

RESERVE MANAGEMENT GROUP

Reserve Management Group
4550 Darrow Road
Stow, OH 44224

November 3, 2022

Agency: Council on Environmental Quality

Docket: CEQ-2022-0004

Reserve Management Group (RMG) appreciates the opportunity to submit comments regarding the efforts to date of the Biden Administration – working through the Environmental Protection Agency (EPA), Council on Environmental Quality (CEQ), White House Environmental Justice Interagency Council (IAC), White House Environmental Justice Advisory Council (WHEJAC), and other agencies/entities – aimed at measuring and addressing environmental justice. This is undoubtedly a vital issue facing our nation. A country that cannot equitably protect the health of all of its citizens is one that has failed at one of its most basic purposes.

To that end, RMG applauds the Administration's intention, as communicated in Executive Order 14008, to develop an Environmental Justice Scorecard meant to document and assess the government's performance on this issue in a comprehensive and measurable fashion. Unfortunately, the Administration has eschewed the language of the Executive Order, instead choosing to take hasty and uninformed actions on matters purportedly concerning environmental justice.

In one such situation, the Environmental Protection Agency intervened in a local regulatory matter that involved RMG. The EPA's involvement ultimately led to a permitting decision that, while purporting to be in the service of environmental justice, will perversely end up harming both the Administration's environmental and climate goals, as well as environmental justice communities already facing health burdens.

In these comments, RMG will provide a brief overview of the situation and use the outcome as a lens through which to view the Biden Administration's failures to adequately incorporate the guidance and achieve the goals of Executive Order 14008.

Southside Recycling Timeline

RMG is a privately held group of distinct but related businesses engaged in ferrous and non-ferrous metals recycling, IT asset disposition (ITAD) and electronics recycling services, and other related services. While RMG is headquartered in Stow, Ohio (between Cleveland and Akron), the various entities owned by RMG

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operate facilities in 10 states. This includes Illinois, where RMG owns a number of businesses operating across 175 acres of former steel mill property located on Chicago's far Southeast Side.

RMG, which had been operating metals recycling and stevedoring businesses at other locations on the Southeast Side since 1987, made its first purchase of real estate at its current location in 1997 and moved its existing operations to the site in the same year. RMG finished assembling the 175-acre campus in 2001. By 2008, RMG was operating four different businesses engaged in metals recycling, material handling, and ITAD/electronics recycling at the site.

Another metals recycling company called General Iron had been operating in an industrial North Chicago neighborhood called Lincoln Park for multiple decades. Over the years, development moved into the area, leading many of the other industrial businesses to move out until General Iron was the last remaining sign of the neighborhood's former character. Inhabitants of the new residential developments complained about the presence of a metals recycling operation near their homes, and eventually the City of Chicago began pressuring General Iron to relocate.

Given the shifting reality of Lincoln Park, General Iron made the difficult decision to sell its business to RMG in 2018 with plans for RMG to open a new and improved version of General Iron's metal shredding business on 25 underutilized acres of RMG's Southeast Side property. This new business would be the most modern metal shredding operation in the country, employing the most technologically advanced equipment to ensure the highest level of environmental protection. The new site also benefited from a significantly larger footprint, better access to transportation and utility infrastructure, and more extensive distancing from homes and other neighbors than was found at General Iron's Lincoln Park site.

As part of this transition plan, RMG applied to the Chicago Zoning Board of Appeals for a special use permit required to operate a Class IVB recycling facility. Following an extensive public hearing that included testimony from environmental advocates, air emissions experts, and city officials, the Zoning Board issued a 15-page report approving the special use application.

Simultaneous with the Zoning Board of Appeals process, RMG, General Iron, and the City of Chicago were negotiating an agreement to facilitate the closing of General Iron's Lincoln Park facility and the permitting of the new operation planned for RMG's Southeast Side property. These negotiations resulted in the signing of a Term Sheet by both companies and the city government on September 10, 2019. Under the terms of this agreement, RMG and General Iron agreed to cease operations of the validly permitted North Side business in exchange for the City's reasonable cooperation in achieving "the efficient, expeditious transition" of the metal recycling operation to the RMG campus location, where the new business would be called Southside Recycling.

Following the signing of this agreement, RMG, under the new Southside Recycling business name, applied to the Illinois Environmental Protection Agency (IEPA) Bureau of Air for an air pollution control

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construction permit. This application demonstrated that the emissions control equipment that would be installed at Southside Recycling's new operation would adequately limit emissions to a level that ensured protection of the community's health. This fact was supported by the results of emissions testing previously conducted on the equipment at General Iron's Lincoln Park facility. The U.S. EPA had helped to design and supervise the previously conducted emissions testing.

