

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBERS:

(TITLE VI)

(TITLE VIII)

(SEC. 109)

1. Complainants

St. Francis Prayer Center
2381 E. Carpenter Rd.,
Flint, Michigan 48505
Contact through undersigned counsel

Environmental Transformation Movement of Flint
1432 Woodslea Drive
Flint, Michigan 48507
Contact through undersigned counsel

Flint Rising
4601 Clio Rd.
Flint, Michigan 48504
Contact through undersigned counsel

Representing the Complainants:

Katherine E. Walz
Eric Dunn
National Housing Law Project
1663 Mission St., Suite 460
San Francisco, CA 94103 (Counsel are working remotely)
(773) 793-3560

Deborah Chizewer
Julie Goodwin
Noorulanne Jan
Earthjustice – Midwest Regional Office
311 South Wacker Drive
Chicago, IL 60606
(773) 484.3077

Nick Leonard
Great Lakes Environmental Law Center
4444 Second Ave.
Detroit, Michigan 48201

(313) 782-3372

2. Other Aggrieved Persons:

Current residents of the River Park Townhomes, a 173-unit family public housing development with 1, 2, and 3-bedroom units, and Ridgecrest Village Townhomes, a 326-unit project-based Section 8 and Low-Income Housing Tax Credit development with 1, 2, 3, and 4-bedroom units, who have been denied equal housing opportunity and subjected to discrimination by Genesee Township on the basis of race and color. Genesee Township engaged in following actions that amount to discrimination by intent and/or effect: The Planning Commission approved of the site plan for the Ajax asphalt plant; Genesee Township approved the acquisition of lots 3 – 14 to Ajax; and Genesee Township issued building permits to Ajax. These actions will place the plant within 1,550 feet of one housing development and a half mile of the other, resulting in significant harm to the health and well-being of those residents, the enjoyment of their community, and the habitability of their homes.

3. The following is alleged to have occurred or is about to occur.

Genesee Township has executed policies and practices that discriminate on the basis of race and color and harm predominantly Black communities who are then forced to live proximate to industries that harm their health, economic well-being, and housing. These same policies and practices violate Genesee Township's duty to affirmatively further fair housing.

4. The alleged violation occurred because of:

Race and color.

5. Address and location of the property in question (or if no property, the city and state where the discrimination occurred)

Genesee Township, Michigan

5088 Energy Drive, Flint, Michigan, including lots 3 – 14 of Energy Drive, Genesee Township, Michigan (future site of the Ajax asphalt plant)

6. Respondents:

Genesee Township
Serve: Daniel K. Eashoo, Supervisor
7244 N. Genesee Road
Genesee, Michigan 48437

7. The following is a statement of facts regarding the alleged violations:

Flint Rising, a project of Tides Advocacy, is an advocacy based environmental justice coalition of members, community organizations and allies that came together in the aftermath of one of the largest public health disasters in the history of this country. Flint Rising believes that

directly impacted people have the leadership necessary to build the organizing infrastructure for this long-haul fight for justice, reparations, and the creating the future that Flint families need and deserve.

In its 40th year **St. Francis Prayer Center** (“SFPC”) is a Flint, Michigan based non-profit that serves residents of the nearby public housing community, River Park, as well as other residents in Flint. The St. Francis Prayer Center exists to serve all people, especially the poorest in the community, and to advance support, direct service, and social justice on behalf of and with the community. For more than 25 years SFPC has been involved in environmental justice efforts in Flint. In the 1990's SFPC was instrumental in the Title VI Civil Rights complaints involving the Genesee Power Station and in the 2021 public and legal initiatives against the Ajax asphalt plant. SFPC also filed a Title VI Civil Rights complaint in 1998 concerning Select Steel recycling mill’s impact on Flint’s Black residents and joined comments to HUD regarding the importance of the disparate impact theory under the Fair Housing Act.

Environmental Transformation Movement of Flint (“ETM Flint”) is a Flint, Michigan based grassroots environmental justice non-profit committed to a future where Flint is a healthy, vibrant, supportive environment for people and nature to thrive, reflecting the resiliency of its people and enabling all residents to live their highest potential. ETM Flint grows diverse environmental justice leaders and just relationships to secure a healthy and secure future by and for Flint residents. ETM Flint catalyzes informed, democratic planning and equitable investment in Flint to bring green jobs and environmental solutions to lift people out of poverty to create a healthier plant for generations to come. ETM Flint is committed to the 17 Principles of Environmental Justice developed through the People of Color Environmental Leadership Summit of 1991: <https://www.ejnet.org/ej/principles.pdf>. Their campaign opposing the Ajax plant siting is at: <https://www.etmflint.org/stop-ajax-asphalt>.

All three groups have been forced to dedicate hundreds of hours to block the siting of the Ajax plant across the street from the Flint community. These efforts have diverted precious time and resources away from actions to improve the Flint community, build resident power and leadership, and help residents address past and present environmental racism. Actions taken by these organizations include, but are not limited to the following: (1) educating the public (including officials from Genesee Township) on the racial justice implications of permitting the Ajax plant to exist in a community already inundated by polluting industries; (2) educating the public (including officials from Genesee Township) about how asphalt plants emit noxious smells and make people sick by releasing toxic pollution into the air, greatly increasing the chances that residents will get asthma and cancer; (3) educating the public (including officials from Genesee Township) on how asphalt plants harm neighborhoods and the property values of predominantly low-income, households of color by damaging and wearing out local streets through the hundreds of trucks necessary to transport the materials and by depressing market values which erodes most of the generational wealth that the low-income residents have to pass on to their children; (4) creating a change.org petition¹ to oppose the siting the Ajax plant in their

