

SIMS Metal Management Comments 2/1/2023-3/9/2023

Date Comment Received	Comment	Attachments
2023-03-09	<p>To follow up on my previous comment about the recent fire at Sims and their ongoing compliance problems, I noticed that one of the main reasons CDPH gave for denying the Southside Recycling Large Recycling Facility Permit was concerns about transparency. If transparency was one of the criteria that CDPH evaluated as part of the Large Recycling Facility Permit process for Southside Recycling, then CDPH should likewise consider the lack of transparency on the part of Sims, and the repeated misinformation Sims continues to spread. Take for example the statement made by Sims in a written statement published by the Sun-Times, which was clearly intended to downplay the extent of the fire. And compare that statement to the facts as detailed in the Chicago Fire Department Investigation Report (attached). The Sun-Times reported that “In a written statement, Sims said it called the fire department out of an abundance of caution.” Contrast that statement to the Fire Department Investigation Report which states “The employees of the plant (Sims) tried to extinguish the fire as they called CFO. This fire grew rapidly with the large fire load and took master streams from multiple Tower Ladders to extinguish the fire.” Also, take the statement that Sims called the Fire Department “out of an abundance of caution” and compare it to the attached photo from the Sun-Times article showing a large plume of billowing smoke from the fire blowing north toward the Pilsen neighborhood. Comparing the facts presented in the attached Investigation Report to the misleading public statements made by Sims demonstrates a significant lack of honesty and transparency since Sims clearly called the Fire Department as a last resort. If Sims actually intended to exercise an “abundance of caution”, they would have called the Fire Department immediately upon noticing the fire. Instead, Sims allowed the fire to grow rapidly while trying, on their own, to extinguish the fire while simultaneously trying to reach the CFO. The actions taken by Sims in response to the fire were the exact opposite of an “abundance of caution.” A more accurate statement from Sims would have been that they “called the fire department in an act of desperation.” Even worse than the false and misleading statements made by Sims is the fact that their negligence exposed the residents of Pilsen to toxic smoke and fumes that would have been prevented if Sims had called the Fire Department immediately, and the fire could have been extinguished much sooner. By waiting until they had no other option, Sims allowed more potentially toxic material to burn, and for much longer, than if the Fire Department was called to begin with. Someone from CDPH should be forced to explain how and why Sims is allowed to continue operating after proving time and time again that they DO NOT care about the community and they continue to put the health and well-being of Pilsen residents in jeopardy. Sims should be shut down immediately and CDPH should deny Sims’ Permit for a Large Recycling Facility.</p>	Appendix A
2023-03-08 2:01 p.m.	<p>How will CPDH weigh the impact of the last month’s fire at Sims when considering whether to issue a Large Recycling Facility Permit to Sims, particularly given Sims’ history of violating federal, state and local environmental regulations? The letter in which CDPH denied the Large Recycling Facility Permit to Southside Recycling states “CDPH finds that the facility proposes to undertake an inherently dangerous activity in a vulnerable community area, and the Applicant failed to provide sufficient evidence that the Facility can comply and stay in compliance with the terms and conditions of a Permit, the Code, or the Rules as necessary to fully protect the residents of the Southeast Side. Accordingly, the permit application is denied.” The recent fire at Sims, which according to the Chicago Fire Department Investigation Report involved a fire that “grew rapidly with the large fire load and took master streams from multiple Tower Ladders to extinguish the fire”, is just the latest example of Sims' inability to safely operate a Large Recycling Facility in Chicago. And based on the findings of CDPH's own Air Quality and Health Report, as well as conclusions reached by the Natural Resources Defense Council, there is no question that Sims is located in a highly vulnerable (Environmental Justice) area.</p>	n/a

	<p>https://www.chicago.gov/content/dam/city/depts/cdph/statistics_and_reports/Air_Quality_Health_doc_FINALv4.pdf https://www.nrdc.org/experts/meleah-geertsma/new-map-shows-chicago-needs-environmental-justice-reforms According to a Sun-Times article written about the recent fire at Sims, the Alderman’s office received calls from neighbors complaining of “strong chemical smells that are causing headaches and nausea.” One resident was also quoted as saying “My nostrils and eyes watered immediately.” The recent reckless actions of Sims, and the subsequent reports of harm caused to nearby residents, clearly demonstrate that the people of Pilsen are not being protected. Furthermore, Sims has once again proven that they cannot comply or stay in compliance with applicable environmental regulations intended to protect the public. If CDPH applies its standards for Large Recycling Facilities equally among similar facilities, and does not pick favorites, then CDPH cannot possibly issue a Large Recycling Facility Permit to Sims after refusing to issue the same permit to Southside Recycling.</p>	
<p>2023-02-20 5:10 p.m.</p>	<p>During this past weekend, I read the report titled “Ineffective By Choice – A Review Of Environmental Enforcement Data In Chicago From 2002-2022” published by Neighbors for Environmental Justice (see link below). While the report effectively outlines the fecklessness of CDPH overall, it also highlights the history of environmental compliance problems at Sims.</p> <p>https://drive.google.com/file/d/1JIHQgGrC1Lh2AmlhzKNnhb8hEfww_IDU/view The report states, in part, that “In 2020, Sims Metal Management was cited for 30 violations, including 9 for air pollution prohibited, 8 for nuisance in connection with a business, 6 for dumping on real estate without a permit, and three for “smoke and gases from internal combustion engines of vehicles.” They negotiated at length, and after a dozen hearing dates, they entered into an agreement with the city in late 2021.” The report further states that “CDPH has confirmed they have a legal strategy of not citing companies for ongoing violations until negotiations are complete. This practice means a company which has been repeatedly cited for environmental violations can protect itself from additional tickets (and any risk of escalating fines for repeat offenses), sometimes for years, by dragging out negotiations.” Sims was clearly aware that dragging out negotiations with CDPH would be an effective strategy as they were cited for numerous violations between March and July of 2020, but the tickets issued by CDPH weren’t settled until October 2021 (over a year later). Throughout this period of “negotiations”, CPDH inspectors continued to observe the same violations that were cited in the tickets, yet NO ADDITIONAL TICKETS WERE ISSUED TO SIMS. The fact that CDPH issued ZERO tickets while Sims continued to violate CDPH regulations FOR OVER A YEAR while the matter was being “negotiated” is a direct contradiction of CPDH’s supposed mission to protect public health and the environment. But what’s even worse is that long after Sims settled the 2020 tickets with CDPH by paying a mere \$18,000 fine, CDPH inspectors continued observing the same exact violations. In fact, the same violations that Sims was cited for nearly 3 YEARS AGO are continuing to occur to this day. The only thing that has changed is CDPH inspectors are now choosing (or are being told) to overlook the ongoing violations of air pollution, odors, and fluff migrating off-site from Sims. If CDPH is serious about its commitment to public health and the environment, and if CDPH actually weighs the compliance history of a company when evaluating an operating permit for a recycling facility, then please have someone from CDPH explain how CDPH could EVER issue a Large Recycling Facility Permit to Sims.</p>	<p>n/a</p>
<p>2023-02-15 9:42 a.m.</p>	<p>Section 3.10.4.7 of the CDPH Large Recycling Facility (LRF) Rules require "A stockpile monitoring protocol that includes the use of thermal cameras, designed to prevent fires and explosions from ASRs and metal stockpiles." Yet a review of the U.S. EPA Inspection Report following the recent fire at Sims states that "Sims previously installed three thermal cameras that can detect heat in the scrap pile. THE THERMAL CAMERAS ARE NOT YET OPERATIONAL." Please have someone from CDPH explain why Sims is allowed to continue operating as a LRF, without an LRF Permit, and without complying with such an important requirement in the LRF Rules.</p>	<p>n/a</p>

<p>2023-02-14 11:05 a.m.</p>	<p>If the City ever decides to hold a community meeting for the Sims Large Recycling Facility Permit application, the residents of Pilsen should demand that CDPH address the issued raised by Neighbors for Environmental Justice (https://n4ej.org/) in a recently published article INEFFECTIVE BY CHOICE - A REVIEW OF ENVIRONMENTAL ENFORCEMENT DATA IN CHICAGO 2002-2022.</p>	<p>Appendix B</p>
<p>2023-02-01 2:47 p.m.</p>	<p>Section 4.12 of CDPH's Rules for Large Recycling Facilities states that "For New and Expanding Facilities, Shredders that Process vehicles or have potentially explosive feedstock must be enclosed. For ALL FACILITIES, Shredders shall be designed to withstand internal explosions, safely deflect objects that may be ejected from the Shredder box by mechanical force or explosions, and be covered or hooded as necessary to meet state and federal air quality capture-efficiency requirements." The attached inspection report describes an explosion that occurred at Sims, DURING A VISIT BY U.S. EPA, which caused metal scrap to shoot out the top of the shredder. The fact that such an incident occurred during a random visit by U.S. EPA indicates that explosions are likely a common occurrence at Sims. More importantly, however, the incident documented by U.S. EPA clearly demonstrates that Sims has no means of safely deflecting metal objects that are ejected from the shredder box. Obviously, metal objects ejected from a large metal shredder have the very real potential to cause serious bodily injury, or even death. Presumably, CDPH considers such a hazard to be a matter of public health since the requirement to "safely deflect metal objects" was included in the Rules for Large Recycling Facilities. SO WHY THEN HAS CDPH NOT REQUIRED THAT SIMS INSTALL AN ENCLOSURE AROUND THE SHREDDER? IS CDPH NOT CONCERNED ABOUT THE HEALTH AND SAFETY OF THE CITIZENS THAT LIVE, AND WORK, IN THE AREA AROUND SIMS?</p>	<p>Appendix C</p>



Chicago Fire Department Office of Fire Investigation

53 E. Pershing Rd
Chicago, IL 60653

Phone: (312) 747-5017
Facsimile: (312) 747-1967

Report: Special Investigation

OFI Case #: 23-0114 Fire Marshal: O'Sullivan/Wojt
OEMC Event #: 230351461 Platoon: 3

Primary Address or Location: 2500 S. Paulina

Secondary Address or Location: N/A

Battalion: 15 Name: Flynn File #: [REDACTED]

Date of Incident: 2/4/2023
Type of Alarm: Still & Box
Time of Alarm: 1623 hrs
Time OFI Notified: 1655 hrs
Box #: 154110

CPD RD#: JG140714
CPD Officer: Acosta
Beat #: 1033
Star #: 16569
Arson Notified: No Responded: No

Occupancy: Industrial (other)/G000

Second Code: N/A

If Commercial: Sims Metal Midwest

Event Description and Narrative:

OfI 466 responded to the above address for a fire in an outdoor pile of scrap metal at Sims Metal Midwest. Upon arrival BC15 observed a fire in a large pile of scrap metal, he further related that CFD went to a defensive operation and called a box due to the large fire load. CFD positioned Tower Ladders and master streams in strategic locations around the pile.