During its review of the Southside Recycling construction permit application, the following steps occurred:

- 1) IEPA requested that Southside Recycling conduct air dispersion modeling of metals emissions at the Southeast Side location. Southside Recycling engaged environmental consultants who assisted in the design and execution of the modeling, which included (at IEPA's suggestion) a list of lead and manganese emissions sources in the vicinity of the new facility's location. IEPA approved Southside Recycling's air dispersion modeling report on March 2, 2020, an acknowledgement of the fact that, even when including all pre-existing sources of metals emissions in the area surrounding the Southeast Side site, Southside Recycling's operations would comply with all applicable health and safety standards.
- 2) IEPA twice requested – and Southside Recycling twice agreed – to an extension of the public comment period on the permit application. For applications such as this one, the period usually lasted 90 days, but in Southside Recycling's case the public was welcome to make comment for a period of 270 days. During this window, IEPA engaged in active outreach to environmental advocacy groups and other interested parties. During this period, IEPA received 329 written comments from the public.
- 3) IEPA consulted with officials from U.S. EPA Region 5 regarding a number of facets of Southside Recycling's permit application and review process, specifically including both technical aspects of the air dispersion modeling and details of how IEPA engaged in the review and public outreach process in order to ensure that environmental justice concerns were taken into account. Multiple U.S. EPA officials who were engaged in these discussions approved of – and commended – the manner in which IEPA conducted the permit application review, with specific praise of the way IEPA centered environmental justice in their considerations. These approvals were made in writing, and all U.S. EPA officials involved were long-time agency officials who are still employed by U.S. EPA as of this writing, rather than political appointees.

Based on this extensive application review process, IEPA issued a 73-page Responsiveness Summary explaining how the permit application, and IEPA's analysis of it, addressed all of the public comments and concerns, including those related to environmental justice. This Responsiveness Summary was released on June 25, 2020, the same day that IEPA approved Southside Recycling's permit application.

During the IEPA's permit application review, the City of Chicago released a stringent new set of rules for the permitting of "Large Recycling Facilities." The City, which solicited input from both environmental groups and recycling companies during the crafting of these rules, acknowledged that the new rules were largely targeted at the new Southside Recycling facility. Despite the significant requirements in these new

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rules (which are regarded as some of the strictest in the nation pertaining to recycling facilities), Southside Recycling was confident – especially given the success of its IEPA permit application after such an extensive review period – in its ability to meet them, and began constructing the new facility as allowed by IEPA's issuance of the construction permit.

The now completed facility includes an enclosed shredder (a style used frequently in Europe but rarely seen in the United States) and employs the most technologically advanced emission control system available. It also includes 24/7 air monitoring (with real-time reporting available to all relevant regulatory entities) and an on-site water treatment facility. RMG's total investment in the enclosed metal shredder exceeds \$80 million.

On November 12, 2020, Southside Recycling submitted an application to the Chicago Department of Public Health (CDPH) for a Large Recycling Facility permit. After Southside Recycling submitted this permit application, CDPH issued a document detailing the timing guidelines for review and consideration of such applications. This document prescribed specific time periods in which the City would receive public comments on applications, inform applicants of any deficiencies in their applications, allow for the submission of supplemental information to cure any such deficiencies, and issue permits for applications it found to be complete and in compliance with the Large Recycling Facility Rules.

The City initially followed its own published guidelines when it began receiving public comments on Southside Recycling's application and when it, on December 23, 2020, issued a letter to Southside Recycling alleging certain deficiencies in its application. Southside Recycling submitted a supplemental application addressing each of these deficiencies on January 14, 2021. After this submission, Southside Recycling personnel received multiple confirmations from CDPH officials that the deficiencies had been adequately remedied by the supplemental submission and that its application was now complete and satisfied all aspects of the Large Recycling Facility Rules. Per the timing guidelines, CDPH should have therefore been compelled to issue a draft permit to Southside Recycling no later than March 15, 2021.