¹ https://www.change.org/p/governor-gretchen-whitmer-stop-ajax-asphalt-plant-for-flint-genesee-township-michigan?recruiter=1224255801&utm_source=share_petition&utm_medium=facebook&utm_campaign=share_petition&recruited_by_id=5936c3d0-0b60-11ec-a6b8-1b102bf97fae&utm_content=fht-30537234-en-us%3A1

community; (5) organizing residents, churches, community leaders, and public officials to oppose the siting of the Ajax plant in their community; (6) advocating with Michigan's Department of Environment, Great Lakes, and Energy (EGLE) and the State of Michigan to not grant the air permit to Ajax; (7) filing public comments in opposition the Ajax plant siting with EGLE; (8) submitting a request to the External Civil Rights and Compliance Office of the US Environmental Protection Agency (ECRCO) for a review of EGLE's compliance with Title VI of the Civil Rights Act of 1964; (9) filing a Title VI complaint against EGLE with ECRCO; (10) supporting Flint and Genesee Township residents in accessing the information they need to submit their own public comments to EGLE, as well as successfully advocating for EGLE to provide a second information session/public hearing on the permit since the first was held on a state-wide election day; (11) advocating for Genesee Township Trustees and Planning Commission to submit their own public comment to EGLE as part of EGLE's permitting process, to acknowledge that they have learned new information about the environmental health, racial discrimination and property value implications of the draft permit, and to ask EGLE to deny the permit until a cumulative impact analysis is completed to ensure that the permit decision is well informed; and (12) advocating that the Genesee Township trustees and Planning Commission reject Ajax's requests for building permits, site plan approval, and lot acquisitions. The actions of Genesee Township have frustrated their missions to ensure Flint becomes a healthy and safe environment for all who live there, causing all three organizations concrete and demonstrable injuries.

Through the acts and omissions detailed herein, and those to be discovered during the course of the Department of Housing and Urban Development's (HUD) investigation, the Complainants allege that Genesee Township has engaged in a pattern or practice of permitting toxic industry in or directly proximate to Flint, which discriminates on the basis of race and color in violation of 42 U.S.C. § 3604; make housing unavailable on the basis of race and color in violation of 42 U.S.C. § 3604(a); discriminate against complainants in the terms, conditions, privileges, or services and facilities violation of 42 U.S.C. § 3604(b); and perpetuate residential segregation. They also allege that Genesee Township is a recipient of federal funding as a subgrantee via Genesee County² and has nonetheless discriminated against them on the basis of race and color in violation of Title VI of the Civil Rights Act of 1964. Finally, the Complainants allege that Genesee Township has failed to meet its obligation to affirmatively further fair housing (AFFH) as required by 42 U.S.C. § 3608 and Section 109 of the Housing and Community Development Act of 1974. Discriminatory zoning and land use decisions by local governments are actionable under these statutes. *See, e.g., U.S. v. City of Parma, Ohio*, 661 F.2d 562, 576 (6th Cir. 1981).

Due to the actions and omissions of Genesee Township, the Ajax asphalt plant will be located in extremely close proximity to the residential housing of primarily Black households in Flint (including public and subsidized housing) and to the St. Francis Prayer Center, who serves the residents of the community. The asphalt plant will emit air toxics, including lead, sulfur

² See 28 C.F.R. § 42.102(f) ("The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary."); *see also Moreno v. Consolidated Rail Corp.*, 99 F.3d 782 (6th Cir. 1996) (en banc).

dioxide, particulate matter emissions, loud noises, and noxious odors, into the Flint community which has already been subjected to lead poisoning as well as other ongoing environmental exposures with devastating and lasting impacts. Genesee Township greenlighted the asphalt plant despite the fact that the complainants, and subsequently the United States Environmental Protection Agency (“EPA”), and HUD all raised serious concerns about the harm that would result to a low-income, predominantly Black community. By taking actions to allow the asphalt plant to operate in this area, Genesee Township is knowingly worsening the disproportionate environmental harms facing this predominantly Black community. Indeed, the residents of federally assisted low-income housing River Park Townhomes (the vast majority of whom are Black)³ units live across the street and only 1,550 feet from the proposed plant location and the residents of the Ridgecrest Village Townhomes (the vast majority of whom are Black) units live 0.5 miles away from the proposed plant location. Genesee Township is continuing a longstanding pattern and practice of granting building permits and approving site plans pursuant to its zoning powers to heavy industrial facilities that emit environmental toxins, creates noxious odors, and emits unreasonable noises directly proximate to areas of Flint that are predominantly Black, including where there is federally assisted housing where a majority of Black households reside. Genesee Township’s actions have forced those low-income, majority Black residents to have no choice but to be exposed to environmental toxins harmful to their health, which discriminates against them and perpetuates residential segregation.

8. SPECIFIC ALLEGATIONS

A. GENESEE TOWNSHIP ACTIONS HERE ARE A PART OF A PATTERN AND PRACTICE OF CONCENTRATING POLLUTING INDUSTRY PROXIMATE TO LOW-INCOME, RACIALLY CONCENTRATED AREAS OF FLINT, INCLUDING WHERE FEDERALLY ASSISTED HOUSING IS SITED.

Though Genesee Township is nearly 90% white,⁴ and its board of trustees is all white, those living within one mile of the Ajax plant are 77% Black and 10 % Hispanic. This is consistent with Genesee Township’s longstanding zoning and land use decisions to concentrate heavy and light industry where communities of color live and where federally assisted low-income housing is sited.⁵

1. Racial Segregation in Genesee Township

Racial segregation in Genesee Township and its surrounding area is intense, pervasive, and enduring. The most recent Analysis of Impediments to Fair Housing Choice (“AI”) to include Genesee Township was conducted in 2006 by the Fair Housing Center of Eastern

³ 93% of the Flint public housing residents are Black. *City of Flint, 2017-2021 Consolidated Plan*,71 <https://www.cityofflint.com/wp-content/uploads/City-of-Flint-2017-2021-Consolidated-Plan-FINAL.pdf>. In all of Genesee County, only the City of Flint has public housing. *Genesee County Amended 2020-2024 Consolidated Plan and 2020 Annual Action Plan*, 64 <http://gcmpe.org/wp-content/uploads/2020/11/Amended-ConPlan-11.18.20-.pdf>

⁴ U.S. Census, “Quick Facts: Genesee Charter Township, Genesee County, Michigan,” *supra*.

