

# CHICAGO LEGAL CLINIC, INC.

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Rev. Thomas J. Paprocki, President  
Edward Grossman, Executive Director  
Marta C. Bukata, Deputy Director  
Keith I. Harley  
Veronique Baker  
Greta Doumanian

Downtown Office  
205 W. Monroe, 4<sup>th</sup> Floor  
Chicago, IL 60606

Phone (312) 726-2938  
Fax (312) 726-5206  
TDD (773) 731-3477

April 19, 2006

Director of the Office of Civil Rights  
U.S. Environmental Protection Agency  
Mail Code 1201 A  
1200 Pennsylvania Ave NW  
Washington, D.C. 20460

**RE: Filing of Complaint alleging that the Illinois Environmental Protection Agency has and will continue to violate Title VI of the 1964 Civil Rights Act**

To The Director:

Please be advised that I represent South Suburban Citizens Opposed to Polluting Our Environment (SS-COPE). SS-COPE is a volunteer, not-for-profit community organization dedicated to securing environmental quality for residents of south Cook County.

Please accept this letter and the attached material as a formal Complaint that the Illinois Environmental Protection Agency, a federally funded entity, is in violation of Title VI of the Civil Rights Act of 1964 and U.S. EPA's implementing regulations. The discriminatory act is the IL EPA's October 20, 2005 issuance of an air construction permit to Geneva Energy to restart operations at a tire-to-energy facility in Ford Heights, Illinois. This Complaint is being filed within 180 days of this discriminatory act. Several aspects of this permit will create a significant, adverse impact on the disproportionately minority residents who live near the facility. Notably, these concerns were brought to the attention of the IL EPA during the public hearing and written comment period on the draft permit, but were ignored by the IL EPA when it issued the final permit. The comments of SS-COPE and relevant documents from the permitting action that resulted in the Title VI violation are attached to the Complaint and incorporated by reference.

In making this Complaint, SS-COPE is following U.S. EPA's Complaint process as mandated under 40 C.F.R. Part 7 *et seq.* SS-COPE formally requests U.S. EPA to accept this Complaint and conduct its investigation under the procedures contained in 40 C.F.R. Part 7 *et seq.*

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As you will see, SS-COPE attempted to engage IL EPA on issues related to Title VI compliance throughout this permitting process. On September 23, 2005, nearly two months before the permitting decision was made, SS-COPE specifically requested IL EPA to conduct a Title VI analysis as part of its permitting decision. As you will also see, IL EPA did not respond to this request until March 30, 2006, more than 5 months after it issued a permit for the facility at issue. Consistent with IL EPA's draft Grievance Procedure, SS-COPE filed a formal Grievance on December 19 2005. As of the submission of this Complaint, which is necessitated by the 180-deadline imposed under federal regulations, SS-COPE has not received a response to this Grievance.

The community of Ford Heights, and particularly the community within one mile of the Geneva Energy facility (1701 S. Cottage Grove Avenue), is disproportionately African-American and poor by comparison to Cook County and Illinois. According to the 2000 census, 82.3% of the population within one mile of the Ford Heights Incinerator is African American, and 41.2% of the total population in the area is living below poverty level. These numbers are extremely high compared to statewide figures of 15.1% African-American and 10.7% of people living below poverty level.<sup>1</sup> As the area surrounding the Ford Heights Incinerator is quite obviously disproportionately African-American and poor, it is exactly the type of area that is meant for protection under Title VI.

IL EPA, as a federally funded entity, has a legal obligation to consider environmental justice issues in compliance with Title VI.<sup>2</sup> As articulated in Title VI, recipients of federal funds have an affirmative obligation to ensure non-discrimination. As such, because IL EPA is a state agency that receives funding from a federal entity, the U.S. Environmental Protection Agency (U.S. EPA), it has a legal duty to ensure non-discrimination in this case.

On September 23, 2005, on behalf of SS-COPE, I submitted a letter requesting IL EPA to conduct an Environmental Justice Analysis on the permitting of the Geneva Energy facility. This letter included specific requests for IL EPA action related to permitting this facility based on the concerns of SS-COPE, its members and other individuals who participated in the September 7, 2005 public hearing in Ford Heights. I received a response dated September 28, 2005 confirming that IL EPA received this request, affirming IL EPA's commitment to environmental equity, and stating that I would receive a final determination in writing from the Agency. However, this response was not made until March 30, 2006, more than 5 months after the issuance of the final permit. On October 6, 2005, I submitted additional comments on behalf of SS-COPE addressing many substantial deficiencies in the draft permit, and again stated the need for IL EPA to improve the draft permit in light of its affirmative obligation to ensure non-discrimination. The October 6<sup>th</sup> letter included a specific request – subsequently denied

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<sup>1</sup> Illinois statistics are 1999 statistics, according to the 2000 census.

<sup>2</sup> "No person in the United States shall, on the ground of race, color, or national origin, . . . be subjected to discrimination under any program or activity receiving Federal financial assistance." Title VI of the Civil rights Act of 1964, 42 U.S.C. 2000d.

by IL EPA – for IL EPA to model potential hazards posed by air pollution from the facility on nearby residents.

