mortgage with monthly payments capped in accordance with her income. This program allowed her to buy her 3-bedroom home in 1968, moving into the home in 1969. She saw homeownership as a chance to finally have a say over the quality of her housing and to create a family home that her children could inherit and could continue to live in. She was shown several different neighborhoods, including some white neighborhoods, but because it was at the height of the civil rights movement, she was concerned for the safety of her family if they moved into a white neighborhood or school district. When they moved into the neighborhood, while there were a few railroad tracks present, there was not much else and there was little traffic or noise. The neighborhood appeared to be quiet, with other Black families seeking to own their homes and no longer rent. Her kids were able to walk to the nearby school in the Beecher School District.

Ms. Barnes and her neighbors have repeatedly complained about the increasing noise, debris, and noxious smells. She said it got worse over the years, especially after the wood burning at the Genesee Power Station, to the point where she and others felt that they could not stay outside for long because it felt like you could not breathe. As the industrial park got bigger, with the scrap metal facilities, Genesee Power, etc., the train and truck traffic increased, making the air and

⁶ FACT SHEET: *Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap*, June 7, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/>

⁷ Demetria L. McCain, *FHEO's Statement by HUD's Office of Fair Housing and Equal Opportunity on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership*, Dec. 7, 2021 at 1, https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Statement_on_Fair_Housing_and_Special_Purpose_Programs_FINAL.pdf

⁸ *Id.*

⁹ *Id.*

smells increasingly worse. Her grandchildren, who she raised, were particularly harmed by the increasing pollution and both have asthma. She said that many neighbors have similar experiences, or worse, with some now on oxygen or have even died.

Ms. Barnes and her neighbors' complaints to Genesee Township and to the companies went nowhere. She feels strongly that she and her neighbors have no representation. Though she has a Flint address, she is technically in Genesee Township. She has repeatedly reached out to the Township Supervisor and code enforcement officer. She noted that both have repeatedly said that there is nothing that they can do and the Township lawyer apparently said that the "railroad co. gets a pass." She does feel that the Township is very comfortable concentrating heavy industry in poor, Black neighborhoods because they do not see Ms. Barnes and her neighbors as their constituents. The Supervisor told Ms. Barnes that he lives about five miles from the area, which she assumes is true for the rest of the trustees and Township staff, so they are not experiencing what she and her neighbors are experiencing. She said this would never happen in their neighborhoods and certainly never happen in communities like Grand Blanc. Her street (Inland) is a main route for the trucks trying to get on 475, which she fears will only increase with the asphalt plant.

Her initial home value from 1968 was \$19,000. With the 30-year mortgage and interest, she paid approximately \$100,000. She also made several home improvements, including investing in new windows, two new roofs, a new driveway, new kitchen, and a new bathroom. Based upon those investments and the mortgage payments plus interest, she estimates that she put at least \$160,000 into the home. Her home's current value is \$15,000. While she thinks someone would likely buy it from her given its size and affordability, selling it would effectively render her homeless. She said she cannot even afford to move into senior housing. Ms. Barnes and many of her neighbors feel trapped. Some of the homes have been abandoned, with squatters occupying one of the abandoned homes. Her children and grandchildren have no interest living in the home, given the smell, noise, and air pollution. She said, in effect, that "wealth passing is gone."

Nicole & Terry Weaver. Nicole Weaver and her mother Terry Weaver live next door to one another, 7005 Cecil Drive (Terry) and 7006 Cecil Drive (Nicole). Their homes are a block away from the Ajax site. They have multiple types of pollution, including from the Genesee Power Station and truck traffic from Carpenter Road. Because of the industrial park, trucks and semis drive down their street multiple times a day. They both said that Genesee Township does not care.

Terry moved into her home in 1959 and paid \$10,000 for it. She secured a traditional loan from a bank. She suspects it is worth the same amount now. Nicole's home was given to her by her dad. He purchased it about 40 years ago. Generations of their family live in the immediate neighborhood. Both estimate that each of their homes is worth about \$10,000. Property taxes are about \$500 a year. Nicole is behind on the payment of her property taxes. Nicole has lived in her current home since she was 8 years old and has lived in the neighborhood her entire life. The family reports a range of illnesses, including Nicole's grandma dying of respiratory problems, even though she never smoked.

