

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALLIANCE OF THE SOUTHEAST)
and FRIENDS OF THE PARKS,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES ARMY CORPS OF)
ENGINEERS et al.,)
)
Defendants.)

Civil Action No. 23-1524
Honorable Thomas M. Durkin

**MOTION OF THE ATTORNEY GENERAL OF ILLINOIS
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

The Attorney General of Illinois respectfully moves this Court for leave to file a brief as *amicus curiae* and, in support thereof, hereby states as follows:

1. On March 13, 2023, Alliance of the Southeast and Friends of the Park (“Plaintiffs”) filed a Complaint against the United States Army Corps of Engineers and three named Corps’ officials (collectively, the “Corps”) regarding the Corps’ approval of the construction of the Calumet Harbor Dredged Material Disposal Facility (“DMDF”) on top of the Corps’ Confined Disposal Facility (“CDF”) located at 3600 East 95th St., Chicago, Illinois, on the shore of Lake Michigan.
2. On May 30, 2023, the Corps filed an Answer to the Complaint.
3. The parties have filed cross-motions for summary judgment, with the Corps’ Reply in Opposition to Plaintiffs’ Motion for Summary Judgment and in Support of Defendants’ Motion for Summary Judgment and Reply to Plaintiffs’ Supplemental Brief having been filed on May 7, 2024. Oral argument on the cross-motions for summary judgment is scheduled on August 28, 2024.

4. During each of the April 25, 2023, February 6, 2024, and May 3, 2024 hearings, the Court inquired about the status of certain Illinois Environmental Protection Agency (“Illinois EPA”) permits for the DMDF. *See* Tr. Proc. Held on 4/25/2023 at 9-10, ECF No. 17; Tr. Proc. Held on 02/06/2024 at 4-5, ECF No. 42; and Tr. Proc. Held on 05/03/2024 at 4, ECF No. 54.

5. It is appropriate to allow *amicus* participation when “the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.” *Chamberlain Grp., Inc. v. Interlogix, Inc.*, No. 01 C 6157, 2004 WL 1197258, at *1 (N.D. Ill. May 28, 2004) (internal quotation marks and citation omitted). That standard is satisfied here, given the Attorney General’s unique perspective on these issues.

6. “Article V, section 15, of the 1970 [Illinois] Constitution provides that the Attorney General is the legal officer of the State.” *Env’t. Prot. Agency v. Pollution Control Bd.*, 69 Ill. 2d 394, 398 (1977). “[T]hat is, he or she is the ‘law officer of the people, as represented in the State government, and its only legal representative in the courts.’” *Id.* (citing *Fergus v. Russel*, 270 Ill. 304, 337 (1915)). The Attorney General’s “duties are prescribed by law and also include those powers traditionally held by the Attorney General at common law.” *Gust K. Newberg, Inc. v. Illinois State Toll Highway Auth.*, 98 Ill. 2d 58, 67 (1983). “As the chief legal officer of the State, the Attorney General has . . . the prerogative of conducting legal affairs for the State.” *Env’t. Prot. Agency*, 69 Ill. 2d at 398. Of particular significance here, the “Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State.” *People v. NL Indus.*, 152 Ill. 2d 82, 103 (1992), *opinion modified on denial of reh’g* (Nov. 30, 1992) (citing *Pioneer Processing, Inc. v. Env’t Prot. Agency*, 102 Ill. 2d 119, 138–39 (1984)).

7. The Illinois Attorney General, as the chief legal officer of the State of Illinois, files this Motion to advise the Court of the status and issues regarding the permitting of the existing CDF and the proposed DMDF. Although the Attorney General does not file this Motion on behalf of the Illinois EPA, and it does not reflect information or deliberations internal to the agency, the Attorney General nonetheless has a “unique perspective” on the legal issues, *Chamberlain Grp.*, 2004 WL 1197258, at *1, having regularly filed actions enforcing the Illinois Environmental Protection Act, including in Southeast Chicago.

8. In addition, having noted Plaintiffs’ and Defendants’ arguments regarding environmental justice concerns, *see* Pls. Comb. Mem. in Opp’n to Defs. Mot. for Summ. J. & Reply in Supp. of Pls. Mot. for Summ. J. at 14-15, ECF No. 47; Defs. Mem. in Opp’n to Pls. Mot. for Summ. J. & in Supp. of Defs. Mot. for Summ. J. at 22-24, ECF No. 44-1, in the very community in which he served for a decade as the Illinois State Senator, the Illinois Attorney General provides a brief summary of the over 100 years of pollution that has disproportionately impacted the citizens of Southeast Chicago and urges this Court to prevent any further burden to this community.

