By electronic mail

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Re: Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, regarding the Michigan Department of Environment, Great Lakes, and Energy's Issuance of Permit Nos. 14-19, 14-19A, & 33-20

I. Introduction

The disparate adverse environmental impacts imposed on communities of color are among a swath of unjust disparities impacting nearly every facet of Black and Brown life across the United States. While each of these disparities has a history of its own, nearly all share roots in generations of racialized actions and inactions never fully rectified by those in power. In failing to confront the true lasting impacts centuries of discrimination have had on communities of color, governments and industries across the United States have been permitted to rely instead on the guise of ostensibly facially race-neutral laws and policies that perpetuate the entrenched legacy of the openly discriminatory actions of times past. [1]

Since springing into the national consciousness in the 1980s, the environmental justice movement has compelled federal, state, and local governments to examine how environmental laws and regulations may result in communities of color continuing to bear a disproportionate burden of environmental risks. The start of the environmental justice movement is often pinned at Warren County, North Carolina, where in 1982 residents protested the state's decision to locate a hazardous waste landfill in a predominantly Black and low-income community. However, it was from the civil rights movement of the 1960s that the modern environmental justice movement drew its core principles. At the heart of the environmental justice movement is a firm dedication to rectifying the inequitable distribution of burdens and benefits based on race, a practice that Martin Luther King addressed in his 1967 book, *Where Do We Go from Here*, in a passage that remains hauntingly prescient today:

> *When the Constitution was written, a strange formula to determine taxes and representation declared that the Negro was sixty percent of a person. Today another curious formula seems to declare he is fifty percent of a person. Of the good things in life,*

[1] For comprehensive works on the discriminatory use of facially race-neutral laws see Robert Bullard, *Unequal Protection: Environmental Justice and Communities of Color (*1994) (environmental law). Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. (2010) (criminal law). Richard Rothstein, *The Color of Law* (2018) (housing law).

> *the Negro has approximately one half those of whites. Of the bad things of life, he has twice those of whites.*[2]

Environmental justice confronts these inequities within the context of environmental laws, policies, and practices. The United States Environmental Protection Agency has defined environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, or national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."[3] The concept of "fair treatment" in the context of the development, implementation, and enforcement of environmental laws means that "no group of people, including racial, ethnic, or socio-economic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, or commercial operations or the execution of federal, state, local and tribal programs and policies."[4]

While today's laws can no longer *expressly* codify racial segregation and unequal treatment, racial inequities continue to be reinforced through seemingly race neutral means. Confronting these inequities requires consciously addressing our nation's deeply embedded system of racial hierarchy. As noted by environmental justice scholar and activist Dr. Robert Bullard:

> *The laws that codify racial segregation have been eradicated but the practices continue today, which is why you get refineries, chemical plants and landfills disproportionately in communities of color…The only way to reverse that is to change the idea that communities of color are dumping grounds for pollution.*[5]

Across the country, race remains a dominant indicator for exposure to environmental pollutants. Air pollutants are no exception. For particulate matter emissions ≤ 2.5 μm in diameter (PM2.5) and those ≤ 10 μm in diameter (PM10), Black Americans bear a

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[2] King, Martin Luther, *Where Do We Go from Here: Chaos or Community?* (1967).

[3] U.S. EPA, Environmental Justice, https://www.epa.gov/environmentaljustice (last visited November 8, 2021)

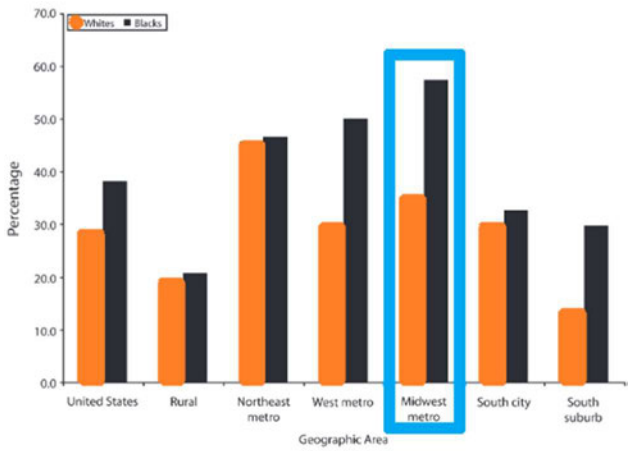
[4] Robert Bullard, Paul Mohai, Robin Saha, and Beverly Wright, *Toxic Wastes and Race at Twenty: 1987 - 2007: A Reported Prepared for the United Church of Christ Justice & Witness Ministries,* United Church of Christ (2007), https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf

[5] Oliver Milman, *Robert Bullard: 'Environmental justice isn't just slang, it's real'*, The Guardian (2018), https://www.theguardian.com/commentisfree/2018/dec/20/robert-bullard-interview-environmental-justice-civil-rights-movement (last visited November 8, 2021).

burden 1.5 times higher than the population as a whole and 1.8 times higher than whites.[6]

The decisions by Michigan's Department of Environment, Great Lakes, and Energy ("EGLE") allowing Stellantis to significantly expand its facilities continues the discriminatory legacy of requiring communities of color to bear the disproportionate burden of the industrial pollution generated by all of society. Unfortunately, the Stellantis Complex ("Facility") does not exist in isolation. While racial disparities exist across the country, nowhere are the air pollution burdens on communities of color more disparate than the Midwest.[7] One third of the 15 states where Black exposure to PM2.5 is highest are located along the Great Lakes.[8] Michigan is one of them.

Figure 1- Percentage of people living within 1 mile of polluting industrial facility by race and geographic area.



Americans' Changing Lives Study, 1986.

At the same time, the decisions continue our nation's long legacy of discriminatory displacement of Black communities against their will.

The Black community (b) (6) in Detroit, Michigan seeks recognition of the discriminatory harms imposed on their community through actions taken by the State of Michigan's Department of Environment, Great Lakes, and Energy, to seek an end to those harms, and to step towards their rectification. Specifically, the Complainants detail the following:

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[6] Ihab Mikati, *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, American Journal of Public Health vol. 108 (2018).

[7] Mohai, Paul et al., *Racial and Socioeconomic Disparities in Residential Proximity to Polluting Industrial Facilities: Evidence from The Americans' Changing Lives Study*. American Journal of Public Health Vol. 99, Suppl 3 (2009).

[8] Christopher Tessum et al., *Pm2.5 Polluters Disproportionately and Systemically Affect People of Color in The United States*. Sci Adv Vol 7, Issue 18 (2021).

- EGLE's decisions to approve permits regarding Stellantis Complex facilities, which permit increases in air emissions in a disparately impacted community of color, violates 40 C.F.R. Part 7.

- EGLE's failure to perform cumulative impact analyses under Rule 228 as has subjected resident to an adverse disparate impact and preserves a pattern or practice of discrimination on the basis of race, color, and national origin in violation of 40 C.F.R. Part 7.

II. Complainants

Complainants (b) (6) [redacted] in Detroit, Michigan. (b) (6) [redacted] Each complainant self identifies as a person of color and has experienced numerous ill effects as a result of EGLE's decisions. Informed by the impacts these decisions have had on their own lives and those of their loved ones, each is deeply concerned about the increased adverse health impacts being seen across their community.

III. Factual Background

A. History of Mack Avenue and Jefferson North Assembly Plants

Located at 2101 Conner Avenue in Detroit, Stellantis' Jefferson North Assembly Plant (JNAP) currently produces large SUVs; the Jeep Grand Cherokee, Jeep Grand Cherokee SRT, and Dodge Durango. Immediately to the north of the JNAP at 4000 St. Jean Avenue is another Stellantis facility, the Mack Avenue Assembly Plant.

Built in 1916 by the Michigan Stamping Company, the original six-story Mack facility was located between St. Jean Street and Conner Avenue.[9] It had been built atop Conner Creek, a waterway tributary to the Great Lakes once vital to the indigenous Anishinaabe.[10] From 1923 on, "Old Mack"' became entwined with the precursors to the

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[9] AllPar, *Chrysler's Mack Avenue Engine Plants (Formerly Stamping Plant)*, https://www.allpar.com/threads/chrysler%E2%80%99s-mack-avenue-engine-plants-formerly-stamping-plant.229392/ (last visited November 8, 2021).

[10] Sergey Kadinsky, *Conner Creek, Detroit* https://hiddenwatersblog.wordpress.com/2016/06/14/conner-creek-detroit/ (last visited November 8, 2021).

FCA/ Stellantis name. At the time, ownership of the plant was maintained by the Briggs Manufacturing Company, which produced Plymouth bodies for Chrysler Corporation, until their eventual purchase of the plant in 1953.[11] The 33-acre site continued to produce automobile body parts and frames until 1979, when Chrysler closed the plant.[12]

In December of 1982, as the plant sat vacant, the City of Detroit purchased it.[13] Idle, the site quickly devolved into a brownfield contaminated by hazardous industrial toxins threatening the health of nearby residents, including polychlorinated biphenyls (PCBs) and asbestos.[14] Hosting millions of pounds of contaminated materials, it sat for over 10 years to further degrade while remaining surrounded by residential housing.

In August of 1989, civil penalties totaling $264,000 were levied by the EPA against the City of Detroit regarding violations of the Toxic Substances Control Act and PCB regulations.[15] EPA mandated cleanup of the site began in 1990.[16] Contamination at the site was extensive. In the end, the site was demolished and cleanup required the removal of:

- Ten million pounds of PCB-contaminated debris, concrete, and equipment
- Eleven million gallons of contaminated water
- One and half million pounds of asbestos-containing materials including 15 miles of asbestos-covered pipe and 87,000 square feet of asbestos floor tiles
- Enough scrap metal to build 20,000 cars.[17]

Stellantis' presence along Jefferson Avenue shared a similar trajectory. The assembly plant was first built on the South side of Jefferson by Chalmers Motor Company in

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[11] AllPar, *Briggs Body Plants and Chrysler*, https://www.allpar.com/threads/briggs-body-plants-and-chrysler.229393/ (last visited November 8, 2021).
[12] Id.
[13] Id.
[14] Id.
[15] In re Detroit, Doc. TSCA-V-C-82-87 (U.S. EPA Aug. 18, 1989) https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf/Dockets%20by%20Year%20Filed/87B01EFDFABF329985257FBC00702143/$File/city_of_detroit_tsca_jones_082589.pdf.
[16] U.S. EPA Superfund Program, CERCLIS Database: Old Mack Ave Stamping Plant (released through FOIA).
[17] Automotive Intelligence, *Chrysler´s Mack Avenue Engine Plant History* (1999) https://www.autointell.com/nao_companies/daimlerchrysler/dc-manufacturing/chrysler-mfg-mack-ave-03.htm.