⁵ <https://www.geneseeetwp.com/wp-content/uploads/2019/12/Zoning-Map-09-05.pdf>

Michigan.⁶ That analysis observed that Genesee County was the seventh most-segregated county in the nation, with Genesee Township’s dissimilarity index of 67.2 being one of only three municipalities within the county above 50 (note that a dissimilarity level of 50 is considered a “high” level of segregation and a score of 75 or more is considered “very high.”).⁷ Indeed, a remarkable sixty-nine percent of Genesee Township’s Black residents were concentrated in one single census tract.⁸ The AI authors noted Genesee County had remained substantially just as segregated in 2006 as it had 40 years earlier.⁹

Genesee Township’s zoning map,¹⁰ created decades earlier, and the subsequent decisions that stem from it determine where industry and polluters can be sited in the community and act in lock step with the community’s history of racial segregation. The map and the decisions that flow from it fall distinctly along racial lines. Indeed, Genesee Township zoned and concentrated heavy and light industry in the one census tract where the vast majority of Black residents within Genesee Township (census tract 122.02) reside, forcing Black residents to suffer the real, material health and housing consequences of the Township’s discriminatory actions. On the other hand, there is no area of the zoning map where predominantly white residents live that is zoned for heavy industry. Genesee Township continuously applies the zoning map to each and every decision it is asked to make, reinforcing and repeating patterns of discrimination and segregation. At the same time, when making decisions pursuant to the ordinance it ignores what directives the zoning ordinance provides to protect adjacent properties from noise, odor, and other nuisances, essentially tolerating a lower quality of life for Flint’s Black community.

2. The Genesee Township Zoning Ordinance

The current Genesee Township Zoning Ordinance, as last amended on October 13, 2020 (with an effective date of October 21, 2020), provides the process for site plan review and approval by Genesee Township’s virtually all white Planning Commission.¹¹ As part of the review process, the building official may request additional information and materials as needed from the applicant and conduct inspections and site visits.¹² To obtain the approved site plan, Ajax first needed to submit an application and site plan to the Township zoning administrator.¹³ The Township Planning Commission then needed to review and determine whether to approve the site plan, based on whether proposed project:

- “Promotes with intent and purposes” as well as complies with the text of the Genesee Township Zoning Ordinance;
- Is compatible with adjacent land uses and the natural environment;

⁶ See Impediments to Fair Housing for City of Flint and Genesee County, Michigan (2006), http://gcmpc.org/wp-content/uploads/pdf/Genesee_County_AI_2006_by_LSEM.pdf

⁷ See *Id.* at 38-39.

⁸ See *Id.* at 26.

⁹ See *Id.* at 38-39.

¹⁰ <https://www.geneseeetwp.com/wp-content/uploads/2019/12/Zoning-Map-09-05.pdf>

¹¹ See Genesee Charter Twp. Zoning Ordinance (No. 603), Sec. 1702 (Site Plans), 1703 (Plan Review).

¹² See 2015 Michigan Building Code, Sec. 105.3(7) (applicant shall “[g]ive other such data and information as required by the building official”), 110. 1 (inspections).

¹³ See Genesee Charter Twp. Zoning Ordinance (No. 603), Sec. 1702(1).

- Has no impact on public services and amenities; and
- Complies with all applicable state and federal statutes.¹⁴

Under the ordinance, an industrial park is “[a] special or exclusive type of planned industrial area designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services in attractive surroundings among compatible neighbors.”¹⁵ In R-1 single family districts, [e]ncroachment by non-residential uses and activities considered capable of adversely affecting the low density residential character of this district is discouraged.”¹⁶ In R-3, multifamily residential districts, the ordinance states that:

It is the intent of this district is to provide for an efficient and economic use of land through a mixture of single-family, two-family, and multiple-family housing types together with such public and semi-public buildings and facilities and accessory structures as may be necessary and are compatible with such residential developments. **The provisions of this district are intended to provide for the development of such projects with characteristics that are compatible with surrounding areas, while preserving open space and other natural features. It is the intent of this district to locate residential developments near concentrations of nonresidential activities and facilities such as employment centers, with adequate access to major transportation arteries and existing public facilities and services.**¹⁷

For heavy industry, the “I-2 Heavy Industrial District is established for manufacturing, assembling and fabrication activities including large scale or specialized industrial operations, **whose external physical effects will be felt to some degree by surrounding properties.** The I-2 Heavy Industrial District is so structured to permit, in addition to I-1 light industrial uses, the manufacturing, processing and compounding of semifinished or finished products from raw materials.”¹⁸ Within any district there are minimum requirements for performance standards. These include, but are not limited to, a prohibition on the creation of offensive odors, and controlling “offensive sounds . . . so as not to become a nuisance to adjacent properties.”¹⁹ It also includes a requirement to reduce the quantity of dust, dirt, fumes, and fly ash into the open air stemming from the operation of any process, furnace, or combustion device.²⁰ Pursuant to Section 1703(1)(d), Ajax submitted a request for a site plan review with the Genesee Township Planning Commission’s approval. Under the ordinance, site plan review with Planning Commission approval “is required when there is a change of use in conjunction with exterior construction that requires a building permit, additional use of an attached building or portion of building with a prior approved site plan on file of a use permitted in the same zoning district, development of a property, or construction of a previously developed property...”²¹ The Planning Commission is responsible for approving, approving with specified changes and/or

¹⁴ See *Id.* at Sec. 1702(1)(d).