9. Allowing the Attorney General to file a brief now will not cause unnecessary delay in this litigation. *Cf. Andersen v. Leavitt*, No. 03-cv-6115, 2007 WL 2343672, *1, *6 (E.D.N.Y. Aug. 13, 2007) (permitted local government to file brief as *amicus curiae* five months after completion of summary judgment briefing).

10. Counsel for the *amicus curiae* Attorney General reached out to counsel for both parties in the case. Counsel for the Plaintiffs indicated they support this motion, while counsel for the Defendants indicated they “take no position at this time and reserve their right to file a timely response.”

WHEREFORE, the Attorney General respectfully requests leave to file the attached brief
as *amicus curiae*.

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ATTACHMENT

ATTORNEY GENERAL OF ILLINOIS *AMICUS CURIAE* BRIEF

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**BRIEF OF THE ATTORNEY GENERAL OF ILLINOIS
*AS AMICUS CURIAE***

KWAME RAOUL,
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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Article XI of the Illinois Constitution of 1970 provides a right to a healthful environment:

- §1 The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.
- §2 Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

Ill. Const. 1970, art. XI, §§ 1 and 2. The Illinois Supreme Court has recognized this constitutional right in Illinois. *See, e.g., People v. NL Industries*, 152 Ill. 2d 82, 90-91 (1992).

The Illinois Supreme Court also has long recognized that the Attorney General, as the “... chief legal officer of this State, ... has the duty and authority to represent the interests of the People of the State to insure a healthful environment.” *Pioneer Processing, Inc. v. E.P.A.*, 102 Ill. 2d 119, 138 (1984); *see also Env’t. Prot. Agency v. Pollution Control Bd.*, 69 Ill. 2d 394, 398 (1977) (“... under both the 1870 and 1970 constitutions, [] the Attorney General is the chief legal officer of the State; that is, he or she is ‘the law officer of the people, as represented in the State government, and its only legal representative in the courts’) (quoting *Fergus v. Russel*, 270 Ill. 304, 337 (1915)). Under this authority, the Illinois Attorney General has filed numerous enforcement actions against companies in Southeast Chicago for violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.*, and corresponding regulations dating back to the 1980s through the present. For example, between 2014 and 2019, the Illinois Attorney General litigated and resolved a case against the Beemsterboer Slag Company (“Beemsterboer”), located along the Calumet River just over two miles south of the current CDF¹ site and as close as 0.3 miles to residential

¹ Capitalized terms used, but not defined herein, shall have the meanings ascribed to such terms in the Motion of the Attorney General of Illinois for Leave to File Brief as *Amicus Curiae*.

neighborhoods, that operated a 22.5-acre bulk material handling and storage facility and allegedly handled, stored, and shipped petroleum coke (“petcoke”) and metallurgical coke without the proper permit.² Similarly, the Illinois Attorney General filed two enforcement actions against KCBX Terminals Co. (“KCBX”), which processed petcoke and coal in Southeast Chicago,³ that were resolved through consent orders requiring cleanup measures and civil penalty payments.⁴

In hearings on April 25, 2023, February 6, 2024, and May 3, 2024 in this case, the Court asked about the status of the permits for the CDF and the DMDF. *See* Tr. Proc. Held on 4/25/2023 at 9-10, ECF No. 17; Tr. Proc. Held on 02/06/2024 at 4-5, ECF No. 42; and Tr. Proc. Held on 05/03/2024 at 4, ECF No. 54. Through this brief, the Attorney General provides an update regarding such permitting to the best of his knowledge.⁵ In addition, the Attorney General has noted the parties’ arguments regarding the Corps’ intention to locate the DMDF in an area of environmental justice concern. *See* Pls. Comb. Mem. in Opp’n to Defs. Mot. for Summ. J. & Reply in Supp. of Pls. Mot. for Summ. J. at 14-15, ECF No. 47; Defs. Mem. in Opp’n to Pls. Mot. for Summ. J. & in Supp. of Defs. Mot. for Summ. J. at 22-24, ECF No. 44-1 (“ECF No. 44-1”). As such, the Attorney General provides information regarding the inappropriateness of locating the DMDF in the already overburdened Southeast Chicago community.

SUMMARY OF ARGUMENT

The Corps operates the CDF located at 3600 East 95th St., Chicago, Illinois, which is “an

² 1st. Am. Compl. for Inj. & Civ. Penalties, *People v. Beemsterboer, Inc.*, No. 2013CH26175, Cook Cty. Cir. Ct. (Mar. 27, 2014) ¶¶5, 7-8; Consent Order, *People v. Beemsterboer, Inc.*, No. 2013CH26175, Cook Cty. Cir. Ct. (Oct. 15, 2019).