1908.[18] In 1925, two years after purchasing "Old Mack," Chrysler became its new owner.[19] In 1927, the company also purchased the American Motor Body Company, its plant located directly north across Jefferson Avenue.[20] "The Chrysler plant straddled Jefferson Avenue. The Kercheval body shop was on the north side of the street and the Jefferson engine manufacturing and car assembly plant was on the south side. The bodies came across Jefferson Avenue in an enclosed overhead conveyor."[21]

In 1982, 3 years after its closure of Old Mack, at least "23 residential blocks to the west of the original Chrysler-Chalmers plant were condemned and annexed to the site," several of which were cleared of homes and their residents only to be "replaced by open space that can only be described as ornamental… Outside the plant boundaries, empty lawns and gently meandering sidewalks leading nowhere indicate that the demolished neighborhoods were needed simply to provide a landscape ornament and security buffer for the plant."[22] The plant was closed in 1990 and demolished one year later.

Construction on the current Stellantis Complex began that same year. The city spent $264 million to "acquire and clear more land for the new plant. That required tearing down buildings, small factories, and houses for blocks around, then cleaning the land of toxic industrial waste."[23] In total, roughly 380 acres of property were purchased or condemned by the City of Detroit and transferred to Chrysler, a move Michigan's 1st District Court of Appeals called "unconscionable."[24] Citing precedent, however, the court refused to stop it.

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[18] Brent D. Ryan, *Autopia's End: The Decline and Fall of Detroit's Automotive Manufacturing Landscape*. Journal of Planning History 12, no. 2 (2013) (author's final manuscript).
[19] Id.
[20] Stellantis North America, *New assembly plant rises on auto industry historic terrain*, https://blog.stellantisnorthamerica.com/2019/11/06/new-assembly-plant-rises-on-auto-industry-historic-terrain/ (last visited November 8, 2021).
[21] AllPar, *Chrysler's Jefferson Avenue Plants*, https://www.allpar.com/threads/chrysler%E2%80%99s-jefferson-avenue-plants.229390/ (last visited November 8, 2021).
[22] Ryan, supra, at 12.
[23] Ryan, supra, at 11.
[24] *Detroit v. Vavro*, 177 Mich. App. 682, 684 (1989)

Again, in 2019, with Stellantis seeking to expand the Complex further, the city went to work, acquiring 215 acres of land at an expense of over 100 million dollars and swapping a total of 155 acres of publicly owned land as part of the deal.[25]

B. Recent Air Quality Permits Regarding Mack Avenue and Jefferson North Assembly Plants

Over the past several years, EGLE has issued Stellantis several permits to install, authorizing the Company to undertake a significant expansion of its auto assembly operations at the Stellantis Complex. At issue in this Complaint are a series of permits issued by EGLE regarding Stellantis' Mack Avenue Assembly Plant and its Jefferson North Assembly Plant.

- Permit to Install 14-19
  - Facility: Mack Avenue Assembly Plant
  - Date Issued: 4/26/19
  - Description: Authorized Stellantis to develop the Mack Avenue Assembly Plant, which replaced the Mack Avenue Engine Plant
- Permit to Install 14-19A
  - Facility: Mack Avenue Assembly Plant
  - Date Issued: 10/30/20
  - Description: Authorized changes to combustion equipment and updated toxic air contaminant modeling
- Permit to Install 33-20
  - Facility: Jefferson North Assembly Plant
  - Date Issued: 5/12/21
  - Description: Authorized Stellantis to undertake a sustainment program, including the reactivation of an additional paint line which had been inoperable for several years.

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[25] Nora Naughton, *Detroit acquires nearly 215 acres of land for FCA plant*, The Detroit News, May 3, 2019, https://www.detroitnews.com/story/news/local/detroit-city/2019/05/03/detroit-officials-announce-land-deals-fca-plant/1090684001/.

The permits described above authorized emissions increases for several criteria pollutants. These emissions will be in addition to the existing air pollution emissions from the Jefferson North Assembly Plant.

Table 1 - Actual 2019 Emissions from Stellantis Jefferson North Assembly Plant along with Potential to Emit Provided in Permit Applications Regarding Permits to Install 14-19A and 33-20			
	Potential to Emit - Stellantis Permits to Install[26]		**Actual Emissions 2019[27]**
	Permit to Install - 14-19, 14-19A (tons per year)	Permit to Install - 33-20 (tons per year)	Jefferson North Assembly Plant - 2019 Emissions (tons per year)
VOC	382	22	790
NOx	37	19	57
CO	82	42	4
PM10/2.5	5	4	32
SO2	0.55	0.31	0.4

Since Permit to Install 14-19/14-19A was considered a major modification regarding ozone pollution in an ozone nonattainment area, Stellantis was required to offset its increase in volatile organic compound emissions with a corresponding decrease in the same nonattainment area.[28] In this instance, Stellantis offset its increase in volatile organic compound emissions at its Mack Avenue Assembly Plant with a decrease in volatile organic compound emissions at its Warren Truck Assembly Plant in Warren, Michigan. According to EJSCREEN, 52% of the people living within 1-mile of the

[26] FCA US LLC, Application Permit to Install Amendment: Detroit Assembly Complex - Mack (Apr. 2020), Appendix 1; FCA US LLC, Application for Permit to Install - Jefferson North Assembly Plant Sustainment Project (Mar. 2020), Appendix 2.
[27] Michigan Air Emissions Reporting System, Annual Pollutant Totals Query Results - Chrysler Jefferson North Assembly Plant (2019), Appendix 3.
[28] Mich. Admin. Code, R 336.2908(5).

Warren Truck Assembly Plant are people of color while 98% of the people living within 1-mile of the Stellantis Complex are people of color.[29]

In addition to the criteria pollutant emissions described above, the expansions authorized by Permits to Install 14-19A and 33-20 permit the emission of a number of toxic air contaminants.

Table 2 - Maximum Ambient Impact Resulting from Toxic Air Contaminant Emissions Regarding Permits to Install 14-19 and 33-20		
	Maximum Ambient Impact - 14-19, 14-19A (ug/m3)[30]	**Maximum Ambient Impact - Permit to Install 33-20 (ug/m3)[31]**
Formaldehyde	0.058	0.005
Cumene	0.023	0.020
Ethylbenzene	0.1	0.091

These emissions will be in addition to the existing toxic air contaminant emissions from the Jefferson North Assembly Plant. According to the Toxic Release Inventory, in 2020 the Jefferson North Assembly Plant emitted 19,249 pounds of ethylbenzene and 2,398 pounds of cumene.[32]

C. Demographics of Surrounding Community

Surrounding these facilities are a slew of communities and the respective neighborhoods to which they belong. Located along a slim 3,200-foot-wide industrial zone, they are surrounded on three sides by residential housing. The sheer density of residential housing within the 1-mile radius around the facilities makes for an average population density of 2,681 individuals per square mile, over fifteen times the state

[29] EJSCREEN Report (2020) Appendix 6.
[30] FCA US LLC, Application Permit to Install Amendment: Detroit Assembly Complex - Mack (Apr. 2020), Appendix 1;
[31] FCA US LLC, Application for Permit to Install - Jefferson North Assembly Plant Sustainment Project (Mar. 2020), Appendix 2.
[32] U.S. EPA, TRI Search Plus Data Download - FCA US Jefferson North Assembly Plant, Appendix 4.

average population density.[33] Nine census tracts, totaling 5.5 square miles, immediately border the tract on which these facilities are located.[34] 17,500 people live within these tracts.[35] 5,230 are children under the age of 18.[36]

Child poverty is over three times that of the state population at a staggering 68.6%.[37] 92.3% of students are eligible for free or reduced-price lunches, almost double the rate of Michigan as a whole.[38] 81% of households on household incomes of $50,000, with a per capita income of $12,184.[39]

The racial makeup of each neighboring census tract ranges from 92% to 99.7% Black.[40] These tracts help form the 2.5-mile buffer safeguarding those outside of Detroit's Eastern border with neighboring Grosse Pointe (largely blue area in Figure 2) regarded one of the most racially and economically segregated borders in the United States.[41]

Figure 2 – Racial Dot Map of Area Around Stellantis Facilities Using 2010 Census Data

Each dot corresponds to a single person with race delineated by color of the dot. Symbols added to delineate location of Facilities.
Image Copyright, 2013, Weldon Cooper Center for Public Service, Rector and Visitors of the University of Virginia (Dustin A. Cable, creator)

EJSCREEN demographic data (Figure 3) provides further context for assessing the demography of the

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[33] U.S. Census Bureau, American Community Survey 2014-2018. Retrieved from EPA EJSCREEN ACS Summary Report. Appendix 5; U.S. Census Bureau, Census of Population and Housing, https://www.census.gov/quickfacts/fact/table/MI,US/POP060210#POP060210.
[34] U.S. Census Bureau (2018). *American Community Survey 5-year estimates*. Retrieved from *State of the Detroit Child Profile page for FCA 3* https://sdc.datadrivendetroit.org/custom-profiles/fca-3/
[35] Id.
[36] Id.
[37] Id.
[38] U.S. Census Bureau (2018). *American Community Survey 5-year estimates*. Retrieved from *State of the Detroit Child Profile page for FCA 3*, https://sdc.datadrivendetroit.org/custom-profiles/fca-3/
[39] id.
[40] id.
[41] University of California Berkeley, *Most to Least Segregated Cities in the US*, 2019. https://belonging.berkeley.edu/most-least-segregated-cities.; EdBuild, *50 Most Segregating Borders In The Country*, https://edbuild.org/content/fault-lines/data.

surrounding community. Utilizing census data from the area comprising a one-mile radius of the facilities, the tool found that the level of minority composition of the community is among the top 98% of the state as well as 98% of the entire US. Similarly, the low-income makeup of the community is greater than 95% of the rest of the state and 97% of the country.

Figure 3

EJSCREEN Report (Version 2020)

1 mile Ring Centered at 42.383534,-82.976584, MICHIGAN, EPA Region 5

Approximate Population: 8,632

Input Area (sq. miles): 3.14

(The study area contains 1 blockgroup(s) with zero population.)

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Demographic Indicators							
Demographic Index	87%	29%	98	28%	99	36%	98
People of Color Population	98%	25%	97	25%	97	39%	97
Low Income Population	77%	33%	95	30%	96	33%	97

D. Environmental Quality of the Surrounding Area

Individuals residing near these facilities are inundated with levels of environmental indicators exceeding the state average in nearly every instance. The area has failed to meet the EPA's National Ambient Air Quality Standard (NAAQS) for ground-level ozone since 2018.[42] 12.9% of individuals tested within the surrounding census tracts exhibited elevated blood lead levels compared to 5.9% statewide.[43]

The EJSCREEN report in Figure 4 below, providing data on environmental indicators within a 1-mile radius of the facilities, further confirms the stark contrast between the characteristics of the area compared to the rest of the state. According to the data compiled by the EPA through this tool, all but two environmental indicators are above state average levels. Of particular relevance here are levels of respiratory stressors. Ozone levels are higher than 87% of the state and particulate matter levels more than

[42] U.S. EPA, Michigan Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants (Last Revised Oct. 31, 2021), https://www3.epa.gov/airquality/greenbook/anayo_mi.html.
[43] U.S. Census Bureau (2018). *American Community Survey 5-year estimates*. Retrieved from *State of the Detroit Child Profile page for FCA 3*, https://sdc.datadrivendetroit.org/custom-profiles/fca-3/

89% of the state. Diesel particulate matter levels are over 164% higher than the state average.