¹⁵ Genesee Charter Twp. Zoning Ordinance, Art. II (definition No. 53).

¹⁶ *Id.* at Art. V, Section 500.

¹⁷ *Id.* at Art. V-II, Section 700. (emphasis added).

¹⁸ *Id.* at Art. XII, Section 1200. (emphasis added).

¹⁹ *Id.* at Art. XV, Section 1513.

²⁰ *Id.* at Art. XV, Section 1513(2).

²¹ *Id.* at Art. XV, Section 1703(1)(d).

conditions, or disapproving the request, **“using the criteria for site plan review included in this Ordinance as a basis for its decision.”**²² The Ordinance defines “nuisance factor” to include any “offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things, such as noise; dust; heat; electronic or atomic radiation; objectionable effluent; noise or congregation of people, particularly at night; and passenger traffic.”²³ Despite these directives, the Planning Commission approved the Ajax site plan and the Township subsequently granted building permits. The Ajax plant is however one project in a long series of heavy industrial projects authorized by Genesee Township to be sited directly next to majority Black neighborhoods, regardless of their impact.

3. Location of the Ajax Asphalt Plant

The Ajax asphalt plant construction site is within an industrial park area that is already over-populated with heavy industrial facilities, including Universal Coating Inc, Genesee Power Station, Ace-Saginaw Paving Company, Buckeye Terminals, Superior Materials, RJ Industrial Recycling, Genesee Recycling, Environmental Rubber Recycling, Emterra Environmental USA, and Lake State Railway Company. On information and belief, Genesee Township also authorized these industries to site their plants directly proximate to Black residents, making these communities, in effect, sacrifice zones. The cumulative impact of these industries on their Black residents is profound, permanent, and life altering. On information and belief, Genesee Township’s zoning policies and the policies and practices of its Planning Commission led to this over-abundance of heavy industrial facilities within the northside of Flint.

Ajax, with the express permission of Genesee Township, will construct a hot mixed asphalt plant at 5088 Energy Drive in Flint. Plant construction would include installation of a 500 ton per hour counter-flow drum mixer; baghouse rated to 100,000 Cubic Feet per Minute; recycled asphalt product feed bins; eight storage silos; truck load out area; six asphalt cement tanks; and a hydrocarbon gas fueled heater. Ajax’s Asphalt Plant and Yard will generate fugitive dust from the plant roadways, plant yard, material storage piles, silos, and material handling operations. Additionally, the hot mix asphalt dryer at the Asphalt Plant has the potential to emit hundreds of tons of variety of pollutants every year, including 79 tons per year of sulfur dioxide, 28 tons per year of volatile organic compounds, 89 tons per year of carbon monoxide, 53 tons per year of nitrogen oxides, and 22 tons per year of wide variety of hazardous air pollutants.

Like the other industrial facilities, the Ajax asphalt plant is located in very close proximity to residential housing and numerous community gathering centers; 2,970 people live within a 1-mile radius of the proposed asphalt plant.²⁴ Two low-income federally subsidized housing developments, River Park and Ridgecrest Village, are located directly to the south and

²² *Id.* at Art. XV, Section 1703(2)(c).

²³ *Id.* at Article II.

²⁴ United States Environmental Protection Agency. 2020 version. EJSCREEN. Retrieved September 20, 2021, from <https://ejscreen.epa.gov/mapper/demogreportpdf.aspx?report=acs2018>. U.S. Census Bureau, American Community Survey (ACS) 2013-2017.

southeast of the proposed site. Four mobile home parks are located within a 1-mile radius of the site along with three children’s parks, a public beach, a county recreation area, a community garden, five churches, and an assisted living center. Within 1-mile of the proposed plant, 86% of the population identify as people of color, including 77% of the population identifying as Black and 10% of the population identifying as Hispanic. Forty-three percent of households have incomes of less than \$15,000 a year. The area’s per capita income in 2018 was \$14,991.²⁵ As is further described below, given these extremely low incomes and reliance on federally assisted housing, moving from an area once it becomes a hot bed of pollution caused by heavy industrialization is not practical or possible.

Genesee Township also approved the Ajax plant even though the neighborhood where the plant is to be located has some of the highest levels in the State of Michigan for many of the pollution indicators used by the EPA’s environmental justice screening tool, EJSCREEN.²⁶ Data compiled by the EPA and accessed through its EJSCREEN tool confirms a stark contrast between the characteristics of the area around the proposed site compared to the rest of the state. The EJSCREEN report below combines demographic and environmental indicators in the area encompassed within a 1-mile radius of the proposed site to provide EJ Indexes. Each EJ Index combines demographic factors with a single environmental factor.




EJSCREEN Report (Version 2020)
 1 mile Ring Centered at 43.078570, -83.668652
 MICHIGAN, EPA Region 5
 Approximate Population: 2,970
 Input Area (sq. miles): 3.14

Selected Variables	Percentile in State
EJ Indexes	
EJ Index for Particulate Matter (PM 2.5)	94
EJ Index for Ozone	96
EJ Index for NATA* Diesel PM	89
EJ Index for NATA* Air Toxics Cancer Risk	94
EJ Index for NATA* Respiratory Hazard Index	94
EJ Index for Traffic Proximity and Volume	85
EJ Index for Lead Paint Indicator	94
EJ Index for Superfund Proximity	92
EJ Index for RMP Proximity	87
EJ Index for Hazardous Waste Proximity	94
EJ Index for Wastewater Discharge Indicator	91

An EJ Index is highest in areas with high environmental indicator values combined with large numbers of mainly low-income and minority residents. Higher percentiles indicate a confluence of a high concentration of people of color as well as a high percentile of environmental risks compared to state averages. When an area has a high EJ Index, it is a warning sign that there is likely an environmental justice community that is disproportionately subjected to elevated levels of environmental risks. **The communities around the proposed site for this facility are among the highest percentiles in the state for every index, ranging from the 85th percentile to the 96th percentile compared to Michigan as a whole.**