This fire started deep inside a large pile of scrap metal approx 40' high at a metal recycling plant. There are Class "A", "B" and "C" materials within this large pile of scrap metal. The cause of this fire is a chemical reaction from multiple unknown materials within the pile. The materials oxidized and the heat generated became trapped under the pile causing a spontaneous ignition. The employees of the plant tried to extinguish the fire as they called CFD. This fire grew rapidly with the large fire load and took master streams from multiple Tower Ladders to extinguish the fire. The fire was extinguished without incident. The RFM is classifying this as an accidental fire due to a spontaneous ignition from unknown materials within the scrap pile.

Review and Approval:

Click or tap here to enter text.

Bradley Batka Date: Click or tap to enter a date.
Assistant Commanding Fire Marshal

RR

Ryan Rivera

Date: 2/6/2023

Commanding Fire Marshal

This report was prepared considering information available at the time of its completion. The Chicago Fire Department's Office of Fire Investigation reserves the right to amend this report if additional information becomes available.

(Revised 3/31/22)

APPENDIX B



NEIGHBORS FOR ENVIRONMENTAL JUSTICE

Ineffective By Choice

**A Review Of Environmental Enforcement Data In Chicago
From 2002-2022**

By Anthony Moser
February 2023

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Summary

The City of Chicago does not enforce environmental laws in any way that could seriously disrupt the operation of businesses that violate them.

This report examines how the city enforces environmental laws by analyzing two decades of previously unpublished data from the Department of Administrative Hearings (DAH). City inspection reports, settlement agreements, and emails put the data in context, showing what the city does and how they do it.

The data shows environmental enforcement is mostly limited to small infractions like construction site cleanliness, which are frequently cited and quickly resolved. **Serious concerns about air pollution and waste from industrial facilities are the subject of many complaints but rarely lead to citations.** When citations are issued to industrial facilities, they often take years to resolve as the city engages in lengthy negotiations.

These **negotiated settlements end in small fines and minimal consequences.** Sometimes companies plead liable to some charges while the city drops the rest; for example, companies frequently plead liable to "Failed to take reasonable precautions to minimize air pollution while handling a substance or material that may become airborne or be scattered by the wind," while most citations issued for "Air pollution prohibited" are later dropped. Sometimes there is no admission of liability at all.

The decision to routinely drop air pollution charges protects companies from [escalating fines](#) for repeated air pollution offenses, introduced under Mayor Lightfoot. But even when companies are found liable for air pollution, the fines issued do not meet the minimums in the ordinance. For example, in late 2021, MAT Asphalt was found liable for air pollution and fined \$2,000; but as a category A1 facility, the minimum fine [should have been](#) \$5,000. Since the air pollution ordinance was passed, no facility has been fined more than \$5,000.

Additionally, **CDPH has confirmed they have a legal strategy of not citing companies for ongoing violations** until negotiations are complete. This practice means a company which has been repeatedly cited for environmental violations can protect itself from additional tickets (and any risk of escalating fines for repeat offenses), sometimes for years, by dragging out negotiations. In at least one instance, an inspector did issue additional citations, but CDPH declined to send them to DAH for prosecution.

This incentivizes companies to negotiate in bad faith. Inspection records describe companies that denied access to city inspectors (itself a violation), took months to clean up illegal dump sites, and denied responsibility for noxious odors being experienced on-site during inspections, all while negotiations were in progress. There were no consequences.

Most importantly, **the city fails to use the full range of powers granted by the municipal code**, instead relying solely on fines or settlements through the Dept of Administrative Hearings.

The Commissioner of the Dept of Public Health has the authority to directly issue emergency or non-emergency abatement orders, requiring a business to suspend part or all of any process whenever there is "a threat to human health or safety or to the environment that is expected to occur within a reasonably short time, or that is present now, although [the impact of the threat may not be felt until later.](#)"

This is in addition to the power to seek injunctive relief in Circuit Court, which is also explicitly granted by the [municipal code](#), and the power to attach additional conditions to the annually renewed operating permits.

Current environmental enforcement practices are ineffective at addressing serious violations, but the city chooses not to use more effective tools.

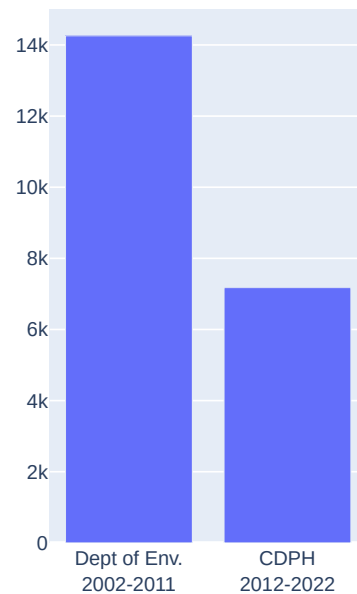
Key Findings

1. After the Dept of Environment was dismantled in 2012, **the number of environmental violations prosecuted by the city declined substantially** and [enforcement priorities shifted](#).

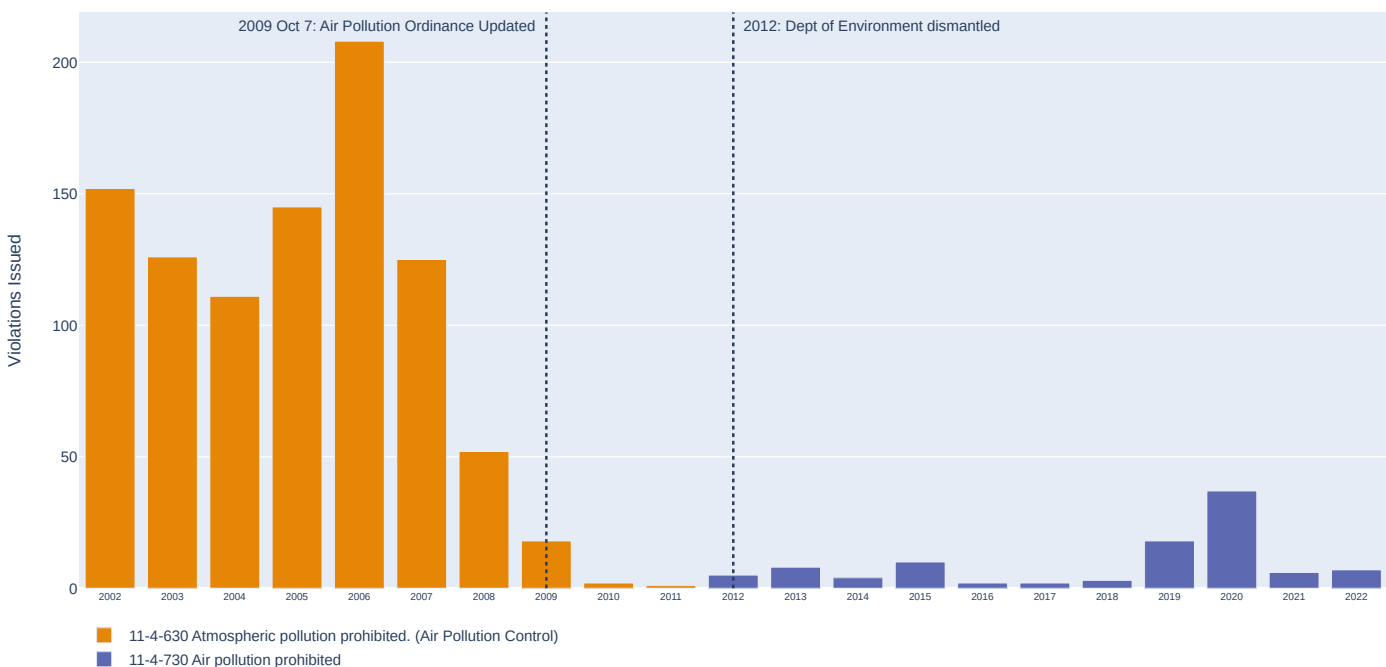
- Total violations prosecuted fell by 50%
- Citations for air pollution fell by almost 90%
- From 2002-2011, the city issued 920 citations for air pollution (11-4-630 Atmospheric Pollution Prohibited)
- From 2012 to 2022, the city issued just 96 citations for air pollution (11-4-730 Air Pollution Prohibited)

Agency	Period	Violations Issued
Dept of Environment	2002 -2011	14,257
Dept of Public Health	2012-2022	7,177

Violations Issued by Department



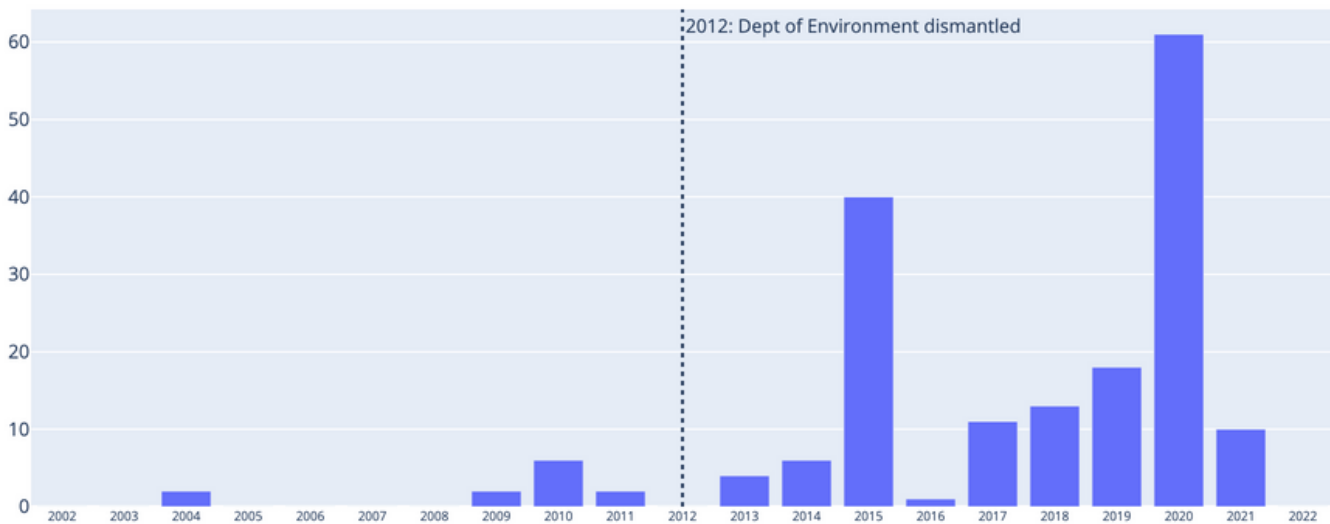
Air Pollution Violations (2002-2022)



2. Most violations are resolved in a single hearing about two months after the initial violation, but **some violations take years to resolve**. Since DOE was dismantled, it's become more common for cases to have many hearings.