Nicole’s family circulated petitions to stop the Genesee Power Station (“GPS”). Nicole and Terry report that GPS promised to never make use of tire derived fuel (TDF) authorized in their permit because it considered it a “backup fuel.” Nevertheless, GPS has since been burned TDF in the power station.¹⁰ GPS has also incinerated wood waste materials with lead paint.¹¹ Nicole and Terry both said that EGLE was repeatedly there to listen to residents about their concerns regarding GPS, but did nothing to address them. As a result of GPS, they hear terrible noises and experience noxious smells. They said that the plant is more active at night, which you can tell because the flames are higher. A GPS spokesperson told them that “[y]ou people are nothing to me.” They said that at least ten years ago, EGLE scraped cars, houses, soil, etc., for testing, but the results were inconclusive. GPS has had numerous violations but were only given a slap on the wrist.¹²

The Ajax Plant is in their minds worse than GPS, because it is across the street and much closer to their homes. They will not be able to open windows or doors and fear that they won’t be able to breathe or go outside. They cannot afford air purifying systems. Nicole said she fears she cannot let her two-year old daughter outside. There is a swing set and sandbox in the backyard. Nicole has to clean it off every few days after it becomes covered in thick, black residue. They said everyone in the neighborhood has issues with breathing and residents have had to be evacuated multiple times due to fires at the junkyard after propane tanks exploded. Her immediate neighborhood has experienced a significant decline, with many of the houses now empty or a part of the Genesee County land bank. Nicole noted that they are no longer worth keeping up and “there is no one to sell them to.” The neighborhood is majority Black, with one Latinx family, and then Nicole’s white family.

Both Nicole and Terry said that they are not comfortable with online meetings and do not have stable internet access. For that reason, EGLE’s public input process did not reach them. Nicole tried to submit public comments on EGLE’s website, but was deterred when the website resulted in a message saying that the website was insecure.

Oshera Jones. Oshera Jones is River Park public housing resident. She has four children and two of her children, a 2-year old and 3-year old, have been admitted to the hospital due to asthma and breathing problems. She said that while she does not have asthma, most residents have health issues, including a variety of breathing problems. She said generations of families have lived there and there is a strong sense of community and enjoyment of the greenspace and trees directly in front of the homes. She is personally conflicted, because while she really loves the area, she also really needs to move due to the health of her children. She is scared about what will happen to them. She is also concerned that the potential plan under Choice Neighborhoods will not happen for at least two years.

Geri Clark. Geri Clark is a member of the North Flint Action Council and a homeowner for the last 20 years. She works and lives in the community, but only found out about the Ajax plant on the news. She never heard from Ajax, EGLE, or Genesee Township before that time. The Neighborhood Action Council has tried to revitalize the neighborhood and make improvements,

¹⁰ Flint Facilities Inspection Summary, AQD – Lansing, (Apr. 12, 2021), 3-4 (Attachment B)

¹¹ *Id.*

¹² *Id.*

but given the growth of the industrial park, it is nearly impossible to make positive change. Although she does not want to move, she may have to as she cannot even open her windows or doors to get fresh air. Even on good days, where you do not smell noxious odors, she has runny eyes and cannot breathe. She and her neighbors try to keep the neighborhood clean but the debris is overwhelming.

Bishop Bernadel Jefferson. Bishop Jefferson has lived in the neighborhood for more than 30 years and she and her faith community have dealt with the growth of the industrial park “for years.” She also has multiple family members who live at River Park Apartments. Like others, she would like to be able to open her windows without getting sick. Her face breaks out every year in a rash, just around the time GPS is most active. She sees what is happening as a “constant invasion from having a safe, clean place to live.” She and her husband never received notice of Ajax coming, even though they live less than a mile from the site. She said she also reached out to HUD, the Genesee County Commissioners, and the Flint Housing Commission, who all confirmed that they also received no formal notice. Bishop Jefferson noted that in Fenton, Michigan residents who opposed an asphalt plant coming to their community, were able to convince the town not to re-zone from farmland to industrial use. It is clear that EGLE and Genesee Township do not care to give the North Flint and Genesee Township residents the same choice, leaving them trapped in valueless homes that are harmful to their health. She also remarked that EGLE should have known that this would be a controversial case, because of the history with the GPS. When she spoke however with the Genesee Township supervisor about Ajax, he said “it does not bother him because he lives five miles away.”