³ Lisa Madigan, Attorney General, *Attorney General Madigan Files New LawsUIT Against KCBX for Pet Coke Pollution Violations*, Mar. 4, 2014, <https://www.lisamadigan.org/in-the-news/2018/3/13/attorney-general-madigan-files-new-lawsuit-against-kcbx-for-pet-coke-pollution-violations>.

⁴ *See* Consent Order, *People v. KCBX Terminals Co.*, No. 2013CH24788, Cook Cty. Cir. Ct. (Jan. 4, 2017); Consent Order, *People v. KCBX Terminals Co.*, No. 2014CH3723, Cook Cty. Cir. Ct. (Sept. 15, 2015).

⁵ The Attorney General does not file this brief on behalf of the Illinois EPA, and it does not reflect information or deliberations internal to the agency.

approximately 43-acre dredged material disposal facility ... used for the handling and disposal of dredged material from the Chicago Area Waterway System including the Calumet River and Harbor.”⁶ The dredged material at the CDF contains highly toxic materials, including mercury, arsenic, and polychlorinated biphenyls (PCBs).⁷ The Corps previously promised to return the lakefront property to the Chicago Park District upon the CDF reaching capacity or after ten years, whichever was later. *See* Chicago Area Confined Disposal Facility Right of Entry, at AR 003872, ECF No. 56-1; Supplemental Environmental Impact Statement for Chicago Area Confined Disposal Facility, Aug. 26, 1998, at AR 005508, ECF No. 56-2. After forty years, the CDF has reached capacity and has not been returned. *See* ECF No. 44-1 at 1. Notwithstanding this prior position, the Corps is now seeking to vertically expand the CDF in the form of the DMDF to hold an additional 530,000 cubic yards of toxic waste over the next 20 years. *See* U.S. Army Corps of Engineers et al., *Section 404(b)(1) Evaluation for Chicago Area Waterway Systems (CAWS) Dredged Material Management Plan (DMMP)*, 4 (2020) at AR 038214, ECF No. 56-10 (“ECF No. 56-10”).

As noted above, Attorney General Raoul has the duty to ensure Illinois citizens’ right to a healthy environment, *supra* at p. 2, which includes those in Southeast Chicago where the CDF is located and the DMDF is proposed to be located. To that end, and especially due to the environmental justice concerns, the Attorney General intends to participate in any State permitting proceedings regarding the existing CDF and the proposed DMDF.

⁶ Illinois EPA, *Chicago Area Confined Disposal Facility*, <https://epa.illinois.gov/topics/community-relations/sites/cdf.html>.

⁷ *Id.*; *see also* Curtis Black, *South Chicago Lakeshore Dump Raises Environmental Justice and Climate Crisis Concerns*, *The Chicago Reporter*, Feb. 7, 2020, <https://www.chicagoreporter.com/south-chicago-lakeshore-dump-raises-environmental-justice-and-climate-crisis-concerns/>.

This brief provides an update on the permits about which the Court has inquired at prior hearings. In addition, the Attorney General sets forth a summary of the long history of environmental injustice visited upon Southeast Chicago, which argues for the conversion of the CDF into a park for the benefit of the Southeast Chicago community as opposed to an expansion of the toxic dredged fill material disposal facility on the shores of Lake Michigan.

ARGUMENT

A. Status of Required State Water Permits.

1. Water Pollution Control Permit.

Illinois EPA is the designated water pollution agency for the State of Illinois. 415 ILCS 5/4(1). Under such authority, on June 7, 2016 and September 29, 2017, Illinois EPA issued to the Corps Water Pollution Control Permit No. 2016-EO-60898 and Water Pollution Control Permit No. 2016-EO-60898-1 to operate the water pollution control facilities at the CDF.⁸ Thereafter, on March 29, 2021, the Corps submitted to Illinois EPA a permit application to further renew the Water Pollution Control Permit and vertically expand the CDF into the DMDF.⁹ The March 29, 2021 permit application remains pending with Illinois EPA.

Relatedly, on April 28, 2021, the Corps submitted to Illinois EPA a permit application, requesting a short-term renewal “to complete the currently scheduled Calumet Harbor navigational dredging project in the spring and summer of 2022.”¹⁰ Due to the CDF being in an environmental justice community, Illinois EPA accepted public comments between June 30, 2021 – July 31, 2021 and September 3, 2021 – October 26, 2021, and held a question and answer session on October 5, 2021.¹¹ On December 10, 2021, Illinois EPA issued to the Corps Permit No. 2021-EO-66302,