Figure 4

EJSCREEN Report (Version 2020)

1 mile Ring Centered at 42.383534,-82.976584, MICHIGAN, EPA Region 5

Approximate Population: 8,632

Input Area (sq. miles): 3.14

(The study area contains 1 blockgroup(s) with zero population.)

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Environmental Indicators							
Particulate Matter (PM 2.5 in µg/m³)	9.38	8.11	89	8.4	85	8.55	77
Ozone (ppb)	44.9	43.1	87	43.8	61	42.9	70
NATA* Diesel PM (µg/m³)	0.554	0.338	83	0.446	70-80th	0.478	70-80th
NATA* Cancer Risk (lifetime risk per million)	29	24	86	26	70-80th	32	<50th
NATA* Respiratory Hazard Index	0.34	0.29	76	0.34	50-60th	0.44	<50th
Traffic Proximity and Volume (daily traffic count/distance to road)	1100	650	83	530	89	750	83
Lead Paint Indicator (% Pre-1960 Housing)	0.78	0.38	86	0.38	87	0.28	92
Superfund Proximity (site count/km distance)	0.076	0.15	58	0.13	60	0.13	57
RMP Proximity (facility count/km distance)	1	0.53	83	0.83	73	0.74	77
Hazardous Waste Proximity (facility count/km distance)	2	1.2	80	2.4	63	5	66
Wastewater Discharge Indicator (toxicity-weighted concentration/m distance)	1.2E-05	1.7	45	2.4	36	9.4	45

The EPA tool combines environmental and demographic indicators to generate Environmental Justice Indexes. Based on the elevated environmental and demographic indicators, the EJ indices for the area within a 1-mile radius of the Jefferson North and Mack Avenue Assembly Plants all but one is among the highest 8% in the state of Michigan, reaching as high as the 95th percentile statewide.

Figure 5

EJSCREEN Report (Version 2020)

1 mile Ring Centered at 42.383534,-82.976584, MICHIGAN, EPA Region 5

Approximate Population: 8,632

Input Area (sq. miles): 3.14

(The study area contains 1 blockgroup(s) with zero population.)

Selected Variables	State Percentile
EJ Indexes	
EJ Index for PM2.5	94
EJ Index for Ozone	93
EJ Index for NATA* Diesel PM	94
EJ Index for NATA* Air Toxics Cancer Risk	94
EJ Index for NATA* Respiratory Hazard Index	94
EJ Index for Traffic Proximity and Volume	94
EJ Index for Lead Paint Indicator	94
EJ Index for Superfund Proximity	92
EJ Index for RMP Proximity	95
EJ Index for Hazardous Waste Proximity	93
EJ Index for Wastewater Discharge Indicator	85

IV. Legal Background

Since its adoption in 1964, the Civil Rights Act has served as the principal federal authority prohibiting state agencies from engaging in discrimination on the basis of race, color, or national origin. The passage of this statute was one of the crowning legislative achievements of the civil rights movement of the 20th century. Soon to follow the Civil Rights Act was the passage of a multitude of federal environmental laws throughout the 1970s and 1980s. Most of these federal environmental laws rely on the framework of cooperative federalism. Pursuant to this framework, federal environmental laws establish the baseline standards, and require states to adopt and implement state laws and regulations in a manner that is sufficient to meet the federal baseline standards. In the context of air quality regulation, the Clean Air Act and its underlying regulations establish the federal standards.

A. Federal Laws Governing Air Pollution Permitting

First passed by the United States Congress in 1970, the Clean Air Act (CAA) is a federal law that serves as the foundation for regulating air pollution throughout the country. Congress, in drafting the CAA, recognized that "the growth in the amount and complexity of air pollution brought about by…industrial development…has resulted in mounting dangers to public health and welfare."[44] Under the Clean Air Act, the Environmental Protection Agency (EPA) is required to regulate the emission of pollutants that "endanger public health and welfare." [45]

A primary means of regulating air pollution sources through the CAA has historically been through state enforcement of emission limits in State Implementation Plans (SIPs). Each SIP is an enforceable collection of environmental regulations approved by the EPA and used by the respective state to administer air pollution control programs fulfilling the requirements of the CAA. Each SIP is required to include a program to provide for the regulation of the modification or construction of any stationary source as necessary to assure that national ambient air quality standards are achieved.[46] States are not allowed to have weaker air pollution controls than those outlined in the CAA. States are, however, allowed to have pollution controls stronger than those required by the CAA.

B. State Laws Governing Air Pollution Permitting

In Michigan, the authority to implement the CAA is granted to EGLE's Air Quality Division (AQD) through Part 55 (Air Pollution Control) of Michigan's Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994, as amended.[47] The EGLE Part 55 Air Rules, approved by the EPA, regulate air emissions and require permits for major sources of pollutants. Specifically, Rule 201 of the Michigan Air Pollution Control Rules requires a person to obtain an approved Permit to Install for any potential source of air pollution unless the source is exempt from the permitting process.

At its heart, the permit to install program ensures that any new or modified stationary source of air pollution will operate in compliance with air quality laws and regulations,

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[44] *Clean Air Act (CAA)*, 42 U.S.C. § 7401(a)(2).
[45] 42 U.S.C. 7401 et seq.
[46] 42 USC § 7410(a)(2)(C).
[47] *Natural Resources* and *Environmental Protection Act* (*NREPA*), 1994 PA 451.

which exist to protect the public health.[48] To ensure this goal is met, permit applicants must supply sufficient information to EGLE to allow the Department to make a reasonable judgment that all federal and state air quality laws and regulations will be complied with.[49] A person must obtain a permit to install before installing, constructing, reconstructing, relocating, or modifying any process or process equipment that may emit any air pollutant or contaminant.[50] Permits to install will include conditions meant to ensure compliance with state and federal air quality regulations. Such conditions commonly include emissions limits, monitoring and testing requirements, operational requirements, as well as recording and reporting requirements. These conditions generally apply to specific emissions units or groupings of emissions units that make up the stationary source of air pollution. For larger stationary sources of air pollution, such as the auto assembly plants at issue here, it is common for there to be several permits to install that apply to the operation of the stationary source.

1. EGLE Toxic Air Contaminant Regulations

A key component of EGLE's permit to install program are its toxic air contaminant regulations. If the process or process equipment for which a permit is required will emit a toxic air contaminant, then the permit applicant must comply with both technology-based standards and ambient air quality standards for toxic air contaminants. To satisfy the technology-based standard, the applicant must demonstrate the emissions unit for which it is seeking a permit to install will "not cause or allow the emission of the toxic air contaminant...in excess of the maximum allowable emission rate based on the application of best available control technology for toxics (T-BACT)."[51] To satisfy the ambient air quality standard, the applicant must demonstrate that emissions from the specific emissions unit for which the permit to install is required will not "cause or allow the emission of the toxic air contaminant from the proposed new or modified emission unit or units in excess of the maximum allowable emission rate which results in a predicted maximum ambient impact that is more than the initial threshold screening level or the initial risk screening level, or both."[52] The initial threshold screening level (ITSL) is defined as the "concentration of toxic air contaminant in the

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[48] *See,* Mich. Admin. Code, R 336.1207(1).
[49] Mich. Admin. Code, R 336.1207(2).
[50] Mich. Admin. Code, R 336.1201(1).
[51] Mich. Admin. Code, R 336.1224(1).
[52] Mich. Admin. Code, R. 336.1225(1).

ambient air that is used to evaluate non-carcinogenic health effects from a proposed new or modified process."[53] The initial risk screening level (IRSL) is defined as the "concentration of a possible, probable, or known human carcinogen in ambient air which has been calculated for regulatory purposes...to produce an estimated upper-bound lifetime cancer risk of 1 in 1,000,000."[54]

2. Rule 225 - EGLE's Ambient Air Quality Standards for Toxic Air Contaminants

In general, permit applicants demonstrate compliance with the ambient air quality standards for toxic air contaminants by providing an air modeling analysis as a part of its permit to install application. An air modeling analysis consists of the permit applicant estimating its maximum hourly emissions rate and then using a computer program to predict the maximum ambient impact based on that predicted maximum hourly emissions rate and a number of other factors, such as local meteorological data including wind speed and direction. To demonstrate compliance with the toxic air contaminant ambient air quality standards, the permit applicant can provide an air modeling analysis that demonstrates that the maximum ambient impact of each toxic air contaminant to be emitted by the proposed emission unit will be less than the ITSL or IRSL.[55]

If a permit applicant is unable to demonstrate that the toxic air contaminant emissions from the emissions unit will cause ambient air impacts below the IRSL, it may demonstrate compliance with the secondary risk screening level (SRSL), which is defined as the "concentration of a possible, probable, or known human carcinogen in ambient air which has been calculated...to produce an estimated upper-bound lifetime cancer risk of 1 in 100,000.[56] To demonstrate compliance with the SRSL, a permit applicant must provide an air modeling analysis that demonstrates that the maximum ambient impact of each toxic air contaminant emissions from the emissions unit for

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[53] Mich. Admin. Code, R 336.1109(d).
[54] Mich. Admin. Code, R 336.1109(c).
[55] Mich. Admin. Code, R 336.1227(1)(c).
[56] Mich. Admin. Code, R 336.1119(c).

which the applicant is seeking a permit and from all other existing emission units at the stationary source will not exceed the secondary risk screening level (SRSL). [57]

Notably, EGLE's ambient air quality standards for toxic air contaminants leave significant gaps. While Rule 225(1) requires a permit to install applicant to demonstrate that its emissions will not cause ambient impacts above any IRSL or ITSL for any toxic air contaminant, it only requires the permit applicant to analyze the emissions from the emissions unit for which it is seeking the permit. Rule 225(1) does not require any consideration of existing background concentrations of any toxic air contaminant nor does it require the permit applicant to consider toxic air contaminants from other emission units at the stationary source or from other nearby stationary sources. While Rule 225(2) does require the consideration of toxic air contaminant emissions from other emission units at the stationary source, this analysis is only required if a permit applicant is unable to demonstrate compliance under Rule 225(1).