As described in comments submitted during the written comment period and testimony given during the public hearing, there were many deficiencies in the draft permit, none of which were remedied in the final permit. These deficiencies, each of which constitutes a separate discriminatory act by Illinois EPA, include:

- 1) the 1999 Best Available Control Technology determination was applied in 2005 despite a specific request to update this determination;
- 2) the permit is less protective than that of a similar facility in Exeter, Connecticut and less protective than the permit held by the previous operator of the Ford Heights facility, New Heights Power and Recovery;
- 3) Geneva Energy will still have the ability to burn shredded tires despite its own admissions that this practice was the primary cause of thousands of violations while the previous facility operated;
- 4) the permit's automatic waste feed cutoff provisions were less protective than the permit for the New Heights facility;
- 5) the draft permit was less protective than the permit for the previous New Heights facility during periods of start up and shut down;
- 6) the permit did not quantify or specifically limit several hazardous air pollutants;
- 7) more specific and protective tire storage requirements were not included in the permit;
- 8) an air quality impact assessment was not performed;

Notably, all of these issues were raised by members of the public and its representatives, and were either completely ignored or inadequately dealt with when IL EPA issued Geneva Energy its construction permit. Such disregard for the public in general, and specifically those who will be affected once the facility begins operating, is a blatant form of discrimination by IL EPA. Providing for public participation but ignoring public comments when issuing the final permit, renders public participation meaningless.

What makes the lack of progress between the draft permit and the issuance of the construction permit so troubling is that IEPA exercised its discretion in favor of Geneva Energy's interests on almost every issue that was raised by residents and their representatives. For example, no evidence exists to show that environmentally helpful suggestions, such as the construction of a berm around the facility in order to contain run off water while fighting a tire fire, were ever seriously considered by IL EPA. According to comments submitted by Cobalt Holdings, LLC, the IL EPA Bureau of Land determined that the "site was incapable of preventing water from running off onto

neighboring properties while fighting a tire fire.”<sup>3</sup> Requiring Geneva Energy to construct a berm to contain such runoff water would have been an easy thing for IL EPA to do, but instead, it ignored this solution to an acknowledged problem.

The troubled history of the New Heights facility, coupled with IL EPA’s decision to issue a weaker construction permit to Geneva Energy, underscores the adverse impact of IL EPA’s actions in this case. For this reason, I formally request the entire IL EPA file related to the New Heights facility be incorporated into the investigation of this grievance, and be made available to me to enable my advocacy in support of this grievance.

Because the Geneva Energy construction permit is weaker than the former New Heights’ permit, which was violated thousands of times and led to a multitude of injuries within the community, there is a strong likelihood that similar harms will occur under this permit. At the September 7, 2005 hearing, residents complained that there were increases of asthma, rats, odor, general sickness, traffic accidents, cancer rates, soot on cars and dying gardens when New Heights was operating. As the Geneva Energy permit is less protective than the permit that was in place when all of these problems occurred, it seems very likely that many of those problems will repeat themselves as soon as the facility operates again.

Among the residents who spoke at the hearing were: [REDACTED], raising concerns about the draft permit allowing such high pressure units to be used in a residential area; [REDACTED], asking about the levels of zinc that will be released into the atmosphere and what Geneva plans to do about the unpaid water bills of the previous owners; [REDACTED], asking about evacuation procedures for the nearby middle school in case of fire; [REDACTED], requesting specifications on whether whole or shredded tires will be primarily used; and [REDACTED], who stated that when New Heights was previously operating, there were significant increases in asthma, rats, odor, general sickness, traffic accidents near the factory, soot on people’s car, and also that many people’s gardens died as a result of the pollution coming from the Incinerator.

IL EPA’s decision to issue a weakened construction permit to restart a troubled facility is highly questionable. IL EPA’s conduct is even worse because it ignored public comments regarding weaknesses in the draft permit. The fact that IEPA did so for a facility that exists in a disproportionately minority community makes such an action discriminatory and in violation of both Title VI and U.S. EPA’s implementing regulations.

In light of prior violations at this facility, deficiencies in the final construction permit, the lack of consideration of the public’s comments and questions, problems with local siting approval, the disproportionate racial and economic makeup of the immediate area, and IL EPA’s failure to produce a timely, final determination regarding SS-COPE’s request for an Environmental Justice Analysis, SS-COPE is filing this Complaint seeking an

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<sup>3</sup> Cobalt Holdings, LLC Written Comments

investigation of whether Illinois EPA, a federally-funded entity, acted in compliance with Title VI of the Civil Rights Act of 1964 in issuing a permit to Geneva Energy.

I formally request that the entire permit record, and any subsequently assembled records about the Geneva Facility as well as its predecessor the New Heights facility, be incorporated into the record of your investigation, and be made available to me to enable my participation in this investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Harley". The signature is fluid and cursive, with the first name "Keith" and last name "Harley" clearly distinguishable.

Keith Harley  
Attorney at Law

Cc Doug Scott, Director, Illinois Environmental Protection Agency  
Ken Page, Environmental Justice Office, Illinois Environmental protection Agency