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Sent: Friday, January 29, 2021 4:56 PM
To: envcomments
Cc: Nancy Loeb; Logan Crossley; Anna Busch; Dave Graham; Megan Cunningham; Jennifer Hesse; Mort Ames; Daniel Lurie; Candace Moore; Angela Tovar
Subject: RE: Public Comment on the Large Recycling Facility Application of General III, LLC (d/b/a Southside Recycling)
Attachments: Comment of SSCBP on GIIIRMG permit application 1-29-21.pdf

[Warning: External email]

To: City of Chicago
Chicago Department of Public Health

Please see the attached Comment sent on behalf of the Southeast Side Coalition to Ban Petcoke (SSCBP) to comment on the application of General III, LLC for a Large Recycling Facility permit to operate a large recycling facility at 11600 S. Burley Avenue.

Should you have any problems opening the attached letter, please do not hesitate to contact me.

Thank you, Dolores

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January 29, 2021

City of Chicago
Chicago Department of Public Health

***Re: Public Comment on the Large Recycling Facility Application of General III, LLC
(d/b/a Southside Recycling)***

Submitted via e-mail to: envcomments@cityofchicago.org

We write on behalf of the Southeast Side Coalition to Ban Petcoke (SSCBP) to comment on the application of General III, LLC (d/b/a Southside Recycling) (hereinafter GIII/RMG) for a Large Recycling Facility permit to operate a large recycling facility at 11600 S. Burley Avenue. This comment is also supported by the Southeast Environmental Task Force (SETF), People for Community Recovery (PCR) and the Natural Resources Defense Council (NRDC). This comment focuses on GIII/RMG's claim that the layout drawings for its ferrous and non-ferrous material processing systems are proprietary information that GIII/RMG may choose not to disclose to CDPH and the public. That claim is wrong and CDPH must not grant a permit to GIII/RMG without being given full access to this information. Likewise, this information is critical to the public's ability to comment on the permit application and CDPH must deny GIII/RMG's proprietary information claim in order to afford the public an opportunity to comment meaningfully.

The CDPH Rules for Large Recycling Facilities (the "Large Recycling Rules") require that an applicant provide an "Air Study" evaluating emissions and air dispersion at the facility. The Air Study "shall evaluate airborne emissions from each Point Source and Fugitive Source [and] PM10 emissions that may be generated at the Facility from sources such as, but not limited to, Processing equipment" ¹ The materials submitted by GIII/RMG in its November 11, 2021, permit application were not sufficiently detailed to satisfy the requirements for an Air Study. CDPH therefore called out this deficiency in Item 17 of the Letter of Deficiency sent to GIII/RMG on December 23, 2020 (the "Deficiency Letter"), and instructed GIII/RMG, pursuant to 3.9.21.1 of the Large Recycling Rules, to provide "the layout drawings for the ferrous material and non-

¹ § 3.9.21.1 Rules for Large Recycling Facilities, CDPH (June 19, 2020). Available at: https://www.chicago.gov/content/dam/city/depts/cdph/InspectionsandPermitting/CDPH-Rules-for-LargeRecycling-Facility_Effective.6_5_20-Corrected-June.19.2020.pdf.

ferrous material processing systems.”² Rather than providing the needed layout drawings, GIII/RMG claimed that the relevant systems are “proprietary and contain information critical to the ongoing sustainability of the business.”³ With no support—and ignoring the need for the drawings in order for CDPH (and the public) to assess the information and data included in the Air Study—GIII/RMG simply asserts that the processing and recycling rates of the systems reflected in the drawings are “unmatched in the industry,” and GIII/RMG may therefore choose not to produce the drawings. This response is absurd and, if credited, would allow any business to ignore CDPH rules and preclude full CDPH review of the health and environmental effects of a proposed recycling facility any time an applicant chose to withhold information.

For the following reasons, as a matter of both law and policy, GIII/RMG cannot refuse to provide layout drawings to CDPH, and CDPH in turn cannot keep those drawings from being publicly disclosed, on the mere basis of GIII/RMG’s assertion that the layout drawings are “proprietary.”