Collectively, the residents and community leaders spoke of their frustration at EGLE and Genesee Township over decades. Both entities approached Ajax as a “done deal,” giving no formal notice to residents about Ajax until it was essentially a go and after millions of dollars were invested to make it possible. What notice was only online and during brief online-only public hearings, which does not reach residents who are disproportionately impacted by pollution and trying to survive a global pandemic. This is also despite the fact that residents and the St. Francis Prayer Center have for decades put them on notice of the harm they are creating, including through litigation and other Title VI administrative complaints going back to the early 1970s. Ms. Barnes, the Weavers, and Bishop Jefferson spoke about their inability to influence the political process at the local and state level, both before and after industry is sited within the park, in large part due to the failings of EGLE’s public comment process. Without federal agency intervention, EGLE and Genesee Township will continue to concentrate pollution at the industrial park and directly limit the quality of life of residents and the use and enjoyment of their homes.

Facing the inevitability of further industrialization and harm to residents’ health, the Flint Housing Commission seems intent on rebuilding the River Park public housing elsewhere in Flint due to the Ajax plant and burgeoning industrial park.¹³

Why HUD and the EPA Must Act

¹³ *Grant could trigger demolition of Flint public housing complex, relocation of residents*, (July 26, 2022) <https://www.mlive.com/news/flint/2022/07/grant-could-trigger-demolition-of-flint-public-housing-complex-relocation-of-residents.html>

The time is now for HUD and EPA action. President Biden has made environmental justice for all a cornerstone of his administration, including his most recent Executive Order that recognizes that communities “with environmental justice concerns face entrenched disparities that are often the legacy of racial discrimination and segregation, redlining, exclusionary zoning, and other discriminatory land use decisions or patterns. These decisions and patterns may include the placement of polluting industries, hazardous waste sites, and landfills in locations that cause cumulative impacts to the public health of communities and the routing of highways and other transportation corridors in ways that divide neighborhoods.”¹⁴ The Executive Order directs all federal agencies to make environmental justice and equity core to their missions. HUD also recently entered into a landmark Voluntary Compliance Agreement in the General Iron matter in Chicago, a case as we noted previously that is strikingly similar to what has transpired here.¹⁵ In both cases, General Iron provides the roadmap for the agencies to remedy the civil rights wrongs here, including by assessing cumulative impacts before an approval for industrial siting and permitting is made, directly engaging and partnering with impacted communities when undertaking those assessments, *preventing the harm from occurring*, and overhauling industrial zoning regulations and ordinances that led to the discriminatory siting in the first place. Now HUD and EPA have to follow the path that has been laid. If not stopped here, EGLE and Genesee Township will proceed as business as usual. No amount of mitigation or improved public comment processes will address the harm to the health and wealth of the impacted community.

A coordinated investigation could uncover the full picture. This review is necessary to accurately document and redress EGLE and Genesee Township’s discriminatory actions and the resulting harm to communities. Toxic, industrial siting near and within communities of color in violation of Title VI is possible because two federal funding recipients engage in separate but concurrent processes to support heavy industry’s interests at the expense of communities. Genesee Township and EGLE’s claimed ignorance to each other’s actions, though somehow perfectly in sync, allow them to sit within the gap between HUD and the EPA’s investigatory arms.

Indeed, Genesee Township claims it only followed its zoning laws and that heavy industry has to live somewhere. As noted in previous correspondence with HUD, Genesee Township was so brazen in its belief it could put heavy industry where ever it wanted that during a public meeting a Township Trustee said that a “nuclear power plant” could be sited in the Dort-Carpenter Industrial Park and there was nothing that could be done to stop it. But industrial zoning should be heavily scrutinized, as it is is just as discriminatory and harmful as exclusionary zoning or long ago outlawed racial zoning.¹⁶ What’s ignored is that because of a reticence to consider

¹⁴ *Revitalizing Our Nation’s Commitment to Environmental Justice for All* (April 21, 2023) <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>

¹⁵ *HUD Negotiates Agreement with the City of Chicago and Community Groups to advance Environmental Justice*, May 12, 2023, https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_095.