⁸ See *supra* n.6 and link to WPC permit-temporary extension therein.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

granting authority to operate the water pollution control facilities at the CDF until November 22, 2022, with certain additional conditions.¹² Since November 22, 2022, the Corps has not applied to Illinois EPA for a permit to operate the water pollution control facilities at the CDF, and Illinois EPA has not issued any further corresponding authorization to the Corps for the CDF or the proposed DMDF.¹³

2. Section 401 Water Quality Certification.

On March 1, 2023, the Corps submitted to Illinois EPA a request for certification for the proposed DMDF pursuant to Section 401 of the Clean Water Act. *See* Ex. 1, Letter from Darin E. LeCrone, Manager, Illinois EPA Division of Water Pollution Control, to Colonel Paul B. Culbertson, District Commander, U.S. Army Corps of Engineers (Apr. 6, 2023), a true and correct copy of which is attached hereto. On April 6, 2023, Illinois EPA issued correspondence to the Corps that identified several deficiencies in the Corps' March 1, 2023 Section 401 certification request and requested an additional response. *See id.* Following the Corps' subsequent submission of additional information to, and meeting with Illinois EPA, the Corps withdrew its request for a Section 401 certification for the DMDF on January 24, 2024. *See* Letter from Kenneth P. Rockwell, Colonel, U.S. Army Corps of Engineers, to Darin E. LeCrone, Division of Water Pollution Control, Illinois EPA (Jan. 24, 2024), ECF No. 39. To date, the Corps has not resubmitted to Illinois EPA its Section 401 certification request for the DMDF. Absent the filing of a request for certification and subsequent written approval by Illinois EPA, proceeding with the construction or operation of the DMDF would similarly be contrary to the requirements of the Act. 415 ILCS 5/12.

¹² *Id.*

¹³ The Corps admits that it "is currently operating the existing CDF." ECF No. 44-1 at 14. Yet, any operation of the CDF without a valid permit is contrary to the requirements of the Act. 415 ILCS 5/12.

3. Stormwater Permit.

On March 27, 2023, the Corps submitted to Illinois EPA a Notice of Intent for coverage under the “General Permit to Discharge Storm Water with Construction Site Activities” for the DMDF. *See* Ex. 2, Letter from Darin E. LeCrone, Illinois EPA Division of Water, to Linda M. Sorn, U.S. Army Corps of Engineers (Apr. 25, 2023), a true and correct copy of which is attached hereto. On April 25, 2023, Illinois EPA issued correspondence to the Corps, “providing notification that coverage under the general permit IL10 will not be granted and an application for coverage under an individual permit is necessary.” *See id.* To date, the Corps has neither sought nor been issued coverage under an individual permit for the site. As such, no construction or operation of the DMDF may proceed. *See* 415 ILCS 5/12.

B. Environmental Justice Concerns.

Among the many issues facing the Corps in its pursuit of the necessary Illinois EPA permits is the need to fully consider the environmental justice realities of the community that is being asked to host another toxic waste disposal site for the next two decades, all while it has already endured four decades of such disposal. *See* ECF No. 44-1 at 3 (noting that dredged sediment has been deposited into the CDF since 1984, and that approximately 500,000 cubic yards is estimated to be dredged over the next 20 years). In fact, the Corps’ decision to seek an expansion of the CDF would perpetuate the cycle that nearby vulnerable and underserved populations have had to endure.

1. Southeast Chicago has a long history of environmental harm.

Southeast Chicago was once one of the largest steel producing regions in the world.¹⁴ Industrial development in the years after the Civil War concentrated around the Calumet River.¹⁵

¹⁴ Rod Sellers, *Chicago’s Southeast Side Industrial History*, Southeast Hist. Soc’y 12 (Mar. 2006), <https://www.csu.edu/cerc/researchreports/documents/ChicagoSESideIndustrialHistory.pdf>.

¹⁵ Craig E. Colten, *Industrial Wastes in Southeast Chicago: Production and Disposal 1870-1970*, 10 Env’t. Rev. 93, 94-96 (1986); *supra* n.14 at 5.

Steel producers were also attracted to the area because of its proximity to railroads,¹⁶ which began to be constructed in the region in the 1840s.¹⁷ Four major steel mills were established in Southeast Chicago, including the United States Steel South Works¹⁸ (approximately one mile away from where the CDF currently sits),¹⁹ and coke plants were constructed at the same time, including the Acme Steel Coke Plant²⁰ (approximately three miles south of the current location of the CDF).²¹

Complaints about pollution and waste began almost immediately, as steel mills dumped liquid industrial waste, such as acids, phenols, benzene, tars, and oils, into the Calumet River,²² while coke plants released coal tar into its waters.²³ Residents experienced poor tasting water and were advised by their aldermen not to bathe near the mouth of the river.²⁴ Solid industrial wastes were left in the marsh areas surrounding the river with little to no regulation until after World War II, when the City began constructing sanitary landfills in the area.²⁵ While landfills were an

¹⁶ *Supra* n.14 at 3.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 12.