3. Rule 228 - Omnibus Provision for the Protection of Health or the Environment

While Rule 225 leaves gaps, Rule 228 is an omnibus provision that allows EGLE to close those gaps. Rule 228 provides that even in situations where a permit applicant has demonstrated compliance with the technology and ambient air quality standards for toxic air contaminants described above, EGLE may determine that the maximum allowable emission rate allowed pursuant to both standards "does not provide adequate protection of health or the environment."[58] In such a case, EGLE may establish a lower maximum allowable emission rate that takes into account "relevant scientific information, such as exposure from routes other than direct inhalation, synergistic, or additive effects from other toxic air contaminants, and effects on the environment."[59]

C. Title VI of the Civil Rights Act of 1964

Section 601 of Title VI requires that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity

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[57] Mich. Admin. Code, R 336.1225(2).
[58] Mich. Admin. Code R, 336.1228(1).
[59] Id.

receiving Federal financial assistance."[60] In addition to Section 601, Section 602 directs federal agencies that are empowered to extend financial assistance to issue rules, regulations, or orders of general applicability, "which shall be consistent with achievement of the objectives" of Title VI.[61] In accordance with Section 602, the EPA first promulgated its Title VI regulations in 1973.[62]

1. EPA's Title VI Regulations and Environmental Justice

As a federal agency that is authorized to extend financial assistance, the EPA has promulgated Title VI regulations pursuant to Section 602. These regulations are described in 40 C.F.R. Part 7 ("EPA's Title VI Regulations").[63] EPA's Title VI Regulations apply to all applicants for and recipients of EPA assistance in the operation of programs or activities.[64] As a recipient of EPA financial assistance, EGLE submitted assurance that it would comply with EPA's Title VI Regulations along with its applications for funding.[65]

Pursuant to the EPA's Title VI Regulations, EGLE is obligated to comply with several requirements aimed at eliminating discrimination on the basis of race, color, or national origin. Relevant to this complaint are the following requirements:

- EGLE shall not exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or sex.[66]

- EGLE shall not use criteria or methods of administering its program or activity that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex.[67]

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[60] 42 USCS § 2000d
[61] 42 USCS § 2000d-1
[62] 38 FR 17968 (1973), as amended by 49 FR 1656 (1984) (codified at 40 CFR part 7).
[63] 40 CFR 7.35.
[64] 40 CFR 7.15.
[65] 71 FR 14207
[66] 40 CFR 7.30.
[67] 40 CFR 7.35(b).

Central to the EPA's Title VI implementing regulations is the consequence of agency policies and decisions, not their *intent*. As such, they include prohibitions against both intentional and unintentional discrimination by EGLE and other EPA funded agencies.[68]

Unintentional discrimination includes those actions that have a disproportionately adverse effect on individuals of a certain race, color, or national origin. Despite not being formalized in writing, a neutral policy or decision understood as a "standard operating procedure, a failure to act, or a failure to proactively adopt an important policy can also constitute a violation of Title VI."[69]

While many environmental laws, regulations, policies, and decisions are neutral on their face, they can still produce unintentional discriminatory effects that violate Title VI. For this reason, EGLE's "Title VI obligation is layered upon its separate, but related obligations under the Federal or state environmental laws governing its environmental permitting program."[70] Therefore, the mere fact that a state agency such as EGLE can demonstrate their actions comply with relevant federal and state environmental laws "does not constitute per se compliance with Title VI."[71]

Similarly, the "question of whether or not individual facility operators are in violation of [environmental laws] is distinct from whether the permitting agencies' decision to grant permits to the operators had a discriminatory impact on the affected communities."[72] The fact that EGLE does not select the site in a license application does not relieve it of the responsibility of ensuring that its actions in issuing licenses for such facilities do not have a discriminatory effect.[73] Within the context of Title VI, the issuance of a license by EGLE or any other recipient of EPA funding is the "necessary act that allows the operation of a source that could give rise to adverse disparate effects on individuals."[74] To operate, the owners of a facility must both "comply with local

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[68] 40 CFR § 7.35, *supra* note 109.

[69] See, e.g., Maricopa Cty., 915 F. Supp. 2d at 1079 (disparate impact violation based on national origin properly alleged where recipient "failed to develop and implement policies and practices to ensure [limited English proficient] Latino inmates have equal access to jail services" and discriminatory conduct of detention officers was facilitated by " broad, unfettered discretion and lack of training and oversight" resulting in denial of access to important services).

[70] F.R. 65, No. 124. 39691. (2000)

[71] Id. at 39690.

[72] Californians v. United States EPA, 2018 U.S. Dist. LEXIS 56105, *35

[73] F.R. 65, No. 124. 39691. (2000)

[74] Id.

zoning requirements" and "obtain the appropriate environmental permit." [75]An EPA funding recipient's operation of a licensing program is independent of local government zoning activities.

2. Disparate Impact Standard

For complaints pursuing an administrative investigation based on the discriminatory effects standard in EPA's Title VI Regulations the agency must determine whether a facially neutral policy or practice resulted in an "unjustified adverse disparate impact."[76] A four-step analysis is used to determine whether a state agency's decision had a discriminatory effect:[77]

1) Identify the specific policy at issue[78]
2) Establish adversity/ harm[79]
3) Establish disparity[80]
4) Establish causation.[81]

Where the evidence sufficiently meets the standards of the four-part test, the complainants have sufficiently established a "prima facie case:" a finding must be in their favor, provided their evidence is not sufficiently rebutted by the other party. Once a prima facie case is established, the burden shifts to the agency, which must then

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[75] Id.
[76] Environmental Protection Agency, Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 65 Fed. Reg. 39,650 (June 27, 2000) Appendix 7.
[77] Elements of a Title VI disparate impact claim are like the analysis of cases decided under Title VII. *N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995) (Codified in Title VII at 42 U.S.C. § 2000e–2(k).)
[78] *Texas Dep't of Hour. & Cmty. Affairs v. Inclusive Communities*, 135 S. Ct. 2507, 2523 (2015). "a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity."
[79] E.g., *S. Camden Citizens in Action v. N.J. Dep'tof Envtl. Prot.*, 145 F. Supp. 2d 446, 487, *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J.) (discussing the methods used to "evaluate the 'adversity' of the impact" and considering whether the impacts at issue were "sufficiently adverse" to establish a prima facie case), *rev'd on other grounds*, 274 F.3d 771 (3d Cir. 2001).
[80] *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 576–77 (2d Cir. 2003).
[81] *Flores v. Arizona*, 48 F.Supp. 2d 937, 952 (D. Ariz. 1999)

produce a "substantial legitimate justification" for the challenged policy or practice.[82] Not every reason is legally sufficient to rebut a prima facie case.[83] The explanation of its reason must be clear and reasonably specific.[84] To be a "substantial legitimate justification," it must also be demonstrably related to a significant, legitimate goal.[85] The agency's interest in policy implementation must then be weighed against the substantial public interest in preventing discrimination.[86]

A finding of a "substantial legitimate justification" for its policy is not in itself exculpatory. Instead, the agency must then determine if there are "less discriminatory alternatives."[87] Where the evidence shows that "less discriminatory alternatives" exist, the policy must be found to violate Title VI, even where the agency demonstrates a "substantial legitimate justification" for its discriminatory actions.[88]

"It is possible to have a violation of Title VI or EPA's Title VI regulations based solely on discrimination in the procedural aspects of the permitting process (e.g., public hearings, translations of documents) without a finding of discrimination in the substantive outcome of that process (e.g., discriminatory human health or environmental effects). Likewise, it is possible to have a violation due to discriminatory

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[82] *N.Y. Urban League*, 71 F.3d at 1036, *Powell v. Ridge*, 189 F.3d 387, 394 (3d Cir. 1999) (citing *Georgia State Conf.*, 775 F.2d at 1417)

[83] *NAACP v Med. Ctr., Inc.*, 657 F.2d 1322, 1350 (3d Cir. 1981) (en banc) ("The content of the rebuttal or justification evidence cannot be determined in the abstract. It must be related to the precise impacts suggested by the plaintiffs' evidence.")

[84] See *Texas Dep't of Cnty, Affairs v. Burdine*, 450 U.S. 248, 254-55, 258 (1981).

[85] *Georgia State Conf. v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985). ("Substantial legitimate justification" in a disparate impact case, is similar to the Title VII employment concept of' "business necessity," which in that context requires a showing that the policy or practice in question is demonstrably related to a significant, legitimate employment goal.)

[86] *Gashi v. Grubb & Ellis Property Management Servs*., 801 F. Supp. 2d 12, 16 (D. Conn. 2011)(citing *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 929, 937 (2d Cir. 1988),*aff'd*, 488 U.S. 15 (1988) ("After the defendant presents a legitimate justification, the court must weigh the defendant's justification against the degree of adverse effect shown by the plaintiff.")

[87] *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407-1413; *Georgia State Conf.*, 775 F.2d at 1417.

[88] See, e.g., *Coalition of Concerned Citizens Against I-670 v. Damian*, 608 F. Supp. 110, 127 (S.D. Ohio 1984). (conducting a thorough review of alternative sites for highway or other methods, such as light rail or public transportation)

human health or environmental effects without the presence of discrimination in the public participation process."[89]

The EPA has noted that Title VI concerns are often raised by communities that "believe they are suffering from adverse effects caused by multiple sources."[90] For such communities, filing a Title VI complaint about a license issued to a specific facility "is a way to focus attention on the cumulative impacts."[91] As such, a Title VI analysis should include an analysis of cumulative impact, which is an assessment of the total exposure to multiple environmental stressors, including exposures originating from numerous sources.[92]

A finding of a violation of Title VI and EPA's implementing regulations must be supported only by the lowest legal standard of proof, a mere preponderance of the evidence.[93] If the facts alleged are found to be more than 50% likely to be true, even by the slightest infinitesimal amount, a finding of discrimination must be made.

V. Complaint

EGLE's decision to issue numerous permits requested for the Stellantis Complex in a short period, which allowed for a significant enlargement of air emissions in a low-income community where nearly all residents within 1 mile are people of color already inundated by other industrial sources, amounts to discrimination of the basis of race, color, and national origin in violation of 40 C.F.R. § 7.30 and 40 C.F.R. § 7.35(b).

EGLE's failure to adopt a policy requiring cumulative impact analyses during the permitting process for industrial facilities continues to compound the disproportionate burden of air pollution borne by Michigan's low-income communities of color, amounting to a policy that is discriminatory on the basis of race, color, and national origin in violation of 40 C.F.R. § 7.30 and 40 C.F.R. § 7.35(b).

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[89] Environmental Protection Agency, *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*, 65 Fed. Reg. 39,650 (June 27, 2000)
[90] Id.
[91] Id.
[92] Id.
[93] *In Re Genesee Power Station.* Complaint No. 01R-94-R5. Environmental Protection Agency (2017). https://www.documentcloud.org/documents/3410925-FINAL-Letter-to-Genesee-Case-Complainant-Father.html.