Agency	Few hearing dates (<5)	Several hearing dates (5-9)	Many hearing dates (10+)
Dept of Environment	98.28%	1.65%	0.07%
Dept of Public Health	91.94%	5.97%	2.09%

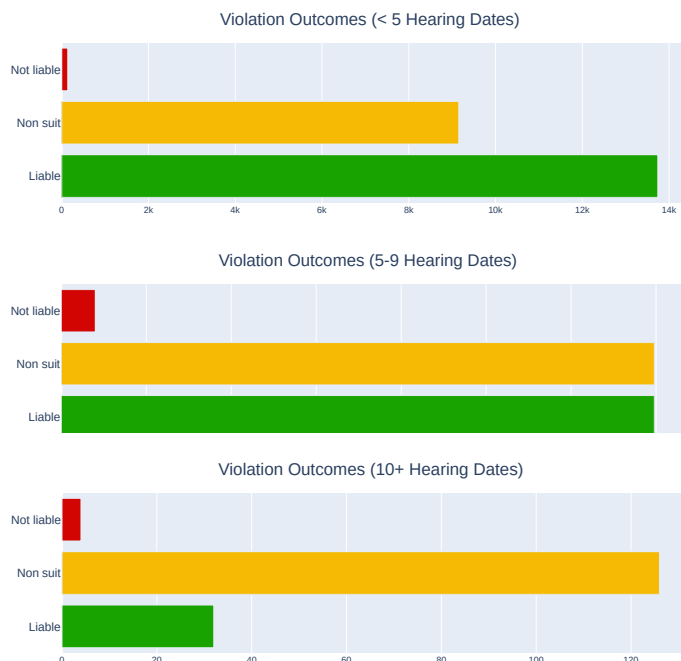
Violations With Many Hearing Dates (10+)



3. **Violations with more hearing dates are more likely to be dropped.**

For violations with many hearing dates, 77% end with the city dropping the charges, classified in the data as "non suit."

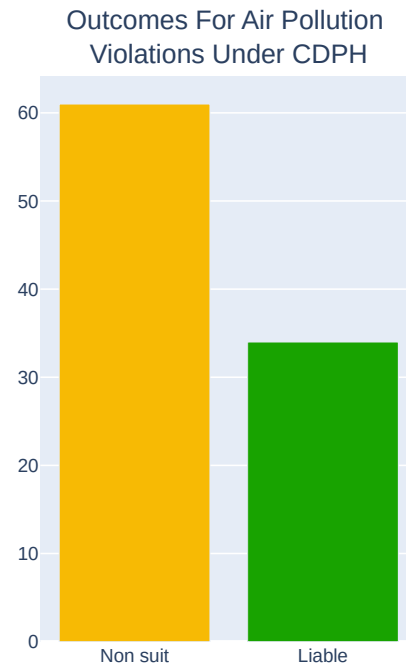
Typically this is accompanied by the company pleading liable to other charges, sometimes with additional requirements (e.g. submitting documentation).



4. **CDPH engages in years-long negotiations with high profile polluters then settles for small fines and negligible consequences.** For example, in 2021 Sims Metal Recycling paid \$18,000 with no admission of liability, and the city dropped the charges for 30 violations.

5. **Air pollution violations are rarely issued and routinely dropped.**

- Charges like "Air Pollution Prohibited" or "Visible Emissions" that explicitly document violations of air permits are likely to be dropped
- Dropping air pollution charges protects companies from escalating fines for repeat offenses
- The escalating fines introduced under Mayor Lightfoot's air pollution ordinance in January 2021 have not been applied to any violations



6. **CDPH has a legal strategy of not citing companies for ongoing violations while they have pending hearing dates.**

- We call this the "Dave Graham Rule," after the Assistant Commissioner of CDPH, who explained that once a company has already been cited several times, "additional violations will not be issued."
- In at least one instance, an inspector issued citations, documenting them in the inspection report, but CDPH declined to send them to the Dept of Administrative Hearings because previous violations were still being negotiated

7. **CDPH presumes businesses to be acting in good faith even when there is clear evidence to the contrary.** Negotiations continue even when inspectors are blocked from work sites and continuing problems are documented.

8. **The city fails to use the full range of powers granted by the municipal code to address environmental violations.**
 - The city chooses to limit its response to settlement agreements and citations processed by the Dept of Administrative Hearings

 - Additional powers outlined in the municipal code include issuing emergency or non-emergency abatement orders, attaching conditions to certificates of operation, pursuing fines on a per-day basis, and seeking injunctive relief in circuit court

Case Study: Pullman Innovations

To understand what city enforcement actually looks like in practice, consider Pullman Innovations, listed on paper as "A-F Acquisition LLC." The facility produces "secondary oil for chicken feed and biofuel from corn, canola, soy and peanut that have been previously processed for human consumption."

Pullman was cited repeatedly from February 2020 through July 2020 for failing to comply with environmental regulations. Those citations took nearly two years to resolve, requiring between 13 and 17 hearing dates.

The city proposed a settlement requiring Pullman to submit a report of proposed odor controls they would then have to implement and a fine of more than \$84,000. After negotiating for months, the city cut the proposed fine to \$42,000. Pullman rejected the offer.

On the day of their hearing, they reached a last minute agreement: the city dropped ("city non-suit") all of the air pollution charges and the visible emissions charge. In exchange, Pullman pleaded liable to seven counts of "Nuisance in connection with business" and one count of "Certificate of operation required." They were required to submit a report of changes they had already made, along with a copy of their annual IEPA emissions form.

They were fined \$12,000.

"STRONG ODORS OF ROTTING, SOUR VOMIT"

There are many years of recorded complaints, but the violations in this example were issued in 2020. It started on February 5th, during an inspection following a complaint.

The inspector reported:

"STRONG ODORS OF SOUR, ROTTEN EGGS, SIMILAR TO A VOMIT ODOR, WAS OBSERVED DIRECTLY EAST OF THE FACILITY [...] THIS ODOR WAS VERY UNCOMFORTABLE TO INHALE AS IT INSTANTLY MADE ME NAUSEOUS AND MADE ME WANT TO VOMIT.

I ASKED TO REVIEW THEIR 2020 CERTIFICATE OF OPERATION AND THEY SAID THEY HAVE NOT UPDATED THEIR 2020 COO. A NOV CITATION #E000034592 IS ISSUED FOR CERTIFICATE OF OPERATION REQUIRED (11-4-660(A)) AND AIR POLLUTION PROHIBITED (11-4-730) TO PULLMAN INNOVATIONS. A NOV CITATION #E000034593 IS ISSUED FOR NUISANCE IN CONNECTION WITH BUSINESS (7-28-080) TO PULLMAN INNOVATIONS."

The same odor was observed on February 28th, where the inspector noted, "THIS ODOR IS COMMONLY OBSERVED AT PULLMAN INNOVATIONS," before issuing additional citations for air pollution and nuisance in connection with a business. The problem continued without improvement, and there were additional inspections and citations.

On March 13th, the inspector described "STRONG ODORS OF FECES AND DECAYING VEGETABLE MATTER"; on March 26th, "STRONG ODORS OF ROTTING, SOUR VOMIT"; on April 3rd it was more of a "VERY SOUR AND ACIDY VOMIT." Their last citations were issued on July 17, 2020, when the inspector described the smell as "SPOILED FOOD OR ROTTING FOOD" and the facility manager denied responsibility:

"THE INSPECTOR SPOKE WITH THE FACILITY MANAGER WHO STATED THAT HE DID NOT NEED TO POST THE BUSINESS NAME BECAUSE THE ADDRESS WAS POSTED ON THE FENCE.

ODOR WAS NOTICEABLE AS I DROVE ONTO PROPERTY, HOWEVER THE MANAGER CHALLENGED THE INSPECTOR AS TO HOW I COULD PROVE IT WAS HIS FACILITY BECAUSE THERE ARE SIMILAR PROCESSERS THAT DO THE SAME PROCESS IN THE AREA. THE ODOR WAS NOTICEABLE AT THE ENTRANCE OF THE GATE BLOWING SOUTHWEST.

Residents continued to complain. One told the inspector:

"IT SMELLS LIKE GARBAGE/FECES/ROTTEN EGGS. IT IRRITATES HER SINUSES, BLOCKS HER NOSE, AND MAKES HER NAUSEOUS. SHE HAS AN OLD HOME AND THE ODORS ALWAYS COME IN. SHE USES A LOT OF AIR FRESHENERS AND AEROSOLS TO COVER UP THE ODORS BUT NOTHING HELPS. THE ODORS ARE MAKING IT HARD TO STAY IN THE NEIGHBORHOOD."

From February through July 2020, Pullman was cited for:

- 11-4-730 Air pollution prohibited (5 counts)
- 11-4-700 Visible emissions limitations (1 count)
- 7-28-080 Nuisance in connection with business (7 counts)
- Certificate of operation required (1 count)

But even though complaints and inspections continued, no more citations were issued. On December 7, 2020, "odors of rotten eggs and acidic odors were observed [...] These odors were uncomfortable to inhale and made us nauseous." But instead of a citation, the report concludes, "An enforcement action is already pending for this issue."

This happened again in February 2021:

"THE ENGINEERS CANVASSED THE STREETS SURROUNDING THE FACILITY AND DETECTED FOUL/SOUR ODORS. THE ODORS WERE STRONG ENOUGH TO CAUSE A PAUSE IN BREATH [...] AN ENFORCEMENT ACTION IS ALREADY PENDING FOR THIS ISSUE."

Then it happened in March. Then a series of inspections document "unpleasant," "sour" or "foul" odors but conclude with "CDPH WILL CONTINUE TO OBSERVE AND INVESTIGATE."

"I THOUGHT YOU WERE PUTTING TOGETHER A SETTLEMENT PROPOSAL"

So what was happening from the time the city stopped issuing citations in July 2020 until February of 2022 when those cases were concluded?

The city was negotiating.

While 96% of environmental violations are resolved in four hearings or less, Pullman's violations each had between 13 and 17 hearing dates. Emails between the Dept of Public Health and Pullman's lawyer Michael Collins show a slow process and a deferential attitude to the company.

In July 2021, a year after they stopped issuing citations, the city proposed a settlement. In August 2021, Pullman missed its court date; Collins blamed it on an assistant who had quit, and the city continued the cases while he deliberated with his client.

By October 2021 the city had reduced proposed fines from more than \$84,000 to \$42,000 and lengthened the time frames for coming into compliance, but Pullman rejected [the city's offer](#).

Hi Mike,

Thank you again for your review and consideration of CDPH's settlement offer in this matter. The City discussed your counter-proposal and offers the attached revised settlement agreement.

Please note that we have reduced the payment amount by more than half of our initial offer. In addition, we specified that the timeframes for compliance are business days per your request. With respect to your other proposed changes, upon consideration the City has determined that we can't agree to those terms.

This is what the full sequence of hearings looked like for that first air pollution citation from February 05, 2020. We obtained [scanned copies](#) of the citations, inspection report, and administrative hearing records via FOIA request.