¹⁶ Cassidy Holtzapple, The Leaflet, *How Economic Zoning Promotes Environmental Racism*, <https://theleaflet.org/home-1/how-economic-zoning-promotes-environmental-racism> (Feb. 2, 2021)(noting that while the U.S. Supreme Court case, *Buchanan v. Warley*, 245 U.S. 60 (1917) outlawed explicitly race based zoning

environmental racism in a land use context, Genesee Township and others like it can craft zoning and land use policies for financial gain, “prioritizing their tax base” over “community interests.” Township trustees and staff feel no direct harm, living miles away from their toxic revenue generator. In any other scheme, using zoning and permitting to discriminate is actionable. Indeed, a locality’s decision to deny zoning to build affordable housing that could have benefitted racial minorities has long been recognized to be among the heartland of actions inviting civil rights and disparate impact liability.¹⁷ Industrial zoning choking off the housing opportunities, wealth, and health of a minority community should be no different.

EGLE’s actions are also discriminatory because the agency refuses to consider the possible disparate impacts of the proposed facility when it is making its permitting decisions. EGLE claims that it has no authority to prevent industrial concentration in communities of color because it may not deny permits based on their location under state law.¹⁸ Not only is this wrong, but the agency also ignores its independent obligations under Title VI to ensure that its actions do not discriminate against racial minorities. Regardless of whether an applicant has obtained local zoning approvals, EGLE must still affirmatively assess whether its permitting decisions will create discriminatory disparate impacts. The agency did not undertake this type of analysis with respect to the Ajax plant and has not done so with any other polluting facility. In fact, EGLE argues that it does not have a duty under Title VI to review the discriminatory impacts of the pollution it authorizes in overburdened environmental justice communities.¹⁹

This is how sacrifice zones are created: localities zone tax-revenue generating industrial parks in overburdened communities of color and away from all white enclaves whose voices are heard if an effort is made to rezone their communities for industry. Then EGLE, the purported public trustee of Michigan’s environmental resources, finds a way to grant a permit to pollute because the land has already been acquired. Industrial applicants have an easy roadmap to approval of their projects in these communities and the health impacts, like chronic asthma in a community, become normalized. So typical is this path that polluters have upfront discussions with EGLE and willing localities like Genesee Township – before they even make formal requests for permitting and land use. HUD and EPA, if they review at all, investigate with tunnel vision, missing the carefully choreographed dance played by federal funding recipients.

It is not too late to intervene stop EGLE and Genesee Township and to move the Ajax facility. There is also an opportunity to change permitting, zoning, and land use policies so that

more than a century earlier, “economic zoning” in the form of industrial zoning, commercial zoning, and residential zoning classifications took its place, while the racialized and segregative effect remained the same.)

¹⁷ See e.g., *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977). See also *Texas Dept. of Hous. and Comm. Affairs v. Inclusive Communities Project, Inc* 576 U.S. 519 (2015).

¹⁸ To support its argument that it has no authority over to deny a permit based on its location, EGLE may point to an opinion of the Michigan attorney general. [Attorney General Opinion #6992](#). The Michigan attorney general’s opinion neither contemplates EGLE’s Title VI obligations, nor indicates that EGLE cannot take location into account in a permitting decision; the Michigan attorney general’s opinion states, instead, that EGLE cannot deny a permit because the proposed activity fails to comply with local zoning ordinances. The attorney general’s opinion is irrelevant here.

¹⁹ See EGLE Response to Ajax Asphalt Title VI Complaint, (May 20, 2022) at 4 (Attachment C) (arguing that Clean Air Act compliance is sufficient to comply with Title VI).

what has transpired here does not happen again. This is especially critical because both respondents are currently considering additional permitting, zoning, and land use. Indeed, Genesee Township has recently cleared land in two new locations within the industrial park: a site across the street from the Ajax facility and a site closer to the end of the park, near Genesee Power Station.

EGLE must affirmatively address cumulative impacts in its permitting and Genesee Township must be expected to take the same or similar steps that the City of Chicago agreed to in General Iron. The DOJ coordination compliance team can help to ensure that the two federal agencies work together to advance the spirit and mandates of Title VI. We would like to meet with you to discuss this further.

Sincerely,

Kate Walz

Debbie Chizewer

cc: Marianne Engelman-Lado, Acting Principal Deputy Assistant Administrator, Office of Environmental Justice and Civil Rights (Engelmanlado.marianne@epa.org)

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