¹⁹ See Google Maps,

<https://www.google.com/maps/dir/3600+E+95th+St,+Chicago,+IL+60617,+USA/South+Works,+Chicago,+IL+60617/@41.730269,-87.5494394,2183m/data=!3m1!1e3!4m14!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x880e2801cf5860db:0xf5544fe033fcab09!2m2!1d-87.5404654!2d41.7375192!3e0!5m1!1e4?entry=ttu>.

²⁰ USEPA, *EPA Adds Acme Steel Coke Plant in Chicago to Superfund National Priorities List*, Mar. 5, 2024, <https://www.epa.gov/newsreleases/epa-adds-acme-steel-coke-plant-chicago-superfund-national-priorities-list#:~:text=Beginning%20in%20the%20late%201800s,SVOCs%2C%20cyanide%2C%20and%20mercury>.

²¹ See Google Maps,

<https://www.google.com/maps/dir/3600+E+95th+St,+Chicago,+IL+60617,+USA/11236+South+Torrence+Avenue,+Chicago,+IL/@41.7072777,-87.5694974,4368m/data=!3m2!1e3!4b1!4m14!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x880e270ba192a78d:0x5730a5753ddf5de4!2m2!1d-87.5620749!2d41.691465!3e0!5m1!1e4?entry=ttu>.

²² *Supra* n.15 at 96-7.

²³ Andrew Hurley, *Industrial Pollution*, Encyclopedia of Chicago (2005), <http://www.encyclopedia.chicagohistory.org/pages/638.html>.

²⁴ *Supra* n.15 at 97.

²⁵ *Id.* at 100.

improvement over dumping, they also created another burden on Southeast Chicago residents: by 1990, the Tenth Ward in Southeast Chicago had over 25 square miles of landfills.²⁶

The steel industry in Southeast Chicago largely relied on immigrants to do dangerous labor for low pay.²⁷ As a result, the residential areas that developed within the area close to the mills were largely immigrant communities.²⁸ In the late 1800s, a large population of Polish immigrants inhabited the area, later followed by Mexican immigrants who arrived at the beginning of the 20th century.²⁹ Social workers at the time described how immigrants lived in poor conditions and were affected by the steel mill industry “in physically offensive ways,”³⁰ noting how the mills shut off their access to Lake Michigan and “belch[ed] forth dense masses of smoke which hang over the neighborhood like clouds of darkness and pollute the atmosphere so that no whiff of the air comes untainted...”³¹ Investment in homes and infrastructure was lower than in other areas of the city, as residents “found shelter in the most used, most outworn and derelict housing which the city keeps.”³²

In the New Deal era, the status of the areas surrounding the current location of the CDF as areas unworthy of investment was further solidified by the process of redlining, a discriminatory practice whereby neighborhoods in large US cities were assigned one of four categories by the Home Owners’ Loan Corporation (HOLC), spanning from “Best” (A), to “Hazardous” (D), as a

²⁶ Christopher Thale, *Waste Disposal*, Encyclopedia of Chicago (2005), <http://www.encyclopedia.chicagohistory.org/pages/1322.html>.

²⁷ Michael Innis-Jimenez, *No Cheerful Patches of Green*, City of Lake and Prairie: Chicago’s Environmental History 137, 140 (Kathleen A. Brosnan, William C. Barnett, & Ann Durkin Keating, eds., 2020).

²⁸ *Id.* at 140-42.

²⁹ *Id.* at 141.

³⁰ Sophonisba P. Breckinridge & Edith Abbott, *Chicago Housing Conditions, V: South Chicago at the Gates of the Steel Mills*, 17 Am. J. Soc. 145, 145 (1911).

³¹ *Id.* at 174.

³² *Supra* n.27 at 143-144 (quoting Elizabeth Ann Hughes, *Living Conditions for Small Wage Earners in Chicago*, City of Chicago Dep’t. Pub. Welfare 9 (1925)).

measure of their creditworthiness.³³ The racial makeup of the neighborhood was a factor in the classification that perpetuated discrimination.³⁴ Hazardous neighborhoods, outlined in red on HOLC maps, were deemed to be poor investments,³⁵ creating unequal access to mortgage borrowing.³⁶ Both Area D100,³⁷ located just to the north of the current site of the CDF, and Area D115 located just to the south, were given grades of “D.”³⁸ Area D100 was deemed the “worst in South Chicago,” noting the predominance of Mexican, Black, and Polish populations.³⁹ Neighborhoods that were redlined have been found to have poorer environmental conditions today than neighborhoods that were given higher grades, including higher levels of pollution and noise and fewer green spaces.⁴⁰

Industrial pollution continued in Southeast Chicago throughout the 20th century.⁴¹ Authorities did not closely monitor waste treatment processes during increased production due to World War II.⁴² In 1954, for example, the Corps filed a complaint against three steel mills alleging that water removed from the Calumet River for industrial purposes was returned with solid

³³ University of Richmond, *Mapping Inequality: Redlining in New Deal America*, <https://dsl.richmond.edu/panorama/redlining/>.