It was at this point that Chicago began disregarding its own guidelines – as well as its signed agreement with the company to reasonably cooperate and follow its permitting procedures – and embarked upon a search for any means to delay the issuance of Southside Recycling's permit. The City was encountering political pressure in opposition to its duty to issue the permit. A small but vocal group of activists was calling for a permit denial under the guise of environmental justice. While the Southeast Side does have a history of facing disproportionate environmental burdens, this opposition came despite all scientific evidence – as exhibited by the extensive IEPA permit application review that included multiple supporting involvements from U.S. EPA – that Southside Recycling's facility would operate in accordance with all applicable laws, regulations, and health standards. This group went to incredible lengths to win publicity for their cause, culminating in a baseless, but nonetheless attention-grabbing, hunger strike. As friendly media outlets reported on this hunger strike, pressure on the City increased. The Lightfoot Administration,

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rather than following its own guidelines that required the permit be issued, desperately searched for a release valve or escape hatch.

U.S. EPA Intervention

Mayor Lightfoot found that release valve in the form of the U.S. EPA and Michael Regan, its newly appointed administrator. On May 7, 2021 – nearly two months after a permit should have been issued in accordance with the CDPH timing guidelines – Administrator Regan issued a letter to Mayor Lightfoot. This letter referenced a conversation from May 3 in which the two discussed the CDPH permitting process and Southside Recycling. Regan wrote that he did “not believe the U.S. EPA’s public comments submitted by the prior administration during the state permitting process were adequate.” It is unclear how thoroughly Regan or his staff had reviewed the issue, as even a brief investigation would have revealed that all U.S. EPA involvement to that point had been handled by career agency officials, not political appointees who come and go when new administrations enter office. Given this fact, it is not clear what inadequacy Regan was referencing.

What is clear, however, is that Regan and his staff did not bother engaging in any outreach to Southside Recycling. This is a tactic they shared with CDPH, whose commissioner, Dr. Allison Arwady, had failed to respond to multiple letters sent by the company seeking an update on the permit application status since the supplemental information had been submitted in January. Dr. Arwady’s refusal to engage with Southside Recycling was yet another breach of the signed agreement between the City and the company, as that document included a provision for regular meetings between the two parties at either side’s request. Administrator Regan, Mayor Lightfoot, and Dr. Arwady were invited to tour the facility on multiple occasions, yet the invitations all went unanswered.

Administrator Regan’s letter recommended that Chicago put a halt to its permitting process in order to complete “an environmental justice analysis, such as a Health Impact Assessment.” This is yet another example of the failure of Administrator Regan and his staff to review Southside Recycling’s Large Recycling Facility application, as the application plainly detailed the science underpinning how the advanced emissions control equipment would ensure the shredder’s environmentally safe operation. The letter failed to provide any details of what such additional analysis should include or how it should be conducted. The EPA’s willingness to intervene in a local permitting decision without offering even the slightest hint of specificity in how the agency’s recommendations should be implemented reeks of hypocrisy and is in direct contravention of Executive Order 14008’s intent to develop an Environmental Justice Scorecard with clear performance measures. Just a few months after President Biden signed the Executive Order, his own designated appointee was already treating its words as things that could be ignored when it suited the political winds of the day.

Unsurprisingly, the Lightfoot Administration took only minutes after the public release of Administrator Regan’s letter to publish a notice of the indefinite suspension of the City’s review of Southside Recycling’s

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permit application. The timing further betrayed the coordinated and rehearsed nature of this farcical corruption of the environmental justice concerns that President Biden's Executive Order sought to address. Also unsurprisingly, Chicago's published notice of the permit review suspension was entirely devoid of any details of the additional analysis that would be conducted. The federal and city governments were not concerned with science or policy, but only with devising a way to continue delaying the permitting decision that the City, by its own published documents, had been compelled to make months before.

In the midst of this ongoing saga, the U.S. EPA further elucidated the misguided nature of its intervention in Southside Recycling's permit application review when the agency's Office of Enforcement and Compliance Assurance issued an Enforcement Alert regarding excess emissions from metal shredders on July 1, 2021. This three-page document included a section detailing the EPA's recommended actions for metal shredding facilities to control their operations' emissions.

These recommendation almost exactly the describe the enclosed shredder and emissions control train that Southside Recycling had installed at its new facility on the RMG campus. Had Administrator Regan or his staff taken the time to review Southside Recycling's Large Recycling Facility permit application, they would have quickly realized that this facility was designed and built to meet or exceed the standards that the EPA itself had just publicly recommended. Given this fact, Southside Recycling's facility would have been better used as an example of how U.S. EPA can work collaboratively with both industry and communities to best fulfill the intentions of Executive Order 14008 and other Biden Administration goals and policies. Instead of engaging in the collaborative sort of work that both he and President Biden had repeatedly touted, Administrator Regan instead chose to bow to the political request of Chicago's embattled mayor by making Southside Recycling a scapegoat.