²⁵ *Id.*

²⁶ *Id.*

Genesee Township has also greenlighted the Ajax plant despite the fact that Flint, Michigan has become an international symbol for what environmental racism looks like.²⁷ The 2016 United States Commission on Civil Rights Report critiquing EPA’s Compliance and Enforcement of Title VI and Executive Order 12898 referenced the “mass lead poisoning of residents of Flint, Michigan,” a predominantly Black community and recognized that Flint residents had been exposed to polluted air long before the drinking water issues arose.²⁸ As the Flint Water Advisory Task Force noted in its 2016 report:

Flint residents, who are majority Black or African American and among the most impoverished of any metropolitan area in the United States, did not enjoy the same degree of protection from environmental and health hazards as that provided to other communities.²⁹

Genesee Township greenlighted the Ajax plant despite the fact that the Complainants and others informed Genesee Township of the harm that would befall the Flint community. Genesee Township Trustees and Planning Commission’s actions were unchanged even after they were asked to submit their own public comment to EGLE as part of EGLE’s permitting process, were asked to acknowledge that they had learned new information about the environmental health, racial discrimination and property value implications of the draft permit, and were asked to request that EGLE deny the permit until a cumulative impact analysis is completed to ensure that the permit decision is well informed. While one trustee noted that the information “gave them pause,” they took no additional action to stop the facility from being sited on Energy Drive.

Even before this threatened addition of air pollution to the community from an asphalt plant, Flint residents suffered unthinkable lead exposure that resulted in permanent neurological damage to the city’s children; lead exposure to the city’s adults; and reduced home values.³⁰ Despite widely publicized evidence of existing lead poisoning, Genesee Township approved a facility that will add lead emissions to the air. In addition to the lead poisoning in Flint, and likely as a result of the exposure to air pollution including PM₁₀ and other harmful air emissions, Flint residents suffer from disproportionately high rates of asthma and other respiratory diseases; higher rates of cardiovascular disease; and shorter life expectancies. Asphalt processing plants are known to pose dangerous air pollution risks involving chemicals such as formaldehyde, hexane, phenol, polycyclic organic matter, and toluene.³¹ Exposure to these hazards may cause a

²⁷ U.S. Commission on Civil Rights, *Environmental Justice: Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12898*, 104 (September 2016), https://www.usccr.gov/files/pubs/2016/Statutory_Enforcement_Report2016.pdf.

²⁸ *Id.* (“[I]ong before people in Flint, Michigan, had to worry about brownish, putrid-smelling, lead-laced water, they worried about poisoned air.”) (quoting Zoe Carpenter, *How the EPA has Failed to Challenge Environmental Racism in Flint – and Beyond*, THE NATION (January 28, 2016), available at <https://www.thenation.com/article/how-the-epa-has-failed-to-challengeenvironmental-racism-in-flint-and-beyond/>).

²⁹ FLINT WATER ADVISORY TASK FORCE, FINAL REPORT 56 n.20 (2016).

³⁰ *See, e.g.*, Testimony of Ed Hoort at 0:38:15, Hearing of the Michigan Civil Rights Commission, Apr. 28, 2016 [audio recording].

³¹ *See* U.S. Environmental Protection Agency, Fact Sheet: Final Rule to Reduce Toxic Air Emissions from Asphalt Processing and Asphalt Roofing Manufacturing Facilities (Feb. 28, 2003), https://www.epa.gov/sites/default/files/2016-03/documents/2003_final_factsheet_asphalt.pdf

range of health problems, such as skin irritation, respiratory issues, and headaches, central nervous system problems, along with liver damage, reproductive defects and cancers.³² The Ajax asphalt plant threatens to emit PM (particulate matter) emissions, sulfur dioxide emissions, volatile organic compounds, lead emissions, and cause significant odor issues.³³

B. GENESEE TOWNSHIP’S APPROVAL OF THE BUILDING PERMIT, LAND, AND ZONING FOR THE AJAX ASPHALT DISCRIMINATES AGAINST RACIAL MINORITIES AND COMPOUNDS THE HARM ALREADY PRESENT.

Despite its ongoing obligations not to discriminate and to affirmatively further fair housing, Genesee Township has continuously followed a discriminatory policy and practice of allowing harmful industrial activities to be carried out near those communities (and not near other, predominantly white areas). The Township’s approval of the Ajax operation continues this “standard operating procedure” of environmental discrimination against communities of color.

Obtaining approval for the asphalt plant in Genesee Township required Ajax to obtain a building permit and an approved site plan.³⁴ To issue the building permit, the Township’s Building Department needed to review the application and relevant construction documents to determine whether the application materials and proposed work conformed to Michigan Building Code requirements as well as related Township ordinances³⁵ and “other pertinent laws or ordinances.”³⁶

Despite ample indications and evidence that the Ajax asphalt plant would be harmful to the nearby residential communities and inconsistent with anti-discrimination and environmental justice laws, the Ajax facility received all the necessary approvals. The Genesee Township Building Department approved Ajax’s application for a building permit, issuing the permit on June 10, 2021. The Planning Commission approved the site plan at its December 16, 2020, meeting. At some point subsequent to the Planning Commission vote, Genesee Township approved the sale of lots 3 – 14.

In granting these approvals, neither the Building Department nor the Planning Commission requested or considered reasonable information about such matters as the cumulative impacts of additional industrial emissions on the surrounding residential areas, the types of airborne emissions the plant would produce, the dangers that such emissions might present, or what countermeasures the plant would adopt to control those emissions. Notably, both the Building Department and the Planning Commission considered the Ajax facility to be a conforming use under Section 1513 of the Township’s Zoning Ordinance, which requires both that “objectionable sounds, including those of an intermittent nature, shall be controlled so as not to become a nuisance to adjacent users” and that “[c]reation of offensive odors shall be

³² *Id.*

³³ <http://chej.org/wp-content/uploads/Asphalt-Plants-PUB-131.pdf>; See also [Complainants’ Comment Letter to EGLE](#).