³⁴ See Wenfei Xu, *Legacies of Institutionalized Redlining: A Comparison Between Speculative and Implemented Mortgage Risk Maps in Chicago, Illinois*, 32 Housing Pol’y Debate 249, 252 (2022).

³⁵ *Supra* n.33.

³⁶ *Supra* n.34 at 249.

³⁷ See University of Richmond, *Mapping Inequality: Redlining in New Deal America, Area D100*, https://dsl.richmond.edu/panorama/redlining/map/IL/Chicago/area_descriptions/D100#loc=12/41.7324/-87.5877.

³⁸ See University of Richmond, *Mapping Inequality: Redlining in New Deal America, Area D115* https://dsl.richmond.edu/panorama/redlining/map/IL/Chicago/area_descriptions/D115#loc=14/41.7354/-87.5503.

³⁹ *Supra* n.37.

⁴⁰ See, e.g., Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 Env’t. Sci. Tech. Lett. 345 (2022); Cesar O. Estien et al., *Historical Redlining Is Associated with Disparities in Environmental Quality across California*, 11 Env’t. Sci. Tech. Lett. 54 (2024); Bev Wilson, *Urban Heat Management and the Legacy of Redlining*, 86 J. Am. Plan. Ass’n 443 (2020).

⁴¹ *Supra* n.15, at 100-103.

⁴² *Id.* at 100.

particles that accumulated in the bottom of the river.⁴³ Similarly, a 1965 report by the U.S. Department of Health, Education, and Welfare described how “popcorn slag” from the steel mills collected on beaches, bothering residents with a “sulfide odor and gritty texture.”⁴⁴

2. Southeast Chicago is currently overburdened with environmental harm.

Today, while the steel mills have closed and there is an increased focus on cleaning up past pollution, Southeast Chicago remains an industrial center that continues to experience significant environmental burdens. By way of example, the area is still Chicago’s largest industrial corridor by land area,⁴⁵ home to many active industrial sites including a Ford assembly plant,⁴⁶ scrap processing yards,⁴⁷ and bulk cargo handling facilities.⁴⁸ Southeast Chicago is currently home to

⁴³ *Id.*

⁴⁴ U.S. Dep’t of Health, Educ., and Welfare, *Report on the Pollution of the Waters of the Grand Calumet River; Little Calumet River, Calumet River, Lake Michigan, Wolf Lake, and Their Tributaries* 44 (Feb. 1965), <https://nepis.epa.gov/Exe/ZyNET.exe/2000TUWT.TXT?ZyActionD=ZyDocument&Client=EPA&Index=Prior+to+1976&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C70thru75%5CTxt%5C00000002%5C2000TUWT.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#>.

⁴⁵ Jasmine Anderson, *An End to Sacrifice Zoning in Chicago*, 28 Pub. Int. L. Rep. 10, 12 (2022).

⁴⁶ Neil Steinberg, *A Century of Ford Cars Made at Torrence Avenue*, Chicago Sun Times, Feb. 27, 2024, <https://chicago.suntimes.com/columnists/2024/02/27/ford-assembly-plant-chicago-torrence-avenue-100-years-model-t-aurus-explorer>.

⁴⁷ For example, Sims Metal is located at 9331 S. Ewing Ave, a half a mile away from the CDF. See Google Maps, 3600 E. 95th St. to 9331 S. Ewing Ave, available at <https://www.google.com/maps/dir/3600+East+95th+Street,+Chicago,+IL/9331+S+Ewing+Ave,+Chicago,+IL+60617/@41.7250902,-87.5428607,1106m/data=!3m1!1e3!4m14!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x8811d8077f1e29f3:0x9749b53628e3101e!2m2!1d-87.5392764!2d41.7272358!3e0!5m1!1e4?entry=tu>.

⁴⁸ For example, the Illinois International Port District is located adjacent to the CDF. See Google Maps, 3600 E. 95th St. to Illinois International Port District, available at <https://www.google.com/maps/dir/3600+East+95th+Street,+Chicago,+IL/Illinois+International+Port+District,+3600+E+95th+St,+Chicago,+IL+60617/@41.7257613,-87.5403418,1106m/data=!3m1!1e3!4m14!4m13!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x8811d808c72c053f:0x1fc7ebc2e6f8f4a4!2m2!1d-87.5355008!2d41.7286146!3e0!5m1!1e4?entry=tu>.