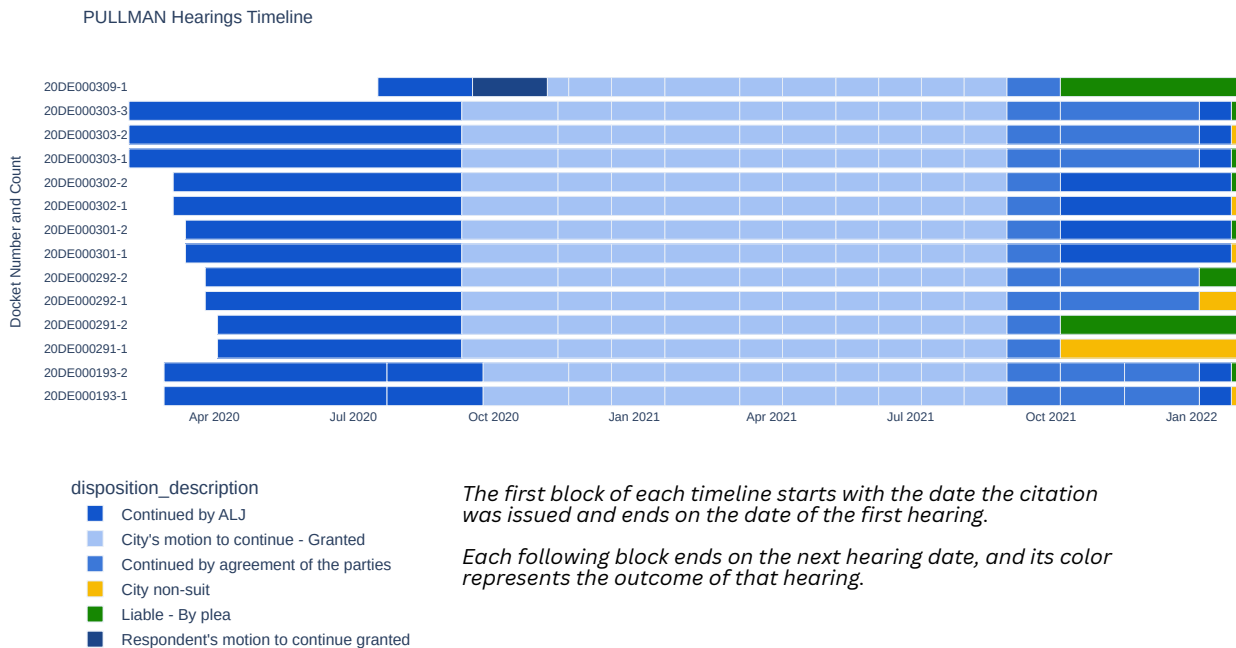
Docket Number	MCV Count	Violation	NOV Issued	Hearing Date	Disposition of Hearing
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2020-09-10	Continued by ALJ
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2020-11-12	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2020-12-17	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-01-21	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-03-11	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-04-08	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-05-13	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-06-10	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-07-08	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-08-05	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-09-02	City's motion to continue - Granted
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2021-10-07	Continued by agreement of the parties
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2022-01-06	Continued by agreement of the parties
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2022-01-27	Continued by ALJ
20DE000303	2	11-4-730 Air pollution prohibited	2020-02-05	2022-02-03	City non-suit

By October 2021, even the Administrative Law Judge was fed up with how long the process had dragged on, ordering "THIS IS THE FINAL CONTINUANCE FOR THE PARTIES." Despite her frustration, there were two more continuances.

Finally, the city reached a last minute agreement on February 3, 2022, almost two years exactly from when the city inspector was made instantly nauseous by the sour rotting smell. They dropped the charge.

The city dropped all five counts of "11-4-730 Air pollution prohibited." Pullman pleaded liable to seven counts of "nuisance in connection with business" and one count of "Certificate of operation - required." They agreed to submit a report of changes they had already made, along with a copy of their annual IEPA filing.

In total, they paid \$12,000.



ONGOING COMPLAINTS

The day after the settlement was reached, an inspector responded to complaints about Pullman and reported

"ROTTEN EGG, SOUR ODOR AND LIVESTOCK ODOR [...] I SPOKE TO THE COMPLAINANT. SHE EXPLAINED THAT SHE HAS BEEN COMPLAINING FOR YEARS ABOUT THE ODOR. WHEN THE ODORS ARE REALLY BAS [sic], SHE WILL REPORT IT. SHE IS SICK OF SMELLING IT AND JUST WANTS TO ENJOY HER HOME AND NEIGHBORHOOD."

It concludes, "CDPH WILL CONTINUE TO OBSERVE AND INVESTIGATE." No citations were issued.

At a June inspection the company told the inspector that someone had "accidentally left the release valve open on one of the loaded tankers." However, "PETE FURTHER STATED THAT THE VALVE MISHAP HAS BEEN ADDRESSED AND SHOULD NOT HAPPEN AGAIN." No citations were issued.

In July 2022, the facility manager

"ACKNOWLEDGED THAT THEIR PROCESSES DID RELEASE AN ODOR THAT OFTEN SPREADS OFFSITE AND AFFECTS THE NEIGHBORING AREA. HE WAS OPEN TO THE NEIGHBORS COMMUNICATIONS AND WOULD CHANGE WHATEVER WAS CURRENTLY HAPPENING IF THE ACTIVITY WAS CAUSING A RELEASE WITHOUT THEIR KNOWLEDGE."

On Sept 23, 2022, an inspector again documented "STRONG, NOXIOUS AND UNPLEASANT" odors while responding to a complaint. They issued a citation for air pollution.

There has already been a hearing. The case was continued.

An Enforcement Action Is Pending

Pullman is not alone. A small number of other industrial, manufacturing and construction companies also take years to resolve citations, ending in dropped charges and small settlements, including:

- MAT Asphalt
- T&B Ltd (sister company to MAT)
- Reliable Asphalt
- Sims Metal Recycling
- Controlled Demolition (from the Hilco demolition)
- MCM Management (from the Hilco demolition)
- Norfolk and Southern Railroad
- General Iron

The number of violations with 10 or more hearing dates has increased significantly since the Dept of Environment was disbanded. One possible reason: **the Department of Public Health admits that its legal strategy involves not issuing tickets for ongoing violations to companies with pending hearing dates.**

We learned of this practice after a series of inspections at MAT Asphalt seemed to document violations but ended with "an enforcement action is pending."

Digging into CDPH inspection records, we found similar patterns at other industrial facilities, although language varied. Sometimes reports ended with "CDPH will continue to observe and investigate," instead of "enforcement action is pending."

Here are some excerpts.

2020 Sept 24 • MAT Asphalt, 2055 W Pershing Rd
Inspection #12546763

[...] I OBSERVED STRONG ODORS OF FRESHLY PRODUCED ASPHALT AND ODORS SIMILAR TO FIREWORKS (BURNING CHEMICALS/SULFUR) AT DAMEN AVE AND PERSHING RD THE DRIVEWAY INTO MAT ASPHALT. THESE ODORS ARE VERY UNCOMFORTABLE TO INHALE. I OBSERVE THE EMISSIONS FROM THE STACK BLOWING TOWARDS THE INTERSECTION OF DAMEN AVE AND PERSHING RD, BLOWING INTO AND OVER THE FACILITIES EAST OF MAT ASPHALT.

WHILE ONSITE, MAT ASPHALT WAS NOT UTILIZING THEIR CRUSHER TO BREAK LARGE PIECES OF ASPHALT. THEY HAVE WETTED THE ROAD WAYS ON THE PROPERTY TO CONTROL DUST. AFTER THE INSPECTION, I FOUND THAT THE WIND DIRECTION FROM 8AM-9AM WAS PROPELLING FROM THE SSW, WSW, AND SW. THIS MEANS THAT ODORS WERE OBSERVED AT THE SOUTHEAST SIDE OF MCKINLEY PARK AND THE NEIGHBORHOOD ENCLOSED BY DAMEN AVE, 37TH ST, ASHLAND AVE, AND PERSHING RD.

AN ENFORCEMENT ACTION IS PENDING FOR THESE ISSUES.

2020 Dec 9 • Sims Metal Recycling, 2500 S Paulina
Inspection #13097245

WHILE CANVASSING THE AREA SURROUNDING METAL MANAGEMENT MIDWEST INC ON DECEMBER 9, 2020, ODORS WERE OBSERVED AT THE FOLLOWING LOCATIONS: 2352 N ASHLAND AVE (CITY OF CHICAGO DEPARTMENT OF STREET AND SANITATION), AND 2356 S ASHLAND AVE (GRAINGER INDUSTRIAL SUPPLY).

IT IS AN ODOR OF SWEET METAL. THIS ODOR WAS UNCOMFORTABLE TO INHALE AND DISCOURAGED US FROM BEING DOWNWIND FROM THE SHREDDER. THE SHREDDER WAS IN OPERATION AT THE TIME OF THE INSPECTION. WE OBSERVED VISIBLE EMISSIONS ESCAPING THE SHREDDER.

AUTO FLUFF/AUTO SHREDDER RESIDUE WAS OBSERVED AT THE FOLLOWING LOCATIONS: 2357 S WOOD ST (PREFERRED FREEZER SERVICES) LOADING AREA, 2352 N ASHLAND AVE (CITY OF CHICAGO DEPARTMENT OF STREET AND SANITATION), AND 2356 S ASHLAND AVE (GRAINGER INDUSTRIAL SUPPLY).

AUTO FLUFF IS A PRODUCT OF SHREDDING OPERATIONS AND IT CONSIST OF FINE PARTICLES OF GLASS, FIBERS, RUBBER, METAL, PLASTIC, DIRT, AND AUTOMOTIVE FLUIDS. WE OBSERVED WET PAVEMENT ON PAULINA ST.

FUGITIVE DUST OR DEBRIS WAS OBSERVED WHEN WORKERS DISTURBED MATERIAL PILES AND MOVED MATERIALS.

AN ENFORCEMENT ACTION IS ALREADY PENDING FOR THESE ISSUES.

2022 March 8 • Sims Metal Recycling, 2500 S Paulina
Inspection #16144898

WHILE CANVASSING THE AREA ON MARCH 8, 2022, ODORS AND VISIBLE EMISSIONS WERE OBSERVED.

THE SHREDDER WAS IN OPERATION AND MATERIALS WERE ON THE CONVEYOR BELT. CLAW EXCAVATORS WERE SEEN MOVING MATERIALS AROUND AND TO THE SHREDDER CONVEYOR BELT. EMISSIONS WERE SEEN ESCAPING THE SHREDDER. NO WATER TRUCK OR STREET SWEEPER WAS OBSERVED AND THE STREET WAS NOT WETTED.

ODORS WERE OBSERVED AT THE CITY OF CHICAGO FACILITY ON ASHLAND AVE, EAST OF THE FACILITY. SWEET, BURNING METAL ODORS WERE OBSERVED AND THEY WERE VERY UNCOMFORTABLE TO INHALE.

THE WIND WAS TRAVELING FROM THE SOUTHWEST AT 10MPH AT 02:00PM (WHEATHERCHANNEL.COM). THE TEMPERATURE WAS 40°F AT THE TIME OF THE INSPECTION AND IT WAS SUNNY.

CDPH WILL CONTINUE TO OBSERVE AND INVESTIGATE.