A. EGLE's decision to approve permits regarding FCA facilities, which increased air emissions in an already disparately impacted community of color, violates 40 C.F.R. Part 7.

In the United States, environmental laws are highly technocratic, prescribing specific limits for individual pollutants at discrete facilities. They are the bounds of a scheme that grants the right of facilities to pollute. By so intensely focusing on the technical, their construction is ostensibly race-neutral on their face.

As such, nothing in the Clean Air Act or Part 55 of Michigan's Natural Resources and Environmental Protection Act requires EGLE to consider cumulative effects of multiple sources located in a concentrated area. Nor does either statute require EGLE to consider whether its decision to issue a license to emitting facilities like those at issue here will have a disproportionate impact on persons of a particular race, color, or national origin.

Yet, it is precisely because of facially race-neutral laws and the actions that are justified by them that Title VI of the Civil Rights Act focuses not merely on the *intent* of an action but also on its *effect*. As noted by the EPA, compliance with environmental laws does not constitute per se compliance with Title VI. In short, the same action can be both in compliance with state and federal environmental laws and be deemed a violation of a community's civil rights.

The intent behind EGLE's decisions permitting Stellantis to further inundate a community so vulnerable to the effects of increased levels of pollution may not have been to discriminate. Sadly, the effects of their decisions have been to cause considerable and discriminatory harm. Additionally, the community is uniquely impacted by numerous adverse impacts associated with the operation of these massive emitting facilities.

The operation of the Stellantis Complex quite literally in the backyard of a dense urban neighborhood creates numerous adverse environmental impacts that have already begun to cause severe consequences for the health and wellbeing of nearby families. The experiences of the following individuals only begin to illustrate the real, substantial, and adverse impacts EGLE's decisions have imposed on the community as a whole.

(b) (6) [redacted]

"I don't want to die for Jeep."

A (b) (6) [redacted] (b) (6) [redacted] lights up when she talks about kids. It makes sense. After decades of working at (b) (6) [redacted], she has spent much of her time in retirement as a respite foster care parent. Taking in at least eight children at various points over the course of the last four years, she has dreams of adopting a girl one day. Despite moving to (b) (6) [redacted] in 1983, when she thinks of that future, she does not envision it taking place there.

The degradation of air quality in the area has placed a glaring burden on (b) (6) [redacted] life. Reliant on a single window air conditioning unit to cool her home, she used to keep windows open on very hot days. However, she had begun to notice levels of dust accumulating inside her home like she had never experienced before. Her furniture would become covered in an orange powdery substance.

Her sister, aunt, and mother all resided on (b) (6) [redacted] alongside her. In 2014, when attempting to care for their elderly mother, (b) (6) [redacted] sister began to suffer from (b) (6) Privacy, (b) (7)(C) Enforcem (b) (6) Privacy [redacted] rare inflammatory disease (b) (6) Privacy, (b) (7)(C) Enforcement Privacy [redacted] While suffering from a debilitating persistent cough, shortness of breath, and tender skin lesions, she learned that air pollutants had been tied to onset of the disease.[95] (b) (6) [redacted] began to suspect the emissions from the Stellantis Complex as a contributor to her sister's suffering. Despite benefiting from her sister's assistance in caring with their mother, (b) (6) [redacted] encouraged her to leave the area while she remained, caring for her mother until her passing in 2017.

Later, it was her aunt that became haunted by what began as a mild cough but developed to one persistent and painful. Earlier this year, she had enough. (b) (6) [redacted]

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[94] Based on Interview of (b) (6) [redacted] by Andrew Bashi, October 18, 2021 (transcript available upon request).

[95] Cheryl Pirozzi, *Short-Term Particulate Air Pollution Exposure is Associated with Increased Severity of Respiratory and Quality of Life Symptoms in Patients with Fibrotic Sarcoidosis*, International Journal of Environmental Research and Public Health vol. 15 (2018); Philipp Rustler, *Acute Sarcoidosis Clusters in Cold Season and Is Associated with Ambient Air Pollution: A Retrospective Clinical–Meteorological Study*, Annals of the American Thoracic Society, 18 (2021); GP Kucera, *Occupational risk factors for sarcoidosis in African-American siblings*, Chest 123 (2003); DJ Prezant, *The incidence, prevalence, and severity of sarcoidosis in New York City firefighters*. Chest 116 (1999).

drove her aunt to stay with their family in Georgia where her symptoms rapidly dissipated and she has now permanently relocated.

(b) (6) has gone to extraordinary lengths to fend off outdoor air pollutants. She visited a local fabric retailer to purchase 8 to 9 yards of clear plastic film. She has used it to permanently seal every window in her home, but for the one playing host to her air conditioner. Her furniture is covered with plastic sheets to preserve it from unwanted intrusions of dust. An air purification unit sits prominently in her living room.

Still, (b) (7)(A) has experienced year-round symptoms of poor air quality of her own. Early in the morning, she often wakes to a mild to strong burning sensation in the back of her throat. She has developed a chronic persistent cough, first dry, now accompanied by congestion and increased levels of mucus in her throat.

She has also developed chronic watery eyes that persist year-round, a symptom increasingly documented in patients with frequent interactions with elevated levels of air pollutants.[96] (b) (6)

(b) (6) The properties, (b) (6), was handed to Stellantis by the City of Detroit as part of a massive land transfer. Today, those plots are 360,000 square feet of parking and St. Jean is a thoroughfare for Stellantis employees and truck drivers. (b) (6) .

Truck drivers, impatiently waiting to enter the grounds from the light on Mack Avenue, routinely use their air horns to move traffic along. The sound of large diesel engines, trains, and employee vehicles are constant, accompanied by the occasional low flying helicopter dropping off materials during construction or the sirens of fire trucks

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[96] PD Gupta, *Minor to Chronic Eye Disorders Due to Environmental Pollution: A Review*. J Ocul Infect Inflamm 2: 108 (2018).; C.J. Chang, *Impact on Eye Health Regarding Gaseous and Particulate Pollutants*. Aerosol Air Qual. Res. 20 (2020).; Tristan Bourcier, *Effects of air pollution and climatic conditions on the frequency of ophthalmological emergency examinations*, British J. Ophthalmology 87 (2003)

arriving on the scene. Every few days (b) (6) hears an unexplained high-pitched sound emanating from the facility, lasting for roughly 5 minutes each time.

Perhaps even more disturbing are the sounds of employees. The freshly paved parking lot (b) (6) transforms into a host for loud Thursday night parties. (b) (6) (b) (6) can both see and hear the raucous drinking and smoking taking place on Stellantis grounds, and the occasional employee traversing the alleyway to urinate in her backyard. She has been disturbed by the sounds of arguing and fighting taking place behind those concrete walls. She has witnessed loud explosion-like sounds that shook her entire home. Bricks have shifted, exerting so much pressure on the structure that some windows will no longer open. She no longer utilizes her wall-mounted kitchen cabinetry, a sensible decision after vibrations separated them two inches from the wall.

The noises have taken a toll on (b) (6). They make it difficult for her to fall asleep. She is prematurely awoken nearly every night. Startled, she often has difficulty falling back asleep. The bright white lamps used to illuminate the parking lot shine directly into her bedroom. It felt like daytime no matter the hour of night until she installed tinted film to block some of it out. She now experiences chronic fatigue, attributed to the near nightly disruptions of her sleep and frequently wakes with headaches. The weekends, quieter than weekdays on average, are often her only chance to sleep restfully through the night.

(b) (6)

"When my eyes start to burn, I start to become more afraid of all the things I can't smell than those that I can."

The smell of fumes reminiscent of paint would make any reasonable person concerned. For (b) (6), exposure to potentially hazardous pollutants make him more than concerned. He is genuinely afraid.

As a (b) (6) patient, (b) (6) health status makes him particularly vulnerable to the adverse impacts of environmental contaminants. Battling (b) (6), he is well aware

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[97] Based on Interview of (b) (6) by Allyson Putt, October 15, 2021 (transcript available upon request).

of research suggesting a causal link between exposure to air pollutants and his disease.[98] At the same time, he has been diagnosed with (b) (6) [redacted], which can make breathing difficult for him.

Over the last year, (b) (6) has noticed a marked increase in both air quality concerns and his own symptoms. He notices the smell of paint, like it was freshly sprayed from an aerosol can, about 75% of the time from his home (b) (6) [redacted]. It is often particularly strong early in the morning. Breathing in now causes him to cough and develop increased tightness in his chest. He gets frequent headaches and his eyes often begin to burn, even on the off chance that the smell of paint in the air is not as noticeable. He is more easily fatigued and has developed frequent bouts of nausea. His symptoms often clear up within an hour of leaving the neighborhood, but nearly always within three or four hours.

With his health conditions, (b) (6) is keenly aware of the importance of exercise, but the presence of the facility has made it harder to do. Where he used to exercise in his own community, playing basketball with friends in the neighborhood, he is now too weary to breathe in the air.

His neighbor, (b) (6), has noticed a difference. "He used to be very active, mowing his lawn and doing a lot of other activities. But now I mostly see him staying indoors and his health is deteriorating."[99] (b) (6), (b) (6) [redacted], was forced to relocate, moving in with relatives along with his wife and three children. He moved his family out of the neighborhood when he noticed a huge increase in dust and noise pollution emanating from the Stellantis Complex. He hopes to move back, but for now, the risks are too high.

While (b) (6) has moved his family in with relatives for the time being, (b) (6) has had to avoid having family or friends over because of the disruption caused by the Stellantis Complex. He has concerns that his family will too be disparately impacted by

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[98] See: Rana Iemaan, *Benzene exposure and non-Hodgkin lymphoma: a systematic review and meta-analysis of human studies*, The Lancet Planetary Health, 2021; Rebeca Ramis, *Study of non-Hodgkin's lymphoma mortality associated with industrial pollution in Spain, using Poisson models*. BMC Public Health 9 (2009).

[99] Based on Interview of (b) (6) by Allyson Putt, October 29, 2021 (transcript available upon request).

the effects of decreased air quality. (b) (6) [redacted]. His grandbabies have not visited since work on the Stellantis Complex began. While he now stays inside his home as much as possible, his family members are too weary to visit, with their own concerns for their health.

Then there are the noises. He hears the sound of diesel engines roaring in the background at all hours, day and night. (b) (6) [redacted] Still, he knows exactly when there has been a shift change by the sound of employee vehicles speeding through the parking lot and down his street. Loud bangs and vibrations sometimes shake his house, causing nails to pop out of their place and his back porch to begin to collapse.

(b) (6) [redacted]

"The migraine headaches, and the burning in the eyes, and tightness in my chest… I just know when I'm out too long, I get that way, but I can't say today is going to be worse than tomorrow. I know yesterday it was just too much. I was crying."