The City, by outsourcing the design and execution of the Health Impact Assessment to various consultants, did eventually produce a report on Southside Recycling's permit application. The report was, again unsurprisingly, long on qualitative judgments and short on quantitative measurement – another failure to meet the aims presented in Executive Order 14008.

Of particular note is the quantitative work that Tetra Tech, the City's chosen environmental consultant, conducted for the Health Impact Assessment. That work resulted in a 509-page report (separate from the official Health Impact Assessment report) which found all cancer risks and multiple-chemical hazard indices to be well within the acceptable ranges or below the applicable thresholds. Those acceptable measurements came in spite of the fact that, by Tetra Tech's own explicit admission in their report, their analysis used incredibly conservative conditions that likely resulted in overestimation of the risks and hazards associated with the Southside Recycling facility. To further examine the quantitative scientific case that the Southside Recycling facility met all applicable standards and posed no significant health risks to the surrounding area, an unbiased reader might want to know the source of the acceptable risk ranges

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and hazard indices. This impartial observer may be surprised – or perhaps not surprised by this point in the tale – to learn that those ranges came directly from the United States EPA.

The City, in clear contravention of its own published rules, documents, and signed contracts, denied Southside Recycling's permit. Predictably, Administrator Regan was quickly all over social media with praise for the decision. Environmental justice was mentioned many times in the statements from both the City of Chicago and Administrator Regan. Any search for references to quantitative data, the repeated clearing of hurdles set by the U.S. EPA's own policies, or any defined performance measurements surrounding environmental justice as set out in Executive Order 14008 was, on the other hand, fruitless.

The case is now playing out in the courts. At the same time, valuable metal commodities go unrecycled due to a lack of processing capacity in the nation's third largest metropolitan area. More steel – a material essential to the Biden Administration's infrastructure improvement goals – is made using carbon-intensive melting of iron ore and coking coal instead of with recycled metals that are far less harmful to the environment.

Conclusion

In this case, the United States EPA opted to ignore or discount all of the following:

- 1) Emissions control equipment testing it helped to design and supervise;
- 2) Written communication between the Illinois EPA and its own career staff – scientists, not political appointees – in which U.S. EPA officials praised the thoroughness with which IEPA reviewed a permit application and centered concerns about environmental justice in their evaluation;
- 3) The recommended best practices for the control of emissions from metal shredders published by its own Office of Enforcement and Compliance Assurance in July 2021;
- 4) Repeated scientific analyses – including analyses that used the U.S. EPA's own thresholds and indices as benchmarks – that demonstrated how a new metals recycling business would comply with all applicable health and environmental standards; and
- 5) The Biden Administration's own stated policies, as communicated in Executive Order 14008, to develop *measurable* performance standards around environmental justice.

All of these items were disregarded in order to provide political cover for a municipal government that lacked the backbone to follow its own rules when faced with vocal protests from a small group of residents. Despite President Biden's campaign statements about uniting the nation and restoring the value of compromise to its rightful place in the political landscape, his own appointees opted to support a mayor's decision to side with this scant group of activists under the guise of environmental justice.

Conspicuously absent was any attempt, by either the City of Chicago or the federal government, to engage with the recycling companies involved in this matter. Given the vast economic and environmental challenges facing the nation, this sort of singlemindedness when imposing the influence of the federal

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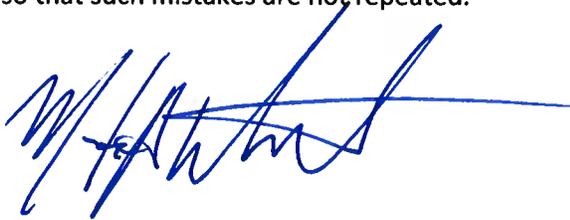
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government will surely prove counterproductive to real progress on issues that the Biden Administration has communicated their desire to tackle.

Reserve Management Group recognizes and appreciates the Biden Administration's desire to right some of the environmental wrongs that have overburdened so many communities throughout the nation for so many years. But, when those aims are allowed to be hijacked by any loud opposition willing to claim that their problem is one of environmental justice, facts and science be damned, 'progress' on this issue will come only at the expense of other important economic and environmental goals.

In this case, the U.S. EPA's actions actively undercut its own purposes and those of the Biden Administration. RMG hopes to see the aims of Executive Order 14008 more fully and judiciously enacted so that such mistakes are not repeated.

A handwritten signature in blue ink, appearing to read 'Mark A. Weintraub', with a long horizontal line extending to the right.

Mark A. Weintraub, Esq.
General Counsel
Reserve Management Group