I. There is no legal basis for RMG/GIII to withhold information or drawings from CDPH.

CDPH is charged by the City of Chicago with a critical role in furtherance of important public interests. Chapters 2-112 and 11-4 of the Municipal Code give the Department of Health the duty to enforce environmental rules and protect the public health and safety of the citizens of Chicago. Pursuant to the fully authorized and properly adopted Large Recycling Rules, CDPH seeks to fulfill its duty by collecting information necessary to evaluate the public health implications of GIII/RMG’s proposed facility. GIII/RMG cites no legal basis for withholding the drawings needed by CDPH for its review of the permit application—and cannot.

The Deficiency Letter is clear. CDPH requires the drawings in order to assess the required Air Study. Moreover, and shockingly, (and as noted in the Deficiency Letter) GIII/RMG actually provided these drawings in an unredacted form to Illinois EPA as part of GIII/RMG’s construction permit application filed with IEPA. The Large Recycling Rules directly address this point: “Documentation submitted to other regulatory agencies, such as EPA, IEPA . . . relating to the construction or operation of a . . . Recycling Facility . . . *must* be included in the application” Large Recycling Rules, paragraph 3 (emphasis added). Further, “Pursuant to 11-4-310 of the Code, the Applicant *may request* the Department to treat with confidentiality any information the

² Letter from CDPH to Hal Tolin, Subject: Class IVB Large Recycling Facility Application Deficiency Letter and Request for Additional Information (December 23, 2020). Available at: <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/General-III-Deficiency-Letter.pdf>.

³ Response to December 23, 2020 Request for Additional Information for a Class IVB Large Recycling Facility Permit Application located at 11600 S. Burley Avenue, Chicago, Illinois (hereinafter GIII/RMG Response), Addendum 1 at page 13.

Applicant deems a Trade Secret or containing Confidential Business Information.” *Id.* (emphasis added). Nothing in the Large Recycling Rules allows GIII/RMG on its own to declare a document “proprietary information” and withhold it from CDPH.

Furthermore, CDPH’s instruction to provide the drawings is not only within its regulatory bounds but is essential to evaluating the Air Study—a key component to assessing potential health and environmental harms from the GIII/RMG facility.⁴ As NRDC explains in separate technical comments being submitted, and which SSCBP adopts herein:

“With respect to the technical need for these drawings, the applicant claims that ‘any and all information regarding environmental impacts of the ferrous and nonferrous material processing systems’ are presented through provision of various other information. However, none of these items provide confirmation of the maximum capacity/processing rate of the systems on an hourly, daily, or other basis, which as discussed in these comments is not disclosed elsewhere in the application either. Because the maximum capacity/processing rate on an hourly and daily basis is necessary for ensuring protection of short-term air quality, the applicant must provide the layout drawings as part of its application. We also reiterate our prior comment that diagrams of the shredder and shredder enclosure are necessary to verify the expected capture efficiency.” (Internal footnote omitted).

In short, there is no legal basis for GIII/RMG to withhold the drawings from CDPH, and, because the drawings are necessary for CDPH’s evaluation of the permit application, the resubmitted permit application is incomplete and CDPH cannot issue a Large Recycling Facility Permit to GIII/RMG based on the current application.

II. Public disclosure is the presumption where the information requested by CDPH relates to the public interest and must be made available to the public for comment.

Illinois Law broadly favors public disclosure of any information obtained by state or local government agencies.⁵ In passing the Illinois Freedom of Information Act, the Illinois legislature identified the presumption of disclosure as “necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring

⁴ GIII/RMG’s response suggests it believes that other materials provided in the original application collectively meet the requirements of the Air Study. Presumably, if CDPH agreed that the previously submitted materials were sufficient, it would not have instructed GIII/RMG to provide the unredacted drawings.

⁵ 5 ILCS § 140/1.

government to ensure that it is being conducted in the public interest.”⁶ CDPH’s powers and duties under the Chicago Municipal Code involve matters of immense importance to public health and safety and the environment. The public interest at stake is explicitly recognized in the text of the Code and is implicitly the rationale behind the notice and comment period that accompanies CDPH’s review of a permit application under the Large Recycling Rules. In order for members of the public to comment meaningfully on the materials submitted to CDPH, those materials must be complete, thorough, and publicly available.

III. GIII/RMG has not provided sufficient evidence to support its claim that the layout drawings are exempted from disclosure as Confidential Business Information (CBI).