250 facilities that are regulated by the United States Environmental Protection Agency (“USEPA”)⁴⁹ and is the only industrial corridor in Chicago zoned to store hazardous waste.⁵⁰ In addition, according to USEPA, since 2014, over 75 companies in Southeast Chicago have been investigated for noncompliance with the Clean Air Act,⁵¹ and Superfund sites in the area include the site of the Acme Coke Plant, more than 100 acres of contaminated land containing carcinogenic chemicals and harmful metals.⁵² Further, a large number of properties in the area are located next to or within 400 feet of a truck route⁵³ and close to railroads,⁵⁴ resulting in bothersome noise and fumes. This concentration of industrial and superfund sites in Southeast Chicago has resulted in a lack of green spaces for residents to enjoy,⁵⁵ which have been favorably linked to better health outcomes.⁵⁶

Against this backdrop, Southeast Chicago and the four neighborhoods that comprise it have been identified as environmental justice communities, in part because of their demographic

⁴⁹ USEPA, *Southeast Chicago Ambient Air Quality Analysis*, <https://www.epa.gov/il/southeast-chicago-ambient-air-quality-analysis>.

⁵⁰ National Resources Defense Council, *Mining for Limestone on Chicago’s Southeast Side? Residents Gear Up for a Fight (Again)*, Feb. 17, 2023, <https://www.nrdc.org/stories/mining-limestone-chicagos-southeast-side-residents-gear-fight-again>.

⁵¹ USEPA, *Environmental Issues in Southeast Chicago*, <https://www.epa.gov/il/environmental-issues-southeast-chicago>; Letter from Michael S. Regan, Administrator, USEPA to Lori E. Lightfoot, Mayor, City of Chicago (May 7, 2021), <https://www.epa.gov/system/files/documents/2022-02/letter-to-mayor-lightfoot-5.7.21.pdf>.

⁵² Brett Chase, *Acme Steel site on Southeast Side becomes newest Chicago Superfund priority*, Chicago Sun Times, Mar. 6, 2024, <https://chicago.suntimes.com/environment/2024/03/06/acme-steel-epa-southeast-side-superfund-priority-cleanup>.

⁵³ See City of Chicago, *CSI: A Manufacturing Work Plan for the 21st Century* 23 (2011), https://www.chicago.gov/content/dam/city/depts/zlup/Sustainable_Development/Publications/Chicago_Sustainable_Industries/Chicago_Sustainable_Book.pdf.

⁵⁴ See *id.* at 25.

⁵⁵ See Gia Clark, *A Deep Dive Into Chicago’s Climate Inequality*, 14 East, Nov. 3, 2023, available at <http://fourteeneastmag.com/index.php/2023/11/03/a-deep-dive-into-chicagos-climate-inequality/>.

⁵⁶ See Kirsten M.M. Beyer et al., *Exposure to Neighborhood Green Space and Mental Health: Evidence from the Survey of the Health of Wisconsin*, 11 Int’l J. Env’t. Res. & Pub. Health 3453 (2014).

makeup.⁵⁷ Over 70% of the residents of South Chicago, the neighborhood within Southeast Chicago directly adjacent to the CDF, are Black and over 20% are Hispanic.⁵⁸ More than a third of residents have an annual income less than \$25,000,⁵⁹ and close to one fourth speak a language other than English in the home.⁶⁰ Nearly one in five residents do not have a high school diploma.⁶¹ By all indicators, this is a vulnerable community.

In fact, every level of government has recognized Southeast Chicago as an environmental justice community. USEPA’s EJ Screen tool has ranked Southeast Chicago at the highest levels for many pollution indicators, including fine particulate matter, air toxics cancer risk, respiratory hazard, traffic proximity, lead paint, Superfund site proximity, hazardous waste proximity, and wastewater discharges.⁶² Similarly, Illinois EPA has identified the area containing the CDF as an environmental justice community.⁶³ Further, Southeast Chicago received a very high Environmental Justice Index Score in the City of Chicago’s 2023 Cumulative Impact Assessment, indicating that it has some of the highest exposure to environmental harm in the city.⁶⁴

3. Residents of Southeast Chicago suffer from disproportionate health burdens.

A 2020 report by the City of Chicago on Air Quality identified the neighborhoods of Southeast Chicago as areas of great concern, noting that “chronic disease is the leading driver of

⁵⁷ See Illinois EPA, *Illinois EPA EJ Start*, <https://www.arcgis.com/apps/webappviewer/index.html?id=f154845da68a4a3f837cd3b880b0233c>.