Like most grandparents, the highlight of (b) (6) [redacted] life is spending time with her grandchildren. She has lived in her home (b) (6) [redacted] for three years and her work hours are long. The little time she is home is generally spent attempting to rest for the next day of work or entertaining her grandchildren when they stay with her every other weekend. Lately, however, she has been spending those special weekends elsewhere. Her own increasing health symptoms make her concerned for their health too. Now she spends the weekend with them at a hotel.

(b) (6) [redacted] she has been suffering from constant migraines, a resurgence that has coincided with the increasing odors of paint and fumes inundating her neighborhood from the Stellantis Complex. After almost two years without needing to refill her prescription medication, (b) (6) [redacted] her doctor wrote her a new prescription just weeks ago. (b) (6) [redacted]

[100] Based on Interview of (b) (6) [redacted] by Allyson Putt, October 19, 2021 (transcript available upon request).

Like many of her neighbors, she has also been experiencing respiratory and ophthalmic symptoms multiple times a week. She has been feeling increased tightness in her chest alongside shortness of breath. If she's outside for too long, her eyes begin to burn.

The symptoms clear up when she is not around her neighborhood. That is why she tries to spend as much time away from home as possible. Her porch no longer gets much use and she no longer invites people to her home. As for her grandkids, like any others, "they want to run and play." Her home is down the street from a park and big fields, perfect for kids to play in. Letting them do so in her neighborhood, exposing their young lungs to the chemicals behind the odors she routinely smells emanating from the Stellantis Complex, is a risk she no longer takes.

When her community was planning their annual fall Harvest Festival, they had hoped to do it outdoors in an open field in the neighborhood. Concerns about air quality forced them in another direction. "We can't have things on our block without somebody getting sick."

All she can hear (b) (6) are the siren-like sounds, car alarms, and other noises emanating from the complex. Startlingly awoken and adrenaline pumping, she has difficulty falling back asleep. The vibrations generated by activities on the Stellantis property have caused shifts in her home's foundation. On a limited income, home repair costs have only increased since EGLE granted permits allowing for the expansion of the Stellantis Complex.

(b) (6)

"We're not getting paid. We don't work there. But it's like we're being forced to live inside the factory."

Born and raised on (b) (6) (b) (6) has owned her current home for around 5 years. That's not to say she has been able to live in it the entire time. "Since July we've been staying in hotels." A series of environmental health concerns have left her and her family displaced.

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[101] Based on Interview of (b) (6) by Allyson Putt, October 21, 2021 (transcript available upon request).

(b) (6) [redacted] The smell of paint and gaseous fumes is present all day. Her and her neighbors continue to call their natural gas utility, fearing that a line may be leaking. They're response? The smells are not from a leak, but from the Stellantis Complex. "Everything that goes on over there, we smell it." When an employee from the gas company spotted suspected asbestos in her basement, she felt it was time to go. The compounding risks posed by living in a home inundated by industrial emissions and a newfound presence of asbestos finally tipped her over the edge.

(b) (6) Privacy, (b) [redacted] it is easy to imagine her daughter wanting to take advantage of the family's above ground pool on a hot summer day. She had symptoms of mild eczema before, the dryness remedied by cream. Since building increased at the Stellantis Complex her symptoms have reached new levels. (b) (6) [redacted]. For the last year she hasn't wanted to join the family outside or to enjoy the pool, knowing that doing so would result in an increase in her symptoms.

(b) (6) [redacted] is eager to speak about the concerns she has for her children, but she too has experienced her own health effects since activity increased at the Stellantis Complex. Similar to (b) (6) [redacted] and (b) (6) [redacted], (b) (6) [redacted] experiences the worst of these effects in the morning, including headaches and eye irritation.

The effects of constant noise emanating from the Stellantis grounds are similar too. "You barely sleep." (b) (6) [redacted] Now, "the noise is constantly ongoing." At all times of the night employees fresh off their shifts speed through what is now a parking lot (b) (6) [redacted], often then roaring down (b) (6) [redacted], ignoring the proximity of their actions to residents trying to sleep. When she is able to fall asleep, she is often startlingly awoken by a "boom." "There's really no resting."

Despite owning her own home and caring for her children on an income of a little over $30,000 a year, this Black mother has deemed it necessary to expend her limited resources on hotel rooms.

1. **Health Impacts**

Residents of the communities surrounding the FCA Detroit Assembly Complex have begun experiencing increased levels of respiratory distress and other air quality related ailments since construction and operation activities increased at the Facilities, often compounding existing health challenges. As described through the profiles of the four individual Complainants, residents have developed symptoms that include persistent coughs, increased mucus production, tightening of the chest, and difficulty breathing. Each has described respiratory symptoms subsiding shortly after leaving the vicinity of the Facilities; i.e., their own homes. (b) (6) [redacted].

Numerous non-respiratory conditions attributable to the Facilities have also been experienced by Complainants and other residents of the area. Complainants specifically identified experiencing routine and intense headaches or migraines, particularly in the morning. (b) (6) [redacted]

According to the CDC, 11.2% of adults in Michigan currently have asthma. At over 4% reported greater prevalence than the nation as a whole, the state ranks the 8th highest in the country in this regard. Prevalence of current asthma among adults 18 and older in Wayne County Michigan, where these facilities reside, ranks in the top 2 percent of counties across the United States.

Neither Michigan's nor Wayne County's asthmatic burden, however, are borne equally by communities within their borders. Census tracts surrounding these Stellantis facilities exhibit levels of asthma prevalence among adults 130% to 176% compared to rates of the state as a whole.[102] In fact, the tract bordering the FCA facilities immediately to the northeast ranks number 1 of 2772 census tracts in the state for prevalence of asthma among adults with another tract immediately to the east of the facilities ranking 5th.[103]

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[102] CDC, Asthma Prevalence Among Adults, https://ephtracking.cdc.gov/DataExplorer/?c=3&i=54&m=-1.
[103] Id.

Table 3 - Asthma Prevalence Among Adults by Census Tract

County (Census Tract)	Percent	95% Confide...
Wayne County, MI - 26163512200	19.7%	(18.2% - 21.3%)
Wayne County, MI - 26163512900	18.2%	(16.9% - 19.5%)
Wayne County, MI - 26163512300	16.9%	(16.2% - 17.7%)
Wayne County, MI - 26163514300	16.6%	(15.4% - 18%)
Wayne County, MI - 26163512600	16.2%	(15.2% - 17.3%)
Wayne County, MI - 26163512100	16.1%	(15.2% - 17.2%)
Wayne County, MI - 26163513900	16.3%	(15% - 17.7%)
Wayne County, MI - 26163513600	15.9%	(14.7% - 17.2%)
Wayne County, MI - 26163513700	14.6%	(14% - 15.7%)

EGLE knew of existing health burdens but did not incorporate their existence into the decision-making process leading to further increases in disparate adverse impacts on this Black community. Public commenters ensured EGLE was well aware of the existing asthmatic burden on the community. At least one commenter, citing "high asthma rates and other health-related issues in the area," requested a health impact assessment be performed prior to issuance of these permits.[104] Health impact assessments incorporate "an array of data sources and analytic methods and considered input from stakeholders to determine the potential effects of a proposed policy, plan, program, or project on the health of a population and *whether the health effects are distributed evenly within the population*."[105]

EGLE, in its response, "agree[d] that there is a relatively high rate of asthma in Detroit" and that "[t]he 48214 zip code is one of several zip codes that have the highest asthma hospitalization rates for both adults and children in the city of Detroit." After plainly acknowledging its awareness of the disparate health burden already existent in the

[104] EGLE Air Quality Division, *Response to Comments Document - Permit Nos. 13-19 & 14-19, at 9* (April 2019), https://www.deq.state.mi.us/aps/downloads/permits/PubNotice/14-19/13-19_14-19RTC.pdf
[105] Id. (emphasis added)

community, the agency went on to state that it "does not perform health impact assessments." Instead, it utilizes human health risk assessments, "quantitative, analytic processes" that "are not comprehensive and tend to focus on biophysical risks from exposure to hazardous substances."[106]

To make matters worse, while EGLE regulations required Stellantis to offset its increase in volatile organic compound emissions from its Mack Avenue Assembly Plant, it authorized offsets that will have a disproportionate impact on people of color. Specifically, to offset the increase in volatile organic compound emissions at the Mack Avenue Assembly Plant, EGLE authorized the use of a decrease in emissions at an auto assembly plant in Warren that is located in a community that has significantly less people of color in the immediate vicinity.[107]

In other words, the disparate health impacts that would occur by increasing emissions among a Black community with uniquely high levels of respiratory disease while decreasing emissions in a community with less people of color was not taken into account when granting the permits. An agency simply "checking a box" by printing an EJSCREEN report is not enough to satisfy the requirements of Title VI in a community such as this one. This is particularly true in Michigan, where EGLE has, for decades, refused to utilize the limited data they *do* access to impact the outcome of permitting decisions.

The communities surrounding the Stellantis facilities are disproportionately composed of people of color with pre-existing respiratory diseases when compared to state and national averages. As such, the adverse effects, rooted in EGLE's granting of these permits, continues to impose disproportionate negative impacts on people of color in violation of 40 C.F.R. Part 7.

2. Odors

The expansion of Stellantis' operations has caused significant increases in odor issues for nearby residents. Residents in the nearby area, including all four individual complainants, have experienced paint and gas like odors emanating from the Stellantis

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[106] CDC, *Different Types of Health Assessments*, https://www.cdc.gov/healthyplaces/types_health_assessments.htm

[107] *Supra,* note 27.

facilities. Residents have increasingly experienced non-respiratory symptoms that often correspond to the presence of these noxious odors. These non-respiratory symptoms often accompanying the odors include burning sensations in their eyes and nausea. Numerous residents, including the Complainants, no longer feel comfortable using the outdoor spaces of their own homes or the community's public spaces due to the odors emanating from the Facilities.

The odors described by residents are violations of Mich. Admin. Code, R. 336.1901, prohibiting any person from causing or permitting the emission of an air contaminant in amounts that cause, either alone or in reaction with other air contaminants, injurious effects to human health or safety, or unreasonable interference with the comfortable enjoyment of life and property. EGLE has thus far confirmed these nuisance odors on four separate occasions, issuing the following odor related violations resulting from operations at the Facilities.

Table 4 - Odor Violation Notices Issued to Detroit Assembly Complex in 2021

Date Violation Issued	Date(s) Violation Confirmed	Comments
September 20, 2021[108]	August 27, 2021 August 31, 2021 September 3, 2021	"Moderate to strong paint/ solvent odors observed emitting from the facility and impacting nearby neighborhoods."
November 3, 2021[109]	October 28, 2021	"Persistent and objectionable paint/solvent odors of moderate to strong intensity observed emitting from the facility and impacting nearby neighborhoods."

[108] EGLE, FCA Violation Notice September 20, 2021, https://www.deq.state.mi.us/aps/downloads/SRN/N2155/N2155_VN_20210920.pdf.
[109] EGLE, FCA Violation Notice November 3, 2021, https://www.deq.state.mi.us/aps/downloads/SRN/N2155/N2155_VN_20211103.pdf.