³⁴ See 2015 Michigan Building Code, Sec. 105.1 (building permit requirement); see Genesee Charter Twp. Zoning Ordinance (No. 603), Sec. 1703.

³⁵ See *Id.*, Sec. 105.3.1 (action on building permit application).

³⁶ See *Id.*, Sec. 107.3.

prohibited.”³⁷ The Planning Commission made no inquiries about objectionable sounds or anticipated noise pollution from the facility. On information and belief, neither did the Building Department.

Genesee Township’s approval of the Ajax asphalt plant, approval of the sale of lots 3 -14 from Genesee Township, and the issuance of related building permits will have an adverse effect on the nearby residents, subjecting them to reduced air quality and toxic pollutants that threaten their health. In addition, asphalt production is well-known to be a noisy process that can cause nuisances to nearby persons.³⁸ These adverse impacts will be felt most heavily among those living closest to the plant—over 86% of whom identify as Black (77%) or Latino (10%). The presence of these airborne pollutants will diminish the value and enjoyment of their homes and for some will effectively make the housing altogether unavailable to them.³⁹

These harms are exacerbated by the lower baseline health profile of the persons living in the vicinity of the Ajax site. Genesee County ranks among the least healthy counties in Michigan (80 of 83) in overall health outcomes.⁴⁰ Genesee is an outlier among Michigan counties for adult asthma hospitalizations and has among the highest rates of asthma hospitalizations for children.⁴¹ Asthma hospitalizations for whites in Genesee County (10.3 per 10,000 adults) are only slightly above the statewide average (7.7), while hospitalizations for Blacks in Genesee County are among the highest rates in the state (38.6).⁴² Genesee County also has higher “age-adjusted death rates for heart disease, stroke, diabetes mellitus, and kidney disease” than the statewide averages

³⁷ See Genesee Charter Twp. Zoning Ordinance (No. 603), Sec. 1513(6-7).

³⁸ See, e.g., Paul Moon, “Can you hear an asphalt plant from a mile away?” Citizen-Times (May 3, 2019) (“Though he can’t see the [asphalt production] facility that sits a mile east from the 11-acre tract his family has called home since the 70’s, he can hear the plant when it’s operating. ‘It sounds like you got a jet engine right next to your window.’”), <https://www.citizen-times.com/story/news/madison/2019/05/03/can-you-hear-asphalt-plant-mile-away/3661403002/>; see also Enright Companies, “Noise From Asphalt Plant Forces City to Take Action” (Nov. 4, 2014) (“Recently, a West Michigan town fought against an asphalt plant making too much noise during production . . . For some of these homeowners, the plant is less than 100 feet from their front doors. For others, even further away, the noise was becoming unbearable and disruptive.”), <https://www.enrightasphalt.com/noise-from-asphalt-plant-forces-city-to-take-action/>;

³⁹ It is well-settled that the presence of a condition so dangerous or unpleasant that a person reasonably decides to abandon her home can amount to an injury in the nature of a “constructive eviction.” See, e.g., *Thomson v. Campbell Crossing, LLC*, No. 5:16-CV-00169-TBR, 2017 WL 157885, at *4 (W.D. Ky. Jan. 13, 2017) (plaintiff who left a home due to mold plausibly alleged constructive eviction); see *Golden v. City of Columbus*, 404 F.3d 950, 962 (6th Cir. 2005) (municipal policy of terminating water service to tenants because of landlord’s delinquent water bill caused actionable injury to tenants, who were deprived of enjoyment of their homes).

⁴⁰ See University of Wisconsin Population Health Institute, County Health Rankings (2021), <https://www.countyhealthrankings.org/app/michigan/2021/rankings/genesee/county/outcomes/overall/snapshot>

⁴¹ See Michigan Dept. of Health & Human Services, “MICHIGAN ASTHMA ATLAS: Prevalence, Hospitalization, & Mortality by Counties & Regions among Michigan Adults & Children” (Feb. 2019), https://www.michigan.gov/documents/mdhhs/MI_Asthma_Atlas_2019_653258_7.pdf

⁴² *Id.*

for Michigan.⁴³ Lead poisoning is also widespread in the area,⁴⁴ as discussed above. With many area residents having already acquired conditions such as these, they may face even greater health risks from exposure to the Ajax emissions, and they will be less able to cope with those dangers due to such factors as an inability to afford consistently nutritious food, lack of health care, higher stress levels, or other poverty-associated risk factors.⁴⁵

Few of those residents have the resources with which to relocate to healthier areas, meaning that they are constructively evicted from, but at the same time trapped, in their housing. The National Low-Income Housing Coalition estimates the annual income needed to afford a two-bedroom rental home at market rent in Michigan at \$38,575⁴⁶—yet, as noted above, forty-three percent of area households have incomes under \$15,000 per year and the per capita income is just \$14,991.⁴⁷ Relocation is especially unrealistic for those living in the site-based subsidized housing properties (River Park and Ridgecrest Village) near the Ajax location. Tenants who leave site-based subsidized housing do not retain their rental subsidies, without which few such households can afford other decent housing—and they are highly unlikely to obtain new rental subsidies elsewhere. Michigan has a dire shortage of subsidized housing, with only 70 available and affordable rental units for every 100 families at or below 50% of area median income (AMI) and just 35 available and affordable dwelling units for families at or below 30% of AMI.⁴⁸ Note that waiting lists for voucher-based subsidized housing and for 1-bedroom and 2-bedroom units in public housing with Flint Housing Commission, the PHA that serves Genesee County, are closed.⁴⁹ The waiting list is also closed for the statewide Michigan State Housing Development Authority housing choice voucher program.⁵⁰ An estimated seventy-five percent of Michigan renters under 50% of AMI are cost-burdened (i.e., paying more than 30% of their incomes on housing costs); eighty-eight percent of renters at or below 30% of AMI are cost-burdened and seventy-three percent are severely cost-burdened (paying over half their incomes toward housing).⁵¹