2020 April 24 • General Iron, 1909 N Clifton
Inspection #11496730

CHICAGO DEPARTMENT OF PUBLIC HEALTH ENVIRONMENTAL ENGINEERS RESPONDED TO A CITIZEN'S COMPLAINT REGARDING STRONG CHEMICAL ODORS COMING FROM THE FACILITY AT 1909 N CLIFTON AVE, GENERAL IRON INDUSTRIES (GII, LLC). GII LLC OPERATES A RECYCLING FACILITY PURSUANT TO A CLASS IVB RECYCLING PERMIT (ENVREC1063430) ISSUED BY CDPH.

WHILE CANVASSING THE AREA SURROUNDING GII, LLC ON APRIL 24, 2020, ODORS WERE OBSERVED AT THE FOLLOWING LOCATIONS: HOME DEPOT (1232 W NORTH AVE), THROOP ST WABANSIA AVE, AND THROOP ST WILLOW ST.

IT IS A PUNGENT AND UNPLEASANT ODOR OF BURNING, SWEET METAL WITH WAVES OF AN UNFAMILIAR ODOR SIMILAR TO AN AIR FRESHENER. THE SAME ODORS WERE OBSERVED ONSITE AT GII LLC. UNTREATED EMISSIONS WERE OBSERVED ESCAPING THE SHREDDER. NO DUST OR DEBRIS WAS OBSERVED WHEN THE WORKERS DISTURBED THE MATERIAL PILES. NO MISTING CANNONS OR WATER TRUCKS WERE OBSERVED. AUTO FLUFF WAS OBSERVED AT THE INTERSECTION OF CLIFTON AVE AND MARCEY ST.

AN ENFORCEMENT ACTION IS ALREADY PENDING FOR THESE ISSUES.

2021 June 7 • Liberty Waste Services (Republic Waste), 2400 S. Loomis
Inspection #1689159

[...] Trash odors were detected throughout the site. Waste was dumped and handled outside of the roof covered area at the time of the inspection. The site contained excessive seagulls (vectors). Liquid leachate waste from trash trucks was observed on the facility access road. Excessive municipal solid waste litter was observed throughout the site and along access roads. I informed the scale house staff member of my findings. Management stated that due to landfill closures, was hauling delays have occurred.

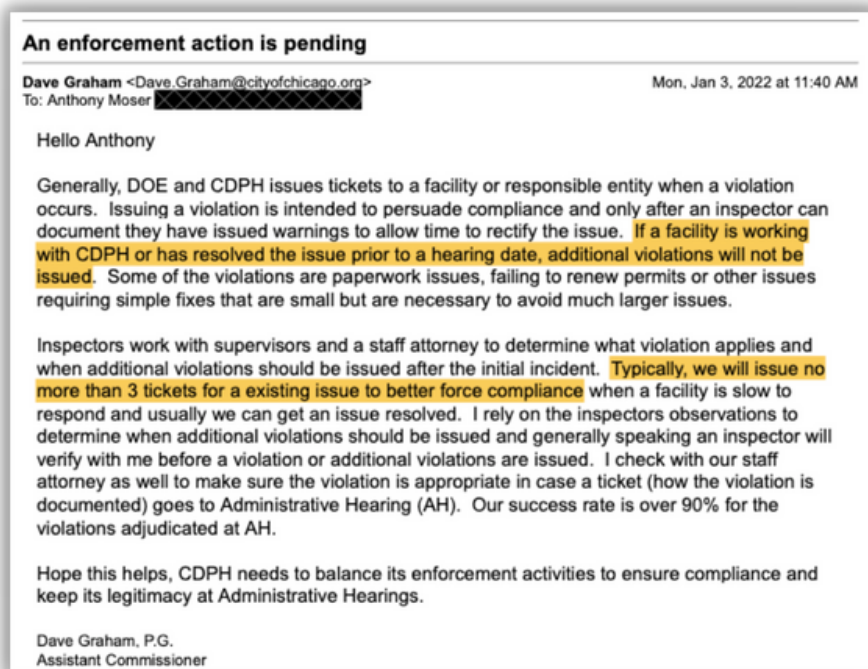
Enforcement Action: **Site conditions observed during the inspection did not comply with the facility operating permit** for litter removal and handling. Special condition B(7), waste handling must be performed under roof covered area on paved surfaces, and special condition B(20), the Permittee shall promptly remove and dispose of any litter that is observed onsite. **A Notice of Ordinance Violation is pending for similar violation** observed during my previous inspection.

2021 July 22 • Liberty Waste Services (Republic Waste), 2400 S. Loomis
Inspection #1707348

Enforcement Action: **Site conditions observed during the inspection did not comply with the facility operating permit** for litter removal and handling [...] A Notice of Violation is pending for permit violations from a previous inspection. [...] **No ticket was issued due to pending violation notice.**

THE "DAVE GRAHAM RULE"

Seeking to understand these inspections, we wrote to Assistant Commissioner Dave Graham. He responded that "there are no guidelines" about when the city will or will not issue more citations for more violations while previous tickets still have pending hearings. Later he followed up, explaining,



"If a facility is working with CDPH or has resolved the issue prior to a hearing date, additional violations will not be issued. [...] Typically, we will issue no more than 3 tickets for a existing issue to better force compliance when a facility is slow to respond and usually we can get an issue resolved."

DAH data suggests it is sometimes more than three tickets, but the strategy he describes is well documented in city inspection reports. A business is cited for environmental offenses on multiple occasions. The offenses continue but the city stops issuing tickets. Eventually most of the charges are dropped.

When asked to explain why so many violations are dropped as non-suits, he explained, "...how we issue tickets is a part of a legal strategy. [...] **Often tickets may be settled with some of the violations dropped to force a defendant to accept responsibility for issues of greatest concern.**"

In light of this strategy, the routine dropping of air pollution charges makes it clear that the city does not consider air pollution to be a significant concern.

The most explicit example of the Dave Graham Rule is an inspection of MAT Asphalt from July 17, 2020, during which an inspector documented clear violations and issued citations, which the Dept of Public Health then declined to prosecute because previous violations still had pending hearings.

Here is the full narrative for inspection #12156800 [line breaks added]:

"*MAIL*WHEN I ARRIVED TO THE AREA ON JULY 17, 2020, I OBSERVED 14 TRUCKS EXITING AND/OR ENTERING THE FACILITY IN A PERIOD OF 20 MINUTES, WHILE ON PERSHING RD. EACH TRUCK THAT EXITED/ENTERED HAD THEIR TRUCK BED'S COVERED WITH A TARP.

I WAS ABLE TO OBSERVE A TRUCK THAT WAS STOPPED AT THE RED LIGHT AT DAMEN AVE AND PERSHING RD. THIS TRUCK HAS ITS TRUCK BED TARP CLOSED AND I WAS ABLE TO OBSERVED VAPORS ESCAPING THE TRUCK BED. THESE VAPORS ARE CREATED FROM THE HOT MIX ASPHALT AND IT CAN LOOK LIKE DUST.

WHILE ON PERSHING RD NEAR DAMEN AVE, STRONG ODORS OF FRESHLY PRODUCED ASPHALT AND ODORS SIMILAR TO FIREWORKS (BURNING CHEMICALS/SULFUR) WERE OBSERVED. THESE ODORS ARE VERY UNCOMFORTABLE TO INHALE AND INSTANTLY MADE ME NAUSEOUS.

A CITIZEN THAT WAS WALKING IN THE PARK EXPRESSED HOW HORRIBLE THE ODORS WERE THAT DAY AND HOW DIFFICULT IT WAS FOR HIM TO BREATHE. I OBSERVE THE EMISSIONS FROM THE STACK BLOWING TOWARDS THE INTERSECTION OF DAMEN AVE AND PERSHING RD, BLOWING INTO AND OVER THE FACILITIES EAST OF MAT ASPHALT.

WHILE ONSITE, I OBSERVED MAT ASPHALT UTILIZING THEIR CRUSHER TO BREAK LARGE PIECES OF ASPHALT. I CHECKED THE CDPH DATABASE, HANSEN, TO ENSURE THAT THE CRUSHER IS LISTED ON THEIR CDPH AIR POLLUTION CONTROL PERMIT. IT WAS OBSERVED THAT THE REGULATED EQUIPMENT IS NOT LISTED ON THEIR CDPH AIR POLLUTION CONTROL PERMIT AND THEY ARE OPERATING THIS REGULATED EQUIPMENT WITHOUT A VALID CDPH AIR POLLUTION CONTROL PERMIT.

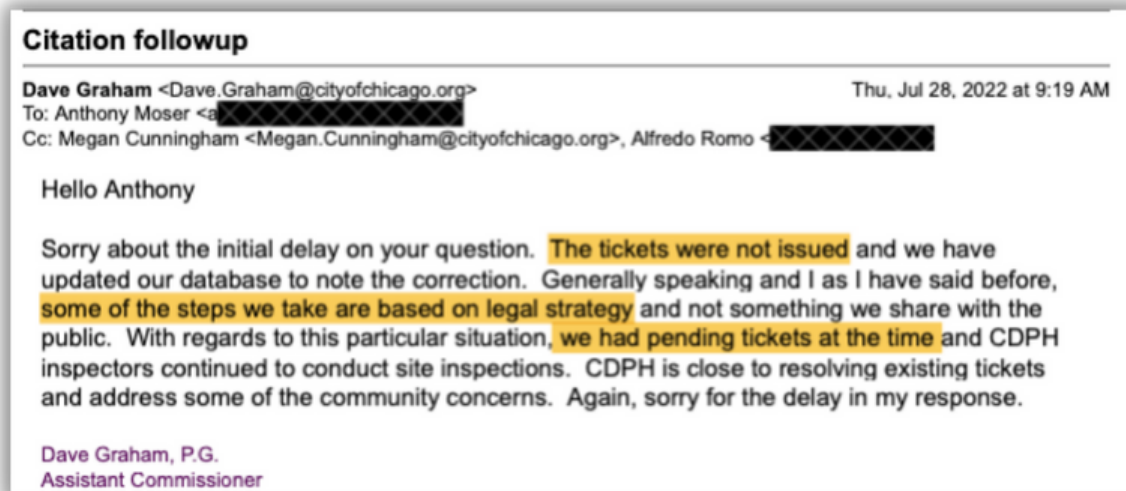
I ALSO OBSERVED AIR BORNE PARTICULATE CREATED BY THE CRUSHER. THERE ARE NO WATER MISTERS/WATER SPRINKLES TO CONTROL THE PARTICULATE. AFTER THE INSPECTION, I FOUND THAT THE WIND DIRECTION FROM 8AM-9AM WAS PROPELLING FROM THE SSW, SW, AND WSW. THIS MEANS THAT ODORS WERE OBSERVED AT THE SOUTHEAST SIDE OF MCKINLEY PARK AND THE NEIGHBORHOOD ENCLOSED BY DAMEN AVE, 37TH ST, ASHLAND AVE, AND PERSHING RD.

A NOV CITATION #E000038273 IS ISSUED FOR AIR POLLUTION CONTROL PERMIT REQUIRED (11-4-620(A)) AND AIR POLLUTION PROHIBITED (11-4-730) TO MAT ASPHALT LLC.