According to EGLE records, neither Stellantis' Warren Truck Assembly Plant nor its Sterling Heights Assembly Plant have received any odor violations. Both of these assembly plants are located in communities that have fewer people of color.

The communities surrounding the FCA facilities are disproportionately composed of people of color when compared to the state and national averages. As such, this adverse effect is having a disproportionately negative impact on people of color in violation of 40 C.F.R. Part 7.

3. Noise

Residents of (b) (6) [redacted] know one thing for certain. The sounds of FCA will never let them rest. 24 hours a day. 7 days a week. Complainants and other residents have described hearing house shaking "booms," sirens, fighting employees, helicopters, diesel trucks, speeding vehicles, parking lot parties, and air horns among numerous other disturbances. They describe being startled in their sleep, in many cases almost nightly, only to struggle to fall back asleep after awakening with a surge of adrenaline. Accompanying these disturbances has been a surge in residents experiencing near daily fatigue.

Sleep disturbances have been "comprehensively and independently associated with poor health-related quality of life in middle-aged and older adults."[110] They are associated with, but not limited to, the following:

- declines in health functioning[111]
- decreased sensitivity to insulin, a precursor to diabetes[112]
- primary headache disorders[113]
- increases in all-cause mortality in older adults,[114]

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[110] Miryoung Lee, *Sleep disturbance in relation to health-related quality of life in adults: The Fels longitudinal study*, J Nutr Health Aging 13 (2009)
[111] Anne B Newman, *Sleep disturbance, psychosocial correlates, and cardiovascular disease in 5201 older adults: the Cardiovascular Health Study*. Journal of the American Geriatrics Society 45.1 (1997)
[112] Derk-Jan Dijk, *Regulation and functional correlates of slow wave sleep*. Journal of Clinical Sleep Medicine vol. 5, 2 Suppl (2009)
[113] Siv Steinsmo Ødegård, *Associations between sleep disturbance and primary headaches: the third Nord-Trøndelag Health Study*. J Headache Pain 11, 197–206 (2010).
[114] Charles Pollak, *Sleep problems in the community elderly as predictors of death and nursing home placement*. Journal of Community Health 15.2 (1990).

- increased hazards for coronary heart disease mortality and morbidity, [115]
- increased relative risk for suicidal ideation, suicide attempt, and suicide[116]
- newly developed poor mental health status, [117]
- future depression in elderly people[118]

The construction of a concrete wall between the backyards of residents (b) (6) and the FCA complex has failed to achieve any meaningful outcome for the community. Instead, the wall is eerily reminiscent of Detroit's famed Birwood Wall. Constructed in 1941, the wall served to physically segregate a newly constructed white neighborhood from a predominantly Black one.[119] It still stands today.

Figure 6 – Photo of Detroit's Birwood Wall (Left) & Stellantis Wall (Right) [120]

"Concrete wall, one half mile long, Detroit, Michigan. This wall was erected in August 1941 to separate the Negro section from a new suburban housing development for whites." (Description from Library of Congress)	"The $5.07 million wall, a project of the Detroit Brownfield Redevelopment Authority on land owned by [Stellantis].[121]

[115] Tarani Chandola, *The Effect of Short Sleep Duration on Coronary Heart Disease Risk is Greatest Among Those with Sleep Disturbance: A Prospective Study from the Whitehall II Cohort*, Sleep, Volume 33, Issue 6 (2010).
[116] Wilfred Pigeon, *Meta-analysis of sleep disturbance and suicidal thoughts and behaviors*. J Clin Psychiatry 73 (2012).
[117] Yoshitaka Kaneita, Associations between sleep disturbance and mental health status: A longitudinal study of Japanese junior high school students, Sleep Medicine, Volume 10, Issue 7, 2009,
[118] Gill Livingston, *Does sleep disturbance predict depression in elderly people? A study in inner London*, British Journal of General Practice 43 (1993)
[119] See Gerald C. Van Dusen, *Detroit's Birwood Wall*: *Hatred and Healing in the West Eight Mile Community* (2019)
[120] 3BLMedia, *The City of Detroit and FCA Seek Artists to Paint One of the Largest Municipal Art Installations in Detroit's History, February 10, 2020,* https://www.3blmedia.com/news/city-detroit-and-fca-seek-artists-paint-one-largest-municipal-art-installations-detroits (screenshot).
[121] Eric D. Lawrence, *Detroit's hulking sound barrier prompts Berlin Wall comparisons,* Detroit Free Press, Mar. 6, 2020, https://www.freep.com/in-depth/money/cars/chrysler/2020/03/06/detroit-fiat-chrysler-wall-sound-barrier/4821119002/.

As the experiences of the Complainants reflect, the wall has not sufficiently reduced their exposure to noises, air pollutants, or odors. Neither do FCA's attempts to paint over it.[122] As one (b) (6) resident was recently quoted as saying, "It does nothing to fix the deeper issues in this community. It's like a bandaid over a bullet wound."[123]

The communities surrounding the FCA facilities are disproportionately composed of people of color when compared to state and national averages. As such, the adverse effects, rooted in EGLE's granting of these permits, continues to impose disproportionate negative impacts on people of color in violation of 40 C.F.R. Part 7.

4. Community Degradation and Displacement

"It was a place where you would really want to raise your kids and have your kids because everybody knew each other. It was a family, it was nice. Sit on the porch, eat your little watermelon or your fruit, the kids playing jump rope or riding their bikes. They can't do that anymore. These kids are never going to experience that. My grandchildren and their children won't get the chance to experience that because of the noise, the traffic, the pollution. It's just so many different things, hazardous things. That's not really a place to raise a family anymore. They took all of that from us. And without even asking us. They just took." - (b) (6)

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[122] Aaron Mondry, *Detroit mural project outside FCA plant sparks concerns about 'artwashing'*. Curbed, Mar 5, 2020, https://detroit.curbed.com/2020/3/5/21166290/detroit-fca-mural-project-community-benefits-artwashing.

[123] Id.

[124] Based on Interview of (b) (6) by Allyson Putt, October 21, 2021 (edited for clarity) (transcript available upon request).

A shocking number of residents have been displaced from their homes due to the effects of these permits. Complainant (b) (6) [redacted] spent months living in a hotel with her children to escape the environmental health hazards until she no longer had the funds to do so. Now, despite owning her own home, her family has been forced to rely on the goodwill of relatives (b) (6) [redacted] (b) (6) [redacted] Her aunt, in an attempt to curb the mounting list of symptoms synonymous with poor air quality, relocated to (b) (6). (b) (6) [redacted], seeing increased levels of respiratory distress in his own children, felt compelled to move (b) (6) [redacted] out of the home they own (b) (6) [redacted] and into the home of relatives.

Figure 7

At its core, EGLE has participated in the creation of a class of internally displaced peoples, forced from their homes by decades of compounding discriminatory decisions that have resulted in this man-made crisis.

The impacts go beyond any one individual. They have begun to alter the character of a community that residents hold dear. Complainants see more homes left vacant and lawns left unkept. Services, which saw an uptick before the project was greenlighted, have slowed. The parks where parents took their children to play are no longer bustling with young energy. Instead, families stay inside or travel outside the neighborhood to enjoy the outdoors, made nervous by the risks that may linger in the air.

The communities surrounding the FCA facilities are disproportionately composed of people of color when compared to state and national averages. As such, the adverse effects, rooted in EGLE's granting of these permits, continues to impose disproportionate negative impacts on people of color in violation of 40 C.F.R. Part 7.

B. EGLE's failure to perform cumulative impact analyses under Rule 228 as has subjected resident to an adverse disparate impact and preserves a pattern or practice of discrimination on the basis of race, color, and national origin in violation of 40 C.F.R. Part 7.

Throughout the permitting processes for Permits to Install 14-19 and 33-20, EGLE received numerous comments urging it to consider the cumulative impacts associated with the air pollution that will result not only from the activities authorized by the permits themselves, but also the existing sources of air pollution in the area, such as Stellantis' Jefferson North Assembly Plant.

Comments submitted by the Great Lakes Environmental Law Center regarding permit to install 14-19 urged EGLE to require Stellantis to utilize its authority under Rule 228 to conduct a cumulative impact analysis of toxic air contaminants to ensure emissions from the Mack Avenue Assembly Plant authorized by permit to install 14-19 along with emissions from other nearby sources such as the Jefferson North Assembly Plant would not cause maximum ambient impacts above ambient toxic air contaminant standards set by EGLE.[125] The Great Lakes Environmental Law Center again urged EGLE to utilize its authority under Rule 228 in its comments on permit to install 33-20.[126]

As noted above, Rule 225 required Stellantis to demonstrate that the toxic air contaminant emissions from the emissions units for which it was seeking a permit would not cause maximum ambient impacts above either the initial risk screening level or initial threshold screening level. Additionally, Rule 228 is an omnibus provision that provides EGLE with the authority to determine that the emissions limits established pursuant to Rule 225 are not sufficient to protect the public health. In such a situation, EGLE may establish a lower emission rate considering, among other things, synergistic or additive effects from other toxic air contaminants.[127]

There is evidence that suggests EGLE's use of Rule 228 was warranted. Both Permits authorized significant expansions of auto assembly operations which resulted in

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[125] Great Lakes Environmental Law Center, Comments to the Michigan Department of Environment, Great Lakes, and Energy Re. Proposed Permit to Install 14-19 (Apr. 23, 2019), Appendix 8.
[126] Great Lakes Environmental Law Center, Comments to the Michigan Department of Environment, Great Lakes, and Energy Re. Proposed Permit to Install 33-20 and 14-19A (Sept. 18, 2020), Appendix 9.
[127] Mich. Admin. Code R, 336.1228(1).

increases in volatile organic compound emissions. Combined, the emissions units authorized by both Permits would have the potential to emit over 400 tons of volatile organic compounds per year.[128] These emissions will join with the nearly 800 tons of volatile organic compounds that the Jefferson North Assembly Plant emitted in 2019, meaning that the Jefferson North and Mack Avenue Assembly Plants together now have the potential to emit 1,200 tons of volatile organic compounds every year.[129]

Volatile organic compounds consist of a family of chemical compounds, many of which are toxic air contaminants. Per air quality modeling analyses provided by Stellantis, the toxic air contaminant emissions from the emission units authorized by the Permits will cause the following maximum ambient impacts:

Table 5 - Maximum Ambient Impact Resulting from Toxic Air Contaminant Emissions Regarding Permits to Install 14-19 and 33-20		
	Potential to Emit - Stellantis Permits to Install	
	Maximum Ambient Impact - 14-19, 14-19A	**Maximum Ambient Impact - Permit to Install 33-20**
Formaldehyde	0.058	0.005
Cumene	0.023	0.020
Ethylbenzene	0.1	0.091

The toxic air contaminant emissions from the emissions units authorized by the Permits will be joining the pre-existing emissions from Jefferson North Assembly Plant which, according to the EPA's Toxic Release Inventory, released 19,249 pounds of ethylbenzene and 2,398 pounds of cumene.[130]

Background levels of formaldehyde, cumene, and ethylbenzene are also elevated. While there are no toxic air contaminant monitors in the immediate vicinity of the Stellantis

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[128] *See, supra,* Table 1.
[129] Id.
[130] *Supra,* note 17.