Although the Freedom of Information Act favors disclosure, the Act exempts some narrow categories, recognizing that there may be types of information that a party has an overwhelming interest in keeping from the public.⁷ One of the exempt categories is “trade secrets” and business information that is “proprietary, privileged or confidential.”⁸ The burden of proving that the information is “confidential,” and therefore covered by the exemption, lies with the party claiming the exemption.⁹

To meet the burden for a CBI Exemption from disclosure, GIII/RMG must show that disclosing the information “would cause competitive harm.”¹⁰ GIII/RMG has not offered any evidence to establish that the disclosure would cause harm, nor any information that would establish the following: GIII/RMG’s competitors, the nature of the harm, the likelihood of the harm, or the severity of the harm. As the Illinois Attorney General’s office noted in a binding opinion regarding a FOIA CBI exemption in the context of a CBI claim made to CDPH, “bare assertions without a detailed rationale” do not satisfy the burden of proof for a disclosure exemption.¹¹

⁶ Id.

⁷ 5 ILCS § 140/7.

⁸ 5 ILCS § 140/7(1)(g).

⁹ 5 ILCS § 140/1.2. The standard of proof is “clear and convincing evidence.” Note that this provision applies on its face to “a public body” that asserts that a record is exempt, and CDPH has made no such assertion regarding the layout drawings. But because GIII/RMG’s claim of confidential protection of proprietary information would be animated by Section 3 of the CDPH Large Recycling Rules, the analysis treats GIII/RMG’s claim in its response functionally as a claim for a FOIA exemption.

¹⁰ 5 ILCS § 140/7(1)(g).

¹¹ Office of the Attorney General, Public Access Opinion 19-007, 2019 PAC 58468 (23 Sept. 2019). See *Rockford Police Benevolent and Protective Ass’n, Unit No. 6 v. Morrissey*, 398 Ill. App. 3d 145, 151 (2d Dist. 2010) (citing *Illinois Education Ass’n v. Illinois State Board of Education*, 204 Ill. 2d 456, 464 (2003)).

Further undermining GIII/RMG's claim of exempted confidential information is the fact that GIII/RMG previously submitted the unredacted drawings to the Illinois EPA for permit approval regarding the same facility and the same equipment. GIII/RMG's response to CDPH's request ignores the requirement under the Large Recycling Rules that such information must be provide to CDPH. Further, not only does GIII/RMG provide no reasoning to distinguish IEPA from CDPH with respect to the agencies' authority or ability to review confidential information, but the very same FOIA logic outlined above would apply equally to the unredacted materials already submitted to IEPA. In other words, a FOIA request to IEPA for the unredacted drawings would allow the requesting party to access the information unless GIII/RMG met the requirements for a CBI Exemption. GIII/RMG's lack of a detailed rationale about the supposed competitive harm makes the CBI Exemption inapplicable to the layout drawings.

Accordingly, GIII/RMG must provide the layout drawings to CDPH and CDPH must then make the drawings available to the public in order for the public to comment meaningfully on the Air Study and potential emissions.

IV. Even if the layout drawings would qualify for a CBI Exemption from public disclosure, GIII/RMG must provide information in some form that will enable the public meaningfully to comment.

As described above and in the separately submitted NRDC comment, the layout drawings are critical to the ability of the public to comment on the adequacy of the Air Study and the dangers posed by potential air emissions from the GIII/RMG facility. Without the layout drawings—or the submission of additional information by GIII/RMG—it is not possible for the public to determine the maximum capacity/processing rate of the systems on an hourly, daily, or other basis. That information is necessary for ensuring protection of short-term air quality. At a minimum, that information must be provided in order for the application to be considered complete or for a permit to be granted.

* * * *

In conclusion, GIII/RMG cannot simply make an abbreviated claim that the layout drawings are "proprietary information" and thereby withhold them from CDPH or the public. The drawings are necessary for a meaningful evaluation of the application by CDPH, and the permit application cannot be considered complete until they are provided. Further, without a showing by GIII/RMG that public disclosure of the information would cause harm to GIII/RMG's business, the drawings are not exempt from public disclosure. Following its own standards under the Large Recycling Rules, CDPH must not grant GIII/RMG's permit until GIII/RMG provides all the information necessary to evaluate the Air Study.

Respectfully submitted,

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