A NOV CITATION #E000038274 IS ISSUED FOR NUISANCE IN CONNECTION WITH BUSINESS (7-28-080) AND HANDLING MATERIAL SUSCEPTIBLE TO BECOMING WINDBORNE (11-4-760(A)) TO MAT ASPHALT LLC.

THE HEARING DATE FOR THE CITATIONS WILL BE ON DECEMBER 10, 2020 AT 1:00 P.M. AT 400 W. SUPERIOR ST. THE CITATION WILL BE SERVED VIA US MAIL TO MAT ASPHALT LLC'S AGENT LISTED ON THE ILLINOIS SECRETARY OF STATE CORPORATION FILE DETAIL REPORT. THE AGENTS NAME AND ADDRESS ILLINOIS IS MICHAEL TADIN, JR AT 4450 S MORGAN ST, CHICAGO, IL 60609."

In 2022 we attempted to learn the outcome of these tickets, only to find that the Dept of Administrative Hearings had no record of them. We [followed up](#) with Asst. Comm. Graham, and he confirmed that CDPH deliberately did not forward them for prosecution:



From the perspective of a business routinely violating environmental laws, the Dave Graham Rule turns pending hearing dates into a form of citation insurance. As long as previous violations remain unresolved and negotiations continue, no further tickets are issued. It is a direct incentive to negotiate in bad faith.

Of course, if companies are acting in bad faith, there should be evidence. If a company was not serious about compliance, but was just dragging out negotiations, we would expect to see a pattern of ongoing problems, denial of accountability, and lack of progress on the issues negotiated.

And if the city was serious about environmental enforcement, evidence of bad faith would lead to aggressive action, rather than continued cooperation.

Let's look at some inspection reports.

Case Study: T & B Limited

T&B Limited is a real estate company owned by the Tadin family, who also own MAT Asphalt. In fact MAT Asphalt operates on land owned by T&B Limited (on the [building permit application](#) Michael Tadin Jr signs for T&B as the landlord, for MAT Asphalt as the tenant, and for Morgan Street Development as the general contractor).

On May 30, 2018, CDPH inspected the property at 4008 S Ashland and found an illegal waste transfer station running the length of the Central Manufacturing District, from Ashland to west of MAT Asphalt. They returned in June to measure the debris.



A map from a city inspection report marks the location of illegally dumped materials

The [inspection report](#) states:

"A total of 6,362 cubic yards of illegally dumped mixed C & D debris waste, from 15 piles, were measured using a Rollatape measuring wheel, 100' tape measure and a Stadia Rod. [...]"

During the measurement exercise Mr. Joe Haughey identified himself as the site manager and Haughey stated that the spoil piles of debris would be removed from the site by the end of the week. The debris consists of dirty sand, broken concrete, asphalt grindings and pieces, clay, soil, broken sewer tiles, and other mixed debris."



Photos from the city inspection report document C&D waste

Three months later, the material had not been removed. CDPH emailed T&B's attorney, politely asking him to consider meeting and offering to continue the citations:

"Given the volume of material and significance of the penalties, I was wondering if you and your client would like to schedule a meeting with CDPH to discuss a resolution of this matter. We would like to see the site brought into compliance in a timely manner. As you know, every day the waste remains on site potentially subjects the owner to additional penalties.

Please let me know if you'd like to set up a meeting at CDPH's office in the near future. In that case, we can plan on continuing the matter tomorrow."

The citations were continued.

Two weeks later, CDPH inspected an adjacent T&B property at 4010 S Damen and found illegal dumping in progress at that very moment.

Trucks from another Tadin company, MT Transit, dumped construction debris in front of the inspectors and then fled the scene. One agreed to wait for his truck to be impounded, then drove off, saying his supervisor had told him to leave:

Upon arrival at the site, a dump truck with MT Transit signage arrived and immediately dumped a load of construction and demolition debris. Inspector Singler provided to the driver, City of Chicago credentials. The driver was asked to remain on site, but dropped the bucket and sped off during the conversation.

A second truck arrived within minutes of the initial visit, with the same verbiage on the side of the truck. The second truck dumped a load of stone.

The second driver agreed to remain on site while the Chicago Police were contacted for the purpose of vehicle impoundment. The second driver left the scene after dumping his load of stone and waiting approximately ten minutes.

The driver was questioned as he was leaving the property as to who gave him permission to leave during a police activity, and the driver stated that his supervisor told him to leave the site.



An MT Transit truck illegally dumps a load of C&D waste



A T&B employee blocks a city inspector

The inspector did issue citations. But the fact that there was a second illegal dump site, or that drivers fled the scene before the police arrived at the instruction of their supervisor, did not deter the city from agreeing to another dozen continuances for the initial violations.

Instead, the two sets were grouped together and talks continued. Inspections also continued. On February 21, 2019 a CDPH inspector returned to the site for a [follow up inspection](#), but was blocked from the property by an employee who parked their car across the entrance. On that very same day, the city agreed to another continuance.

The car blocked the inspector from entering until Anthony Tadin arrived. The inspector observed that there were still 300 cubic yards of excavated sand and two huge piles of limestone.

While denying access to a city inspector is itself a violation of the municipal code, no further citations were issued, and there would be 7 more continuances.

The two sets of tickets were finally resolved in November of 2019. The city dropped three out of four citations issued for each dump site, and [T&B pleaded liable](#) to dumping on real estate without a permit. They paid a \$12,500 fine for each location.

What does it mean to be "working with CDPH" to come into compliance around illegal dumping? Unexpectedly, it would seem to include leaving debris for months, continuing the practice at a second location, instructing drivers to flee city inspectors, and physically preventing access to a work site.

Later inspections of MAT Asphalt routinely found further evidence of illegal dumping. MAT's general manager, who is also the site manager for T&B Ltd, told city inspectors that MAT did not lease the part of the property where the dumping had occurred, so they were not responsible. The inspectors noted that they could not find any information about another company leasing that property, but that it was owned by T&B Ltd. This happened more than 20 times.

The company was eventually issued two additional citations. The other inspection reports conclude, "CDPH will continue to observe and investigate."

Settlements

Most of the time when the city settles, agreement is reached on or near the date of the final hearing. Both parties attend the hearing and agree that for certain violations, the company will plead liable, and for others, the city will drop the charges ("city non-suit" in the data).

Separately, there are a small number of settlement agreements that avoid DAH altogether, where the company and CDPH agree to terms specified in a contract. We obtained copies of the ten [settlements of this kind](#) entered into by the city from 2018-2022. They show the same patterns we have already documented.

For example, over a five month period in 2018, Reliable Asphalt was cited 6 times for air pollution, failing to control windborne material, and exceeding the plans in their permit. Starting from the first violation, there were nine hearing dates. In February of 2019, they reached an [agreement with the city](#) to pay \$15,000, repair their driveway, add a slotted drain, and install a wheel wash station. All charges were dropped.

In a more public example, MCM Industrial Services was cited for their role in the botched Hilco demolition that blanketed the Little Village area in a cloud of dust. They were issued NOVs for

- Failed to take reasonable precautions to minimize air pollution while handling a substance or material that may become airborne or be scattered by the wind
- 11-4-2170 Demolitions and renovations: permit and notification
- 13-32-125(2)(a) Must employ wetting/abatement measures to prevent off-site dust/debris
- 7-28-080 Nuisance in connection with business

After negotiating through a dozen hearing dates, MCM agreed to pay \$17,000 with [no admission of liability](#) and the city dropped all charges.

In 2020, Sims Metal Management was cited for 30 violations, including 9 for air pollution prohibited, 8 for nuisance in connection with a business, 6 for dumping on real estate without a permit, and three for "smoke and gases from internal combustion engines of vehicles." They negotiated at length, and after a dozen hearing dates, they entered into [an agreement with the city](#) in late 2021.

Under Mayor Lightfoot, an ordinance introduced escalating penalties for air pollution in January 2021. [Here's how they described it:](#)

Under the new ordinance, these fines will increase for large facilities to \$5,000 to \$10,000 for a first offense, \$10,000 to \$15,000 for a second offense, and \$15,000 to \$20,000 for any subsequent offense. The fine can go up to \$50,000 if the violation is egregious and involves visible emissions, prohibited air pollution or improper handling of material that can become windborne.

Sims had 9 citations for air pollution in a single year. If they had been found liable for just those violations, the fines outlined above would have totaled between \$120,000 and \$165,000. Instead the city settled, dropping all charges.

Sims admitted no liability and paid \$18,000.

Unused Powers

While we have spent a lot of time looking at data about citations, fines, and city practices around them, **one of the key findings of this report is that the city does not have to limit itself to fines and citations** at the Dept of Administrative Hearings.

In fact, the city has significant enforcement powers, explicitly authorized in the municipal code, they rarely or never use. It is not clear from available records if they have ever been used. They include abatement orders, attaching conditions to operating permits, seeking injunctions in circuit court, and pursuing fines on a per-day basis.

11-4-800(b) Abatement orders

Upon finding a violation of Section 11-4-715(a), any emission limitation, performance standard or permit requirement set forth in this chapter or any air pollution control permit or certificate of operation condition imposed by the commissioner pursuant to this article, **the commissioner may issue an emergency or non-emergency cessation order or an emergency or non-emergency abatement order** in accordance with the provisions of section 11-4-025 of this Code to any person who causes such violation. Such cessation or abatement order may be in addition to the administrative proceedings, fines and penalties herein provided.

In effect, when a company has been found to violate the requirements of their air pollution control permit - for example, by failing to control air pollution - the commissioner may order them to cease operations in part or in whole until the underlying issue is addressed and the risk of further harm has been abated.

Emergency abatement requires an “imminent and substantial risk to the public health or safety or to the environment.” The definition provided in 11-4-025 says it "shall include a threat to human health or safety or to the environment that is expected to occur within a reasonably short time, *or that is present now, although the impact of the threat may not be felt until later* [emphasis added]."

There is a growing body of scientific evidence about the cumulative harms of air pollution, including increased COVID-19 risk and mortality, higher rates of asthma, increased risk of suicide, and shortened life span, all of which would seem to clearly qualify as threats to human health and safety, even though the impact may not be felt until later.

We are not legal experts and cannot say with certainty what level of pollution is sufficient to meet the standards defined in the municipal code. It is difficult to say for sure because the city has not, to our knowledge, issued any emergency abatement orders - even in the case of companies found routinely to be polluting the air, emitting noxious odors, or blanketing neighborhoods in finely shredded bits of metal and glass (euphemistically called "auto fluff").

However the Commissioner is also authorized to issue non-emergency abatement orders:

(2) Non-emergency abatement – Authority. If the commissioner determines that any person is violating any of the provisions of this Code which are under the jurisdiction of the commissioner or the rules and regulations promulgated thereunder or the conditions of any permit or authorization issued thereunder, but such violation has not created, or is not creating, an imminent and substantial risk to the public health or safety or to the environment as defined in subsection (a)(1) above, then **the commissioner may provide the person with a written order to address and correct the violation(s) within a time frame prescribed by the commissioner.**

While the standards required for emergency abatement are rigorous enough to be debated, there can be no argument that the companies cited above were violating provisions of the code under the jurisdiction of the commissioner. The language in 11-4-025(c)(2) is plain: the Commissioner can provide written orders directly requiring companies to address and correct violations.