⁴³ Greater Flint Health Coalition, “Flint & Genesee County, Michigan Community Health Needs Assessment (2019), <https://www.hurleymc.com/files/general/community-health-needs-assessment-2019.pdf>

⁴⁴ See Hanna-Attisha, Mona et al., “Elevated Blood Lead Levels in Children Associated With the Flint Drinking Water Crisis: A Spatial Analysis of Risk and Public Health Response,” *Am. J. Public Health* (Feb. 2016), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2015.303003>; see also Ruckart, Perri Zeitz et al., “The Flint Water Crisis: A Coordinated Public Health Emergency Response and Recovery Initiative,” *J. Public Health Mang Pract.* (Jan.-Feb. 2019) (discussing “population-wide exposure” to lead poisoning), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6309965/>;

⁴⁵ See Greater Flint Health Coalition, “Flint & Genesee County, Michigan Community Health Needs Assessment at pp. 36-46 (2019), <https://www.hurleymc.com/files/general/community-health-needs-assessment-2019.pdf>

⁴⁶ U.S. Census, “Quick Facts: Genesee Charter Township, Genesee County, Michigan,” <https://www.census.gov/quickfacts/fact/table/geneseechartertownshipgeneseecountymichigan/RHI225219>, last visited Dec. 7, 2021.

⁴⁷ *Id.*

⁴⁸ National Low-Income Housing Coalition, Housing Needs by State: Michigan, <https://nlihc.org/housing-needs-by-state/michigan>, last visited Dec. 8, 2021

⁴⁹ See Flint Housing Commission, Public Housing, <https://flinthc.org/public-housing/>, last visited Dec. 8, 2021; see Flint Housing Commission, Housing Choice Voucher, <https://flinthc.org/section-8/>, last visited Dec. 8, 2021.

⁵⁰ See MSHDA Housing Choice Voucher Waiting List Information, <https://www.michigan.gov/mshda/0,4641,7-141-5555-270458--,00.html>, last visited Dec. 8, 2021.

⁵¹ *Id.*

On information and belief, that the community living in the immediate vicinity of the Ajax plant is predominantly low-income and comprised of Black and Latino households was a motivating factor in the decision to approve the plant's site plan, sell the lots, and issue the required building permits. As the U.S. Supreme Court has held, the presence of a discriminatory motive behind a land use decision may be discerned from such factors as:

- Whether the decision bears more heavily on racial minorities;
- Whether the locality has a history of making land use decisions harmful to minority groups;
- The historical background and sequence of events leading up to the decision;
- Departures from the ordinary procedural sequence (or lack thereof) in the planning process;
- Legislative history of the decision and contemporary records and statements.

Arlington Hts. v. Metropolitan Housing Dev'p Corp., 429 U.S. 252, 267-68 (1977).

Here, it is clear that approval of the Ajax facility will impact minority populations more heavily and that this impact was obvious and foreseeable to the Township. Indeed, this is consistent with a long history of segregation by race in Genesee Township (as well as in the greater Flint area generally) and, as discussed above, of siting environmental hazards near communities of color.

The Genesee Township Planning Commission uncritically accepted Ajax's representation that the company would "be a good neighbor who always runs a clean operation" and comply with pertinent regulations, even though there is evidence of the company receiving notices of violations in other communities where it operates.⁵² The Commission did not require further details about the types of airborne emissions the plant would produce, the dangers that such emissions might present, or what countermeasures the plant would adopt to control those emissions. Nor did it apply the minimum requirements within its own ordinance to avoid noxious odors, noise, and other nuisance factors. A reasonable person would not accept such assurances at face value in making a decision of such grand importance as whether to allow the emission of toxic pollutants in such close proximity to a populated area, and it is unlikely the Planning Commission would have done so had the community in question not been a low-income, Black or Latino neighborhood.

Other deviations from procedural norms are not apparent, but this factor does not dispel the impression of discriminatory purpose. On the contrary, that a new facility that will subject members of segregated, predominantly Black community to dangerous environmental pollution could be approved readily and without procedural irregularities reflects a continuation of the

⁵² Genesee Twp. Planning Comm., Meeting Minutes (Dec. 16, 2020); See also Complainants' Comment Letter to EGLE at 17.

Township's historical standard operating procedure of siting dangerous industrial activities near segregated communities of color.

The Michigan Civil Rights Commission explained, in the wake of the Flint water crisis, that "some cumulative impacts, even if unquantifiable, are sufficiently demonstrable and/or so widely accepted that the failure to consider them should be considered environmental injustice."⁵³ The Commission listed several pertinent examples of such environmental injustice, which included:

- Failure to consider high childhood asthma rates in a downwind community when assessing a request to begin or increase a potentially harmful emission.
- Failure to consider the current air quality of an area when assessing a request to begin or increase an emission.
- Failure to consider other environmental harms and risks like water quality when assessing a request to begin or increase an air emission; and
- Failure to consider existing aggravating factors like poor health, lack of health care, and malnutrition, and/or lack of access to healthy foods.

The Genesee Township Planning Commission overlooked substantially all of these critical environmental justice considerations in approving the Ajax asphalt facility. Apart from a single Planning Commission member's question to Ajax about "fumes and odors" in the public hearing on their site plan review, there were no questions about emissions or airborne toxins and absolutely no consideration of the preexisting air quality levels. The Ajax representative responded that Ajax would install "very expensive odor control systems" but provided no further details and no information about hazardous emissions. Another question asked about "runoff," which Ajax denied the facility would produce; the Planning Commission did not make any further investigation of possible contamination of nearby rivers, lakes, or groundwater through airborne particles or other means besides runoff.