Complex, the annual average concentration from a number of monitors in southern Wayne County show levels of toxic air contaminants above the initial risk screening level:

Table 6 - Average Annual Background Concentrations of Selected Toxic Air Contaminants along with the Combined Maximum Impact Resulting from Permit to Install 14-19A and 33-20 as well the Initial Risk Screening Level.			
	Formaldehyde	**Cumene**	**Ethylbenzene**
Average Annual Background Concentration (10-year Average, in ug/m3)	3.3	0.24	2.5
Combined Maximum Impact from Permits to Install 14-19A, 33-20 (Annual Average, in ug/m3)	0.063	0.043	0.191
IRSL (Annual Average in ug/m3)	0.080	0.100	0.400
SRSL (Annual Average in ug/m3)	0.8	1	4

As illustrated by Table 6, ambient air quality monitors in southern Wayne County have routinely detected background concentrations of formaldehyde, cumene, and ethylbenzene at concentrations above the initial risk screening level, which is the threshold at which the contaminant will produce an upper-bound cancer risk of 1 in one million. Particularly troubling are background concentrations of formaldehyde, which exist at concentrations three times the secondary risk screening level. The secondary risk screening level is the threshold at which the contaminant will produce an upper-bound cancer risk of 1 in 100,000. In short, emissions authorized by the Permits will contribute to already high levels of toxic air contaminants in the neighborhood nearby

the Plants. Despite being specifically requested to do so, EGLE refused to utilize its omnibus authority under Rule 228 to conduct a cumulative impact analysis regarding any toxic air contaminant.

There is also evidence that EGLE has disproportionately underutilized Rule 228 in communities of color. In total, Rule 228 has been the source of authority for establishing permit conditions in seven Title V permits.

Table 7 - EJSCREEN Report - Title V Permits with Rule 228 Conditions and Stellantis Jefferson North and Mack Avenue Assembly Plants		
	% People of color within 1-mile radius	**Environmental Indicator Percentile Compared to Michigan, 1-mile radius - Air Toxics Cancer Risk**
Lafarge Alpena 1435 Ford Ave., Alpena, MI	6%	10th percentile
St. Mary's Cement 16000 Bells Bay Rd., Charlevoix, MI	7%	24th percentile
DTE Electric Company - Monroe Plant 3500 East Front St., Monroe, MI	N/A (Nobody resides within 1-mile of Plant)	N/A (Nobody resides within 1-mile of Plant)
Gerdau MacSteel Monroe 3000 East Front St., Monroe, MI	15%	24th percentile
Dow Chemical Company 1790 Building, Washington St., Midland, MI	9%	94th percentile

AK Steel 4001 Miller Rd., Dearborn, MI	16%	97th percentile
Marathon Petroleum 1300 South Fort St., Detroit, MI	76%	97th percentile
Stellantis Jefferson North and Mack Avenue Assembly Plants	98%	83rd percentile

As illustrated above, despite communities of color living with a disproportionate burden of toxic air emissions, EGLE generally has used the omnibus provision in Rule 228 to establish stricter toxic air contaminant emissions limits in communities with relatively few people of color. Further, based on EJSCREEN's environmental indicator for air toxics cancer risk, EGLE has utilized Rule 228 in many instances in which the air toxic cancer risk for the immediately adjacent community is relatively minor particularly when compared to the air toxic cancer risk for those living nearby the Stellantis Complex.

Despite the risks posed by a significant increase in automotive assembly Plant operations in a community that is made up almost entirely of Black persons and other persons of color, EGLE refused to utilize its existing authority under Rule 228 to even conduct a cumulative impact analysis to examine whether toxic air contaminants that will be emitted by the Plant along with background concentrations would lead to a significant adverse impact. Given the high ambient levels of numerous toxic air contaminants that have been detected in Wayne County, it is likely that background levels of some toxic air contaminants, including formaldehyde, cumene, and ethylbenzene, are above their respective initial risk screening levels, which are health-based, ambient air quality standards set by EGLE. It is certain that the emission units authorized by the Permits will contribute additional toxic air contaminant emissions and contribute to an increase in what is likely to be elevated background levels of pollution.

EGLE's refusal to utilize its authority under Rule 228 to require a cumulative impact analysis regarding any of the Permits and to establish stricter permit conditions regarding toxic air contaminants has caused an adverse impact on the predominantly Black resident living nearby the Stellantis Plants. There is also strong evidence that EGLE has utilized its omnibus authority under Rule 228 in a manner that disproportionately benefits White communities. While communities of color historically have suffered from a disproportionate level of toxic air pollutant concentrations, EGLE has predominantly utilized Rule 228 to establish permit conditions for facilities in White communities that have a lower air toxic cancer risk compared to the community nearby the Stellantis Plants. In short, EGLE's historically disproportionate use of Rule 228 to benefit White communities combined with its refusal to utilize its authority to examine the cumulative impacts associated with a number of toxic air contaminants that will be emitted by the emissions units authorized by the Permits in combination with background concentrations of toxic air contaminant concentrations despite ambient air quality data in the area indicating that levels of several toxic air contaminants are already above EGLE's initial risk screening level amounts to an adverse and disparate impact in violation of 40 CFR 7.35(b).

Additionally, EGLE's persistent and longstanding refusal to require a cumulative impact analysis in air permitting decisions that will impact communities of color established a policy or practice of failing to require such analyses despite them being relevant analyses for Title VI compliance. The EPA has noted that EPA regulations prohibit both intentional and unintentional discrimination, and that unintentional discrimination may occur if the "cumulative impacts of pollution from a wide range of sources" disproportionately and adversely impacts individuals of a certain race, color, or national origin.[131] In Michigan, communities of color are disproportionately subjected to high levels of air pollution from a number of sources. Despite numerous requests, EGLE has never required a cumulative impact analysis before issuing any permit to install. In essence, it has established a policy or practice of willful blindness in regards to examining whether a permit to install will result in a disproportionately adverse impact on communities of color. Where a state department has failed to develop a

[131] Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs

policy to ensure Title VI compliance, such a failure may amount to a Title VI violation in and of itself.[132]

V. Jurisdiction

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000d et seq., provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity covered by Title VI. Congress intended that its policy against discrimination by recipients of Federal assistance be implemented, in part, through administrative rulemaking. EPA has promulgated Title VI regulations that apply to state agencies that are recipients of financial assistance from the EPA.

Title VI specifically defines what amounts to a program or activity. It is defined as "all of the operations…of a department, agency, special purpose district, or other instrumentality of a State or of a local government…any part of which is extended Federal financial assistance.[133] If any part of an entity receives federal funds, the whole entity is covered by Title VI.[134] Additionally, EPA's Title VI regulations define a recipient as "any state… instrumentality of a state…[or] public agency… to which Federal financial assistance is extended directly or through another recipient."[135] EGLE has received millions as recipients of financial assistance from the EPA.[136]

According to the EPA's Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, EPA may investigate cases in which the permitted activity is one of several activities, which together present a cumulative impact.[137] In this complaint, the complainants are alleging that a series of

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[132] *See, United States v. Maricopa County,* 915 F.Supp. 2d 1073 (2012).
[133] 42 U.S.C. § 2000d-4a.
[134] *Ass'n. of Mex.-Am. Educ. v. California,* 195 F.3d 465, 474-5 (9th Cir. 1999), rev'd in part on other grounds, 231 F.3d 572 (9th Cir. 2000) (en banc)
[135] 40 CFR § 7.25.
[136] Spending by Prime Award (Awarding Agency EPA, Recipient Environment Great Lakes and Energy). USASPENDING.GOV, https://usaspending.gov/#/search.
[137] U.S. EPA, Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance) 65 Fed. Reg. 39,650, at 39,698 (Jun. 27, 2000)

permits to install issued by EGLE - specifically permits to install 14-19, 14-19A, and 33-20 - have created a cumulative impact that has had a discriminatory effect on the people of color living nearby the Jefferson North and Mack Avenue Assembly Plants. While these permits have been issued over the course of two years, the most recent permit - permit to install 33-20 - was issued on May 12, 2021. This permit authorized Stellantis to reactivate another paint line, which further increased air pollutant emissions in the neighborhood.

According to 40 CFR 7.120(b)(2), a Title VI complaint must be filed within 180 calendar days of the alleged discriminatory act. This complaint is being filed on November 8, 2021, which is 180 days from May 12, 2021 - the date on which permit to install 33-20 was issued. As such, this complaint is timely.

VI. Relief

A. Voluntary Relocation

The decisions by EGLE and other government entities have significantly harmed the ability of residents to sell their property. Adequate financial and administrative support must be provided for the purchase of new properties, relocation costs, and addressing long term impacts of displacement such as mental health assistance, employment and education resources, and access to healthcare. Any program must be voluntary and provide compensation that allows families to relocate to areas that increase their livelihoods and quality of life and not be limited to the market price of property that has been negatively impacted by State actions. Community control of land through transfer to a community land trust is of utmost importance to forgo further industrial encroachment on the community in the future.

B. Home Repair

The structural integrity of homes (b) (6) [redacted] have been severely impacted by ongoing activities at the facilities. Numerous have exhibited foundation and structural damage including collapsing porches and cracking exterior walls. The costs of necessary repairs are significant and mounting. The community benefits agreement, which offered home repair grants up to $15,000 to income eligible property owners, did

nothing to account for the damage to properties that continued after initial repairs were completed. Residents that choose to stay in their homes must be properly compensated for these damages through a home repair solution that is truly equitable and corresponds to the seriousness of the burdens placed upon this community.

C. Require Cumulative Impact Analysis During Permitting Process

While EGLE has been empowered to conduct cumulative impacts analyses via Rule 228 and EPA's Title VI guidance, it has thus far failed to do so. By abdicating its responsibility to conduct a cumulative impact assessment under Rule 228, EGLE is left with no means of knowing whether cumulative impacts, including those arising from these permits, will have a significant discriminatory adverse effect.

Simply put, the agency cannot then know whether it is complying with its Title VI obligations in the process of issuing permits in communities like this one without conducting cumulative impact analyses. More importantly, EGLE must also use the results of a cumulative impact assessment meaningfully. This includes being prepared to deny permits that have discriminatory adverse effects like those described in this complaint.

Sincerely,

/s/Nicholas Leonard

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