It is unclear why the city has never chosen to do this.

11-4-670 Standards for the issuance of annual certificate of operation

(a) The commissioner shall not issue or renew a certificate of operation unless the applicant has certified that it is in compliance with all of the following standards. The applicant must

(1) operate in a manner that is not detrimental to public health or safety, or to the environment;

(2) comply with all substantive standards set forth in Part C of this article or any regulation promulgated pursuant to this article;

(3) hold an air pollution control permit for all regulated equipment or areas in the facility for which a certificate of operation is sought, and comply with all terms of all air pollution control permits; and

(4) keep all regulated equipment or areas in good repair and free from operational defects.

(b) **The commissioner shall have authority to impose conditions necessary to achieve the purposes of this article upon any certificate of operation issued pursuant to this section.** Violation of any certificate of operation condition shall be considered to be a violation of this section.

The language in this section is also plain: the commissioner of the Department of Public Health has the explicit authority to impose conditions necessary for the facility to operate "in a manner that is not detrimental to public health or safety, or to the environment."

We also know from inspection records like #1689159 of Republic Waste that the city has at least occasionally added special conditions to operating permits. Unfortunately, we also know from that inspection that violating those conditions does not result in meaningful consequences, and may not even result in citations.

11-4-810(a) Circuit Court

Environmental violations and fines are defined in 11-4-810 of the municipal code. That section begins:

(a) In addition to any penalty imposed by Section 11-4-800 of this article, and **in addition to permanent or temporary injunctive relief that the City may seek in the Circuit Court of Cook County**, whenever a facility is in violation of any term or condition of an air pollution control permit, certificate of operation, any section of this article, or any rule or regulation promulgated pursuant to this article, the following penalties shall apply

When we spoke to a judge at the Dept of Administrative Hearings, we asked under what circumstances the city might choose to pursue action in Circuit Court instead of DAH.

They gave the example of the Dept of Buildings: if a building owner was in violation of the building code, but it posed no immediate threat to the health and safety of others, the city would likely issue a citation to be adjudicated by DAH. But if the building posed an imminent risk of collapse, the city might go to Circuit Court in order to seek an injunction compelling immediate action.

Indeed, the settlement contracts signed by the city all stipulate that Circuit Court would be the venue for any formal action alleging breach of the agreement. But like the abatements, it is not clear if the Dept of Public Health, or the Dept of Environment before it, has ever directly sought an injunction to stop an industrial facility from polluting - regardless of how many, how frequent, or how serious the complaints or violations.

11-4-810(b) Daily Fines

(b) Each day of any violation of the provisions of this article shall constitute a separate and distinct offense, and **for each such violation the fines imposed in subsection (a) above shall be assessed per day.**

For many reasons, we believe it is problematic that the Dept of Public Health relies almost exclusively on fines and citations to enforce environmental laws. However even within this limited scope, the city fails to fully use the powers granted by the municipal code.

Section 11-4-810(b) states clearly that each day of any violation "shall constitute a separate and distinct offense," and that fines shall be assessed "per day." Not "may," but "shall."

Inspection reports for repeat offenders document day after day of unambiguous violations, sometimes literally writing, "in violation of their permit."

But under the Dave Graham Rule, they do not issue day after day of tickets. If the city is determined to limit its action to fines, they could still do what the plain language of the municipal code requires: issue citations and fines for every day the law is violated.

Conclusions and Recommendations

Let us review what the data shows about how Chicago enforces environmental laws. The Dept of Environment was dismantled, and the number of violations issued dropped dramatically. Enforcement is mostly focused on small offenses. Consequences for pollution by industrial facilities are slow, few, and mild. Citations for air pollution are rarely issued and frequently dropped. Escalating fines introduced in 2021 remain unused, as do many of the powers granted by the municipal code. CDPH deliberately does not issue citations to repeat violators.

The simplest explanation of these findings is that the City of Chicago does not sincerely engage in environmental enforcement, but instead performs a kind of enforcement theater.

They busy themselves with tickets for construction site cleanliness, frequently issued and quickly resolved. Meanwhile, industrial facilities pollute at scale, accompanied by years of complaints, while regular inspections document conditions that violate the law and their permits. In response, the city acts with slow deference, pursuing a legal strategy of not issuing citations to repeat violators. They observe and investigate, but they do not act.

When companies pollute, there are no consequences meaningful enough to affect the operation of their business. The city does not compel them to stop. When they deny access to city inspectors and keep doing the very things for which they have been cited, the city grants them grace and continuances, negotiating lower fines and dropped charges.

When those citations are resolved, the process begins again: a handful of tickets, a string of hearing dates, and endless assurances that the city is meeting with those responsible to seek a speedy path to compliance. An enforcement action is pending.

We call this enforcement theater because **when they act, it is to show they are acting, and not because those actions have meaningful outcomes.** The show of activity obscures the fact that the city has real powers to hold polluters accountable, and chooses not to.

We conclude that environmental enforcement in Chicago is ineffective, and that it is ineffective by choice.

RECOMMENDATIONS

1. **Make full use of the powers granted by the municipal code**

The city has authority it has not used and tools that it has not tested. Fine companies for every violation, issue abatement orders to serial offenders, attach conditions to their operating certificates, and enforce them. Air pollution is a public health emergency, and the city's actions must reflect that urgency.

2. **End the "Dave Graham Rule"**

Refusing to cite companies for ongoing violations is incoherent, and directly contradicts the municipal code requirement to consider all violations on a per-day basis. There is no evidence that this strategy has been effective at bringing companies into compliance - only that the city has declined to issue citations.

3. **Restore the Department of Environment with a budget of ten million dollars**

When it was last funded, The Dept of Environment had a budget of just under \$5 million (adjusted for inflation). In the time since it was disbanded, the climate emergency has accelerated dramatically; 8 of the 10 hottest years on record have happened since then. Doubling the previous budget would signal that the city intends to begin taking environmental issues seriously.

4. **Pass a cumulative impacts ordinance**

The city does not meaningfully enforce environmental laws. Permitting new facilities they are unable to effectively regulate is reckless and dangerous, especially as current zoning practices continue to concentrate them in areas already overburdened with pollution. We must consider what pollution is already present before adding more, and we must codify that requirement into law. We can start by requiring a robust environmental impact assessment of any planned developments (PDs) and expanding what projects receive a PD designation.

5. **Tie city contracts to environmental compliance**

The city should require the highest standard of environmental compliance from companies that want to do work on its behalf, and it should create a list of bad actors who are ineligible as long as they are non-compliant. The city should be pushing companies to quickly come into compliance, instead of incentivizing them to prolong negotiations.

6. **Hold inter-departmental hearings**

It's past time to publicly review current environmental enforcement and procurement practices as a first step towards passing stronger legislation and taking more meaningful action.

Appendix A: Data and Methods

SOURCES

The analysis in this report relies heavily on city data from multiple sources. All of the [source data is shared here](#).

[CDPH Inspections data](#) and [CDPH Complaints data](#) were pulled from the city data portal. Emails were either sent to us directly or obtained via FOIA request; city settlements were obtained via FOIA request to CDPH.

The Dept of Administrative Hearings data for environmental violations prosecuted from 2002-2022 was obtained via FOIA request, as were scanned copies of several individual violation histories (reports, emails of scheduling, final outcomes).

HEARINGS DATA

Each record in that data provided by DAH represents a hearing date for a specific docket number and MCV (municipal code violation) count.

When the report refers to "violations," this is what it is describing: a specific MCV count, for a particular docket number. Each violation is the result of a citation (a "ticket") being issued. Some citations include multiple violations, which are listed as individual counts on the docket. When inspectors describe issuing citations, they will typically say they "issued an NOV" or Notice of Violation.

When multiple violations result from a single inspection, they will generally be given the same docket number by DAH, allowing them to be processed together on the same hearing dates. Each violation can still have a separate outcome or fine.

PROCESSING

In order to analyze the DAH data, the many hearing dates for the many violations were first reduced to a list of unique docket numbers and MCV counts, or docket-and-counts.

We then joined in metadata about those violations: total number of hearings, final outcome, fines if there were any, whether they were issued by DOE or CDPH. For an example of the way the data looked after this, see the [Pullman Innovations records](#).

We also created some simple classifications to make it easier to compare violations and outcomes. We classified the "disposition description" of each violation's final hearing by the outcome: "Liable," "Not liable" or "City non suit." For a closer look at the exact dispositions (e.g. Liable by plea, Liable by prove-up, liable - contested finding), please explore the source data.

We also classified the number of hearing dates, calling less than 5 "few", 5-9 "several" and 10 or more "many." These are not official categories but they effectively show changes in the city's approach over time.

Case (Docket Number)	NOV(s)	Violation Date	Code Sections and Paragraphs
20DE000305	E000034590 E000034591	3/6/20	11-4-620 11-4-760(a) 11-4-030(b) 11-4-730

The above excerpt from a settlement agreement shows there were 4 code violations on 3/6/2020. They were written up as two tickets, or "notice of violation" (NOVs); these are also referred to as citations. Since they happened on the same day, 4 all violations are part of the same docket.

Below is how those same 4 violations appeared in the data after it was processed.

docket number	respondent	violation address	nov issued	mcv count	violation	docket and count	total hearing dates	last hearing date	disposition description	imposed fine detailed	hearing dates	issuing dept	outcome
20DE000305	SIMS METAL MANAGEMENT C/O ILLINOIS CORPORATION SERVICE C	2500 S PAULINA ST	3/6/2020	1	7-28-440 Dumping on real estate w/o permit.	20DE000305-1	13	10/21/2021	City non-suit	0	many	CDPH	Non suit
20DE000305	SIMS METAL MANAGEMENT C/O ILLINOIS CORPORATION SERVICE C	2500 S PAULINA ST	3/6/2020	2	11-4-730 Air pollution prohibited	20DE000305-2	13	10/21/2021	City non-suit	0	many	CDPH	Non suit
20DE000305	SIMS METAL MANAGEMENT C/O ILLINOIS CORPORATION SERVICE C	2500 S PAULINA ST	3/6/2020	3	11-4-760(a) Failed to take reasonable precautions to minimize air pollution while handling a substance or material that may become airborne or be scattered by the wind.	20DE000305-3	13	10/21/2021	City non-suit	0	many	CDPH	Non suit
20DE000305	SIMS METAL MANAGEMENT C/O ILLINOIS CORPORATION SERVICE C	2500 S PAULINA ST	3/6/2020	4	000001	20DE000305-4	13	10/21/2021	City non-suit	0	many	CDPH	Non suit

Appendix B: Source Documents, Charts And Exports

Source [Data](#) and [Documents](#)

- [DAH Hearings and outcomes, 2002-2022](#) ([Part One](#), [Part Two](#))
- [City Settlement Agreements](#) 2018-2022
- [Pullman Innovations](#)
 - [Case Files](#)
 - [Draft Settlement](#)
 - [Negotiations](#)
 - [Inspections](#)
- [Dave Graham Emails](#)
- [T&B Ltd Case files](#)

In addition to the source data, summary tables, and charts, we have prepared reference exports for several of the companies named in this report. These reference spreadsheets attempt to gather all relevant violations, inspections, complaints, and hearings for each company by using all known aliases, spellings, and addresses.