⁵⁸ Chicago Metropolitan Agency for Planning, *South Chicago Community Data Snapshot 3* (2023), <https://www.cmap.illinois.gov/documents/10180/126764/South+Chicago.pdf>.

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 4.

⁶¹ *Id.*

⁶² USEPA EJScreen, <https://ejscreen.epa.gov/mapper/>; Letter from Michael S. Regan, Administrator, USEPA to Lori E. Lightfoot, Mayor, City of Chicago (May 7, 2021), <https://www.epa.gov/system/files/documents/2022-02/letter-to-mayor-lightfoot-5.7.21.pdf>

⁶³ *Supra* n.6.

⁶⁴ City of Chicago, *Chicago’s Cumulative Impact Assessment Environmental Justice Map* (2023), https://www.chicago.gov/content/dam/city/depts/cdph/environment/CumulativeImpact/Chicago-EJ-Index_CAs.jpg.

Chicago's nine-year life expectancy gap between Black and white residents" and that "[a]ir pollution can both increase risk of chronic illnesses like heart and lung diseases and contribute to worse outcomes for people living with certain health conditions."⁶⁵ In fact, South Chicago has higher rates of chronic disease than Chicago as a whole, including adult asthma, COPD, and lung cancer.⁶⁶ There is also a higher rate of children aged 1-5 diagnosed with lead poisoning and the rate of children born with a very low birthweight in South Chicago is twice that of the City of Chicago.⁶⁷

4. The proposed expansion of the CDF would increase the already heavy environmental burden experienced by residents of Southeast Chicago.

The proposed expansion of the CDF would significantly increase the quantity of toxic waste permanently disposed of in Southeast Chicago. *See* ECF No. 56-10 at 4 (describing how the expansion would permanently hold 530,000 cubic yards of waste). Specifically, the expansion would occur less than a mile from a residential neighborhood and many popular community areas, such as Douglas Taylor Elementary School, Calumet Park Beach, and the Calumet Park Softball, Soccer, and Baseball fields.⁶⁸ After 40 years of toxic dumping, rather than the promised green

⁶⁵ City of Chicago, *Air Quality and Health Report 5-7* (2020), https://www.chicago.gov/content/dam/city/depts/cdph/statistics_and_reports/Air_Quality_Health_doc_FLNALv4.pdf.

⁶⁶ Chicago Health Atlas, *South Chicago*, <https://chicagohealthatlas.org/neighborhood/1714000-46?place=south-chicago&tab=data>.

⁶⁷ *Id.*

⁶⁸ *See* Google Maps,

<https://www.google.com/maps/dir/3600+East+95th+Street,+Chicago,+IL/Douglas+Taylor+Elementary+School,+9912+S+Avenue+H,+Chicago,+IL+60617/Calumet+Park+Beach,+Chicago,+IL/Calumet+Park+Softball+Field+North+East,+East+Foreman+Drive,+Chicago,+IL/Calumet+Park+Baseball+Field+1,+Calumet+Park,+South+Avenue+G,+Chicago,+IL/@41.717899,-87.5426481,2212m/data=!3m1!1e3!4m32!4m31!1m5!1m1!1s0x8811d808c6d510eb:0x608b6faa003d68d2!2m2!1d-87.5356386!2d41.72303!1m5!1m1!1s0x8811d80cc1ffc0c3:0x5ffa46f686258102!2m2!1d-87.5331979!2d41.7154019!1m5!1m1!1s0x8811d8129390b589:0xec060c941a483d0d!2m2!1d-87.5286558!2d41.7158686!1m5!1m1!1s0x8811d8103561eb47:0x3863411c8d19b4e2!2m2!1d-87.5284624!2d41.7218103!1m5!1m1!1s0x8811d900184bb273:0xf5a42b0aa20a2817!2m2!1d-87.528543!2d41.718745!3e0!5m1!1e4?entry=ttu>.

space in an area significantly lacking in such spaces,⁶⁹ the proposed expansion of the CDF over the next 20 years would add 530,000 cubic yards of toxic waste to an area already heavily blighted with dangerous pollutants. *See* ECF No. 56-10 at 4.

As their history demonstrates, the residents of Southeast Chicago have shouldered an unfair share of environmental harm for far too long. Prohibiting the expansion of the CDF into the DMDF is an important step to prioritize the quality of life of the residents of Southeast Chicago, ensure their constitutional right to a healthful environment, and bring long overdue environmental justice to the community.

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⁶⁹ *Supra* n.55.

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2024, I caused the foregoing document to be electronically filed with the Clerk of the Court for the U.S. District for the Northern District of Illinois using the CM/ECF system, which sent notification of such filing to counsel of record in this case.

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