



GRETCHEN WHITMER
GOVERNOR

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



November 15, 2021

VIA EMAIL

Mr. Michael S. Regan, Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW (1101A)
Washington, DC 20460

Dear Administrator Regan:

Today the Michigan Department of Environment, Great Lakes, and Energy (EGLE) issued a minor source permit under the federal Clean Air Act to Ajax Materials Corporation (Ajax) for the construction of a new hot-mix asphalt plant.

The Ajax plant will be located in Genesee Township, directly on its border with the city of Flint and adjacent to a majority Black neighborhood where residents have long lived in the shadow of industrial facilities. As recent public comments in response to the asphalt plant's permit application show, Flint residents again expressed deep frustration with the addition of another industrial facility in close proximity to their homes, schools, parks, and other community institutions.

EGLE takes its responsibility for administering the Clean Air Act seriously. We also share your commitment to ensuring environmental justice principles are applied in all agency actions. Since its first days in office, the Governor Gretchen Whitmer Administration has taken steps to live that commitment. Its many actions include:

- Creating the Office of the Environmental Justice Public Advocate and the Office of the Clean Water Public Advocate in early 2019;
- Forming the multiagency internal Environmental Justice Response Team and the external stakeholder Michigan Advisory Council on Environmental Justice to guide and advise the State of Michigan's work to advance environmental justice;
- Hosting the first Michigan Environmental Justice Conference earlier this year, which has brought varied expertise and perspectives from across the country to our environmental justice work;
- Developing the soon-to-be-released Michigan-specific Environmental Justice Screening Tool; and

- Making marked improvements in how we communicate with and engage our fellow Michiganders who live in environmental justice communities.

Despite the significant progress EGLE continues to make in expanding the environmental justice dialog and integrating environmental justice principles into its daily actions, the permit action taken today highlights the limitations of federal and state environmental regulations in addressing the concerns raised by Flint residents.

To be clear, EGLE believes the Ajax permit was appropriately issued in accordance with federal and state laws. As the permit was developed, EGLE consulted with the Michigan Department of Attorney General (MDAG) and other legal experts, other states that have faced similar situations, and United States Environmental Protection Agency (USEPA) staff. The applicant has been quick to remind EGLE that many of the conditions added to the permit following the public participation process go beyond what is normally included in permits for similar facilities. EGLE has been clear with the applicant that while the facility may be similar to others in the state, its location makes it unique and subject to greater scrutiny.

In addition to the ultimate content of the permit, many of the actions EGLE took in developing this permit were unprecedented. The duration of the public participation period was 83 days—longer than any other EGLE public comment period for a minor source permit. While navigating public health and safety concerns related to the pandemic, EGLE held multiple community events to provide residents opportunities to become informed about the application and provide comments. This included participating in an outdoor, in-person option at one hearing for those who felt strongly that a physical gathering was necessary to ensure community members were heard.

While applying federal and state laws to the letter—according to our department's longstanding practice and consistently validated precedent—EGLE broke new ground on this permit in the extent to which we applied location-based environmental justice considerations to the process. In addition to our standard high level of attentiveness to public comment, including those offered by the USEPA Region 5, we were more proactive in our engagement with the community and use of our legal authority in this matter than we have been for any minor source permit in institutional memory.

EGLE will build from this experience and seek continued improvement in how we engage impacted communities in similar future situations. However, if the deep community concerns expressed in response to the Ajax permit application can be addressed more fully under the Clean Air Act, EGLE needs the USEPA's assistance.

Specifically, we request that the USEPA:

1. **Conduct a review of the Ajax permit** – EGLE invites the USEPA to conduct an additional review of the Ajax permit. Some of the comments submitted by the USEPA on the draft permit included a clear nexus to applicable federal

requirements. As a result, EGLE was able to modify the draft permit accordingly. However, some USEPA comments were unclear as to how specific federal laws and regulations apply. If the USEPA believes that the permit does not fully comply with all requirements established in federal law, EGLE requests that the USEPA meet with the permittee and with EGLE to identify any specific change that should be made to the permit.

2. **Enhance EGLE's ability to evaluate air toxics concerns** – EGLE requests the USEPA partner with EGLE to establish a greater understanding of risks from air toxics in Michigan's environmental justice communities. EGLE requests financial assistance from the USEPA for creation and operation of a comprehensive air toxics network that will allow the State of Michigan to assess risks in overburdened communities proximate to clusters of industrial facilities. EGLE also requests that the USEPA provide technical expertise to help design the network, properly site monitors, evaluate data collected, and conduct broader scientific evaluations to correlate monitored levels of toxic pollutants with other relevant existing data (e.g., traffic data).
3. **Provide additional clarity to the States on implementing federal standards in environmental justice communities** – EGLE asks the USEPA to call a summit of state and federal leaders to discuss these policies, including the challenges and opportunities related to addressing cumulative risks. Capitalizing on input from the States as the primary agencies implementing the nation's environmental programs, this summit should be structured to catalyze a comprehensive evaluation of the effectiveness of federal laws and regulations in protecting overburdened communities. To provide the basis for that conversation, EGLE requests that the USEPA provide written guidance to the States as soon as possible, defining how the States should specifically be addressing environmental justice considerations in permitting and enforcement procedures. Among other purposes, this guidance is necessary to ensure consistency across the nation in implementation of federal regulations.

EGLE is grateful to the USEPA for your partnership in pursuing our shared commitment to environmental justice. We look forward to collaborating with you to provide overburdened populations and the business community greater clarity and predictability in how environmental justice principles will be applied in the important regulatory decisions we make every day.

Sincerely,



Liesl Eichler Clark
Director
517-284-6712

cc: Ms. Debra Shore, Regional Administrator, USEPA, Region 5
Ms. Patricia Readinger, Governor's Washington Office
Ms. Kara Cook, Governor's Office
Mr. Robert Reichel, MDAG
Mr. Aaron B. Keatley, Chief Deputy Director, EGLE
Ms. Amy Epkey, Senior Deputy Director, EGLE
Mr. James Clift, Deputy Director, EGLE
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