The Planning Commission gave no consideration whatsoever to the characteristics of the nearby community, including any elevated risk factors related to asthma or respiratory illness, decreased nutrition, or lower health care access in the area. The Planning Commission also gave no consideration to the cumulative impacts of the additional emissions Ajax would produce when added to the pre-existing industrial facilities in the area.

Accordingly, the totality of surrounding circumstances shows that race and color were motivating factors in Genesee Township's approval of the Ajax asphalt plant and accompanying building permits. The decision continued a longstanding pattern and practice of maintaining the

⁵³ Systemic Racism Through the Lens of Flint, Michigan Civil Rights Commission (citing to Hal Bernton, Seattle Times, "Weight of War: Gear that protects troops also injures them," https://www.michigan.gov/documents/mdcr/VFlintCrisisRep-F-Edited3-13-17_554317_7.pdf)

racial boundaries of the community, and placing dangerous pollution sources near predominantly Black areas and away from homogenous white areas.

Even if the circumstances surrounding approval of the Ajax facility did not reveal the Township's discriminatory policy of ensuring that predominantly Black residents are concentrated in segregated areas and that dangerous pollution sources are sited near those communities only, disparate impact theory alone would be sufficient to establish the illegality of the approval. The harmful effects of the Ajax emissions will disproportionately harm those residents living near the plant, over 86% of whom are Black (77%) or Latino (10%). It is not clear what, if any, legitimate purpose Genesee Township had for approving additional industrial emissions, as no evidence of any public benefit (such as increased tax revenues or new job opportunities) was taken in connection with the application. But even assuming the existence of such a purpose, the Township had ample less-discriminatory alternatives, such as (i) conditioning the approval on objectively reasonable evidence that emissions would not contain harmful chemicals such as formaldehyde, hexane, phenol, polycyclic organic matter, and toluene, with which asphalt production is known to cause; or (ii) considering alternative possible sites for the asphalt plant that are more distant from population centers and environmental justice communities. At the very least, the Township could have delayed the approval and conducted additional outreach and fact-gathering, to ensure the final decision had full community input and the decisionmakers were aware of the full range of health risks and harms. Such a delay would have provided the opportunity for the cumulative impact analysis the Complainants and community members were calling for.

C. GENESSEE TOWNSHIP'S AFFH CERTIFICATION SHOULD BE DEEMED UNSATISFACTORY, BECAUSE GENESSEE TOWNSHIP HAS TAKEN ACTIONS CONTRARY TO ITS AFFH OBLIGATIONS.

Not only does the Fair Housing Act prohibit discrimination, it also requires that HUD programs relating to housing and urban development be administered "in a manner affirmatively to further the policies of [fair housing]." 42 U.S.C. § 3608(e)(5). Genesee Township carries this obligation to affirmatively further fair housing as a recipient of HUD funding. Note that while the Township may not receive HUD dollars directly, the Township has received and continues to receive subgrants of HUD Community Development Block Grants from Genesee County. A federal funds "recipient" includes subgrantees.⁵⁴ As a condition of receiving such funds, units of local government must certify "the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and the grantee will affirmatively further fair housing."⁵⁵

Nevertheless, Genesee Township has carried on with its longstanding policy of zoning those areas where predominantly Black residents live for industrial activity. Such actions and omissions to are sited are actions taken contradictory to its duty to affirmatively further fair housing. Genesee Township has pursued this course despite being on notice of its negative fair housing and health implications and its inconsistency with its AFFH obligation. Therefore, Genesee Township's AFFH and civil rights certifications should be deemed unsatisfactory.

⁵⁴ See 28 C.F.R. § 42.102(f); see also *Moreno v. Consolidated Rail Corp.*, 99 F.3d 782 (6th Cir. 1996) (en banc).

⁵⁵ 42 U.S.C. § 5304 (obligation to make certification at § 5304(a)(1); quoted text at § 5304(b)(2)).

D. CONCLUSION

Under all applicable laws and regulations, HUD has the authority to review the discriminatory actions and inactions of the Respondent alleged herein. The Secretary also has the obligation and responsibility to review the Respondent's submissions and certifications in applications for federal funds and to enforce compliance therewith.

For the reasons set out above, the Complainants ask HUD to:

- i. Declare and enjoin Respondent's policies and conduct which violate 42 U.S.C. § 3604, 3608, Title VI of the Civil Rights Act, and Section 109 of the Housing and Community Development Act;
- ii. Deem the Respondent's civil rights and AFFH certifications insufficient to support the obligation of federal funds;
- iii. Awards Complainants damages pursuant to its proof in these proceedings; and
- iv. Award any other relief that may be available pursuant to the Fair Housing Act, Title VI, or Section 109, including monetary damages, reasonable attorneys' fees, and costs.

E. The most recent date upon which the alleged discrimination occurred:

December 16, 2020 (Planning Commission decision) and June 6, 2021 (building permit issued)

F. Types of Federal Funds Identified:

CDBG

G. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Fair Housing Act (duty not to discriminate; duty to affirmatively further fair housing)

Section 109 of the Housing and Community Development Act

Title VI of the Civil Rights Act

Dated: ___12/15/21_____

Respectfully submitted,

/s/ Katherine E. Walz

Katherine E. Walz

Attachments:

- Complainants' Comment letter to EGLE
- Complainants' Title VI Compliance review request to EPA ECRCO
- Request for Title VI Compliance Review to be a Title VI Complaint
- ECRCO confirmation email it will consider the request for a compliance review to be a Title VI complaint
- Letter from James A. Cunningham, Region V HUD
- Minutes from the Dec. 16, 2020 Genesee Township Planning Commission (including Site Plan Review Application) and the June 10, 2021 Genesee Township building permit
- Letter from the Flint Housing Commission