They are for reference only. Because of the inconsistent naming and addresses in the data sets, there may be missing records or false positives. The data in this format was not used in the report analysis, but only to quickly find relevant records for manual review. Please use them carefully.

Exports

- [Charts](#) (PNG and SVG export)
- [Source code to generate charts](#)
- [Processed DAH data - individual violations and outcomes](#)
- [Associated records by company \(reference\)](#)

APPENDIX C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604

DATE: OCT 26 2016

SUBJECT: CLEAN AIR ACT INSPECTION REPORT
Metal Management Midwest, Inc., Chicago,
Illinois

FROM: Scott Connolly, Environmental Engineer
AECAB (IL/IN)

THRU: Nathan Frank, Section Chief
AECAB (IL/IN)

TO: File

BASIC INFORMATION

Facility Name: Metal Management Midwest

Facility Location: 2500 S Paulina St, Chicago, IL

Date of Inspection: September 7, 2016

Lead Inspector: Scott Connolly, Environmental Engineer, US EPA

Other Attendees:

1. Ken Ruffatto, Environmental Engineer, US EPA

Purpose of Inspection: To address citizen dust complaints

Facility Type: Metal Recycling and scrap yard

Arrival Time: 8:54 am

Departure Time: 9:30 am

Inspection Type:

- Unannounced Inspection
 Announced Inspection

OPENING CONFERENCE

- Credentials Presented
- CBI warning to facility provided

Company Ownership: The Company is listed as Metal Management Midwest, Inc., but is doing business as Sims Metal Management.

Process Description:

The facility crushes and shreds cars, and other scrap metal in their shredder to obtain scrap sizes that can be melted down for reuse.

Staff Interview: We did not enter the facility but spoke with a citizen, named Jim, who prefers not to give his last name. He works at the City of Chicago Streets and Sanitation Facility directly east of the Sims Metal Management property. The garages where he works are about 300 meters from the shredder and there is an approximately 12 foot high wall separating the properties. Jim stated that dust and smoke from the shredder and car crusher blows over into the garages and creates dust clouds and haze over the area. He says that dust accumulates on the cars, trucks and windows. He has noticed that he and his coworkers have had increased respiratory stress during periods when the dust is worse. On the day of the visit he mentioned that the smoke was worse before we arrived and had improved a little since we arrived.

TOUR INFORMATION

EPA toured the facility: No

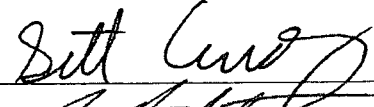
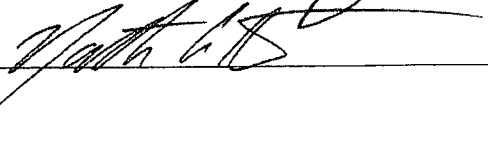
Data Collected and Observations:

Significant amounts of dust and smoke were observed exiting the top of the shredder. Clouds of smoke floated up out of the shredder and over the fence south of the Streets and Sanitation parking area. Not all smoke exiting the shredder seemed to be crossing the property line, and it seemed that gusts of wind were variable.

Field Measurements: were not taken during this inspection.

Concerns: Dust crossing the property line is a concern and there was significant amounts of PM observed exiting the shredder uncontrolled.

SIGNATURES

Lead Inspector:  Date: 9/14/16
Section Chief:  Date: 10/29/16

Facility Name: Metal Management Midwest
Facility Location: 2500 S Paulina St. Chicago, IL
Date of Inspection: September 7, 2016

APPENDICES AND ATTACHMENTS

- Appendix A: Photos

Facility Name: Metal Management Midwest
Facility Location: 2500 S Paulina St. Chicago, IL
Date of Inspection: September 7, 2016

APPENDIX A: FIELD MEASUREMENT DATA

Photos can be assessed at: G:\Air Enforcement And Compliance Branch\IL and IN\SConnolly

Photo No.	Date and Time	Description
IMG_0001	September 7, 2016 at 8:53PM	Dust and Smoke exiting the Shredder
IMG_0002	September 7, 2016 at 8:53PM	Dust and Smoke exiting the Shredder
IMG_0003	September 7, 2016 at 8:53PM	Dust and Smoke exiting the Shredder
IMG_0004	September 7, 2016 at 8:54PM	Dust crossing the property line over the boundary fence
IMG_0005	September 7, 2016 at 8:55PM	Dust and Smoke exiting the Shredder
IMG_0006	September 7, 2016 at 8:56PM	Dust crossing the property line over the boundary fence
IMG_0007	September 7, 2016 at 8:56PM	Dust and Smoke exiting the Shredder
IMG_0008	September 7, 2016 at 8:57PM	Dust and Smoke exiting the Shredder
IMG_0009	September 7, 2016 at 8:58PM	Dust and Smoke exiting the Shredder



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604**

DATE: JAN 13 2017

SUBJECT: CLEAN AIR ACT INSPECTION
REPORT
Metal Management Midwest, Inc., Chicago
Illinois

FROM: Scott Connolly, Environmental Engineer
AECAB (IL/IN)

THRU: Nathan Frank, Section Chief
AECAB (IL/IN)

TO: File

BASIC INFORMATION

Facility Name: Metal Management Midwest, Inc.

Facility Location: 2500 South Paulina St. Chicago, Illinois

Date of Inspection: December 2, 2016

Lead Inspector: Scott Connolly, Environmental Engineer, US EPA

Other Attendees:

1. Sara Loiacono, Environmental Scientist, US EPA
2. Debbie Hays, Central Region SHEC Director, SIMS Metal Management
3. George Malamis, Regional Ferrous Manager, SIMS Metal Management
4. Sam Flores, Plant Supervisor SIMS Metal Management

Purpose of Inspection: To inspect the facility's compliance with the Illinois SIP, to investigate if emission testing at the facility is possible and to address many citizen complaints.

Facility Type: Scrap yard that prepares post-consumer metal for recycling

Arrival Time: 11:00 am

Departure Time: 12:07 pm

Inspection Type:

- Unannounced Inspection
- Announced Inspection

OPENING CONFERENCE

- Credentials Presented
- CBI warning to facility provided

The following information was obtained verbally from Debbie Hays or George Malamis unless otherwise noted.

Company Ownership: The Company owned by Metal Management Midwest, Inc., but is doing business as Sims Metal Management (SIMS).

Process Description:

The facility processes post-consumer metals for recycling in steel mills and other foundries. Scrap metal arrives at the facility mostly by truck, but sometimes by barge. Cars, sheet iron, appliances and sheet fencing are normally the main items processed in the shredder. Cranes are used to load scrap metal onto the conveyer that feeds the hammer mill shredder. The shredder breaks apart the metal into small pieces that can be easily transported. The shredder is equipped with a water spray system that increases the spray depending on the power sent to the motor. Shredded scrap exits the shredder unit and is transferred on two open conveyors to the magnetic separator. The separator removes ferrous from non-ferrous materials and sends each to separate bins for storage. The SIMS facility operates a Z-box air cyclone system that sucks lighter materials and dust out of the scrap to maintain the consistency of the scrap. This system uses recirculating air which results in no emission point.

Staff Interview: Facility staff stated the shredder usually operates about 4-6 hours per day and starts operations after 6 am when the employees arrive. Ms. Hays stated that the facility keeps a log of start and stop times of the shredder and the amount of water used. Mr. Malamis stated that the facility processes mostly white goods or post-consumer scrap and about 35-40% cars. SIMS has contracts with the car decommissioning companies that provide the bulk of the scrap automobiles to SIMS. These contracts require the companies to certify that they remove fluids, refrigerants, and engines from car husks before sending them to SIMS. When SIMS receives scrap from non-contracted sources Ms. Hays stated that facility staff remove fluids and refrigerants from the decommissioning station on site. I asked about explosions occurring in the shredder because they were a component of the community complaints, and facility staff stated that they are very rare occurrences that have not happened in a long time. The operator of the shredder is supposed to maintain a log of explosions, which the company calls "energy releases," that includes time of occurrence.

TOUR INFORMATION

EPA toured the facility: Yes

Data Collected and Observations:

We toured the facility to specifically view the shredder Z-box system and water spray application. During our tour, fully shredded scrap metal was exiting a closed conveyor belt, which deposited it into piles. The piles and point of contact of the scrap metal stream appeared to be smoking and emitting some steam. The facility lists the Z-box system as control equipment for its shredder, but there are two uncovered conveyors that shredded scrap travels on before it enters the ferrous metal separator and Z-box system. During observation of shredder operations, we observed a smoky haze that drifted down from the steam plume exiting the top of the shredder. The haze lingered for several minutes before dissipating, and haze events were observed several times. **At times during operations, we observed metal scrap flying out of the top of the shredder.** At 11:58 am we observed an explosion in the hammer mill that resulted in a fire and brown smoke rapidly exiting the top of the shredder. The entire event lasted about 30-45 seconds and caused vibrations that could be felt from at least 100 meters from the shredder. We also noted that there were large amounts of painted scrap in the material sent into the shredder.

Field Measurements: were taken during this inspection.

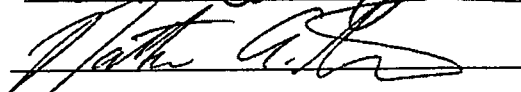
The hammer mill shredder was observed and recorded with the FLIR infrared camera. Using the FLIR infrared camera, we observed hydrocarbons exiting the top and bottom of the shredder and three videos were taken.

CLOSING CONFERENCE

Concerns: We observed hydrocarbons exiting different parts of the hammer mill shredder and pointed this out to facility staff. We also observed particulate matter emissions exiting the shredder in clouds that faded to a haze before it was blown east away from the equipment. Additionally, **we observed an explosion in the shredder that resulted in flames, metals, and brown smoke shooting out of the top of the shredder.**

SIGNATURES

Lead Inspector:  Date: 12/16/16

Section Chief:  Date: 1/3/17

Facility Name: Metal Management Midwest
Facility Location: 2500 S Paulina Ave, Chicago, IL
Date of Inspection: December 2, 2016

APPENDICES AND ATTACHMENTS

- Appendix A: FLIR Videos

Facility Name: Metal Management Midwest
Facility Location: 2500 S. Paulina Ave. Chicago, IL
Date of Inspection: December 2, 2016

APPENDIX A: FLIR VIDEOS

Videos can be assessed at: G:\Air Enforcement And Compliance Branch\IL and INASConnolly

Photo No.	Date and Time	Description
MOV_1722	December 2, 2016 at 9:12 AM	Steam and Hydrocarbons exiting the top of the Shredder as seem from the east
MOV_1723	December 2, 2016 at 11:46 AM	Steam and Hydrocarbons exiting the top of the Shredder as seem from the west
MOV_1724	December 2, 2016 at 11:48 AM	Hydrocarbons exiting the side of the Shredder as seen from the west