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## An End To Sacrifice Zoning in Chicago

Jasmine Anderson

### INTRODUCTION

In 2020, the City of Chicago released an Air Quality and Health Report to ostensibly guide efforts aimed at mitigating the detrimental effects of air pollution in Chicago. Unsurprisingly, the report identified what environmental justice activists have been highlighting for decades: “that air pollution disproportionately burdens neighborhoods on the South and West Sides, with parts of the City bisected by major highways and high concentrations of industry facing significant impacts.”<sup>1</sup> Industrial corridors on Chicago’s South and West sides have historically been embedded in residential communities, serving as economic hubs as well as vectors of air pollution.<sup>2</sup> Among the largest of these corridors is on Chicago’s Southeast side, running along the Calumet River.<sup>3</sup> In the last seven years, at least seventy-five industrial facilities in the area have been investigated for violating the Clean Air Act.<sup>4</sup> Carlos Enriquez, a community organizer with the Southeast Environmental Task Force (“SETF”), recalls massive piles of petcoke in the area: “On windy days, it would blow the petcoke all over the neighborhood. It would cover neighbor’s windows. Little kids weren’t allowed to play in the park after dark on windy days.”<sup>5</sup>

Air pollution negatively impacts health and quality of life, leading to increased rates of asthma, chronic obstructive pulmonary disease (“COPD”), cardiovascular disease, and cancer.<sup>6</sup> In the Calumet Industrial Corridor, residents

<sup>1</sup> *Air Quality and Health Report*, CITY OF CHI. (2020), [https://www.chicago.gov/content/dam/city/depts/cdph/statistics\\_and\\_reports/Air\\_Quality\\_Health\\_doc\\_FINALv4.pdf](https://www.chicago.gov/content/dam/city/depts/cdph/statistics_and_reports/Air_Quality_Health_doc_FINALv4.pdf).

<sup>2</sup> Rod Sellers, *Chicago’s Southeast Side Industrial History*, SOUTHEAST HIST. SOC’Y 12 (Mar. 2006), <https://www.csu.edu/cerc/researchreports/documents/ChicagoSESideIndustrialHistory.pdf>.

<sup>3</sup> CHI. SUSTAINABLE INDUS., CITY OF CHI. DEP’T OF HOUS. AND ECON. DEV. 22 (2011), [https://www.chicago.gov/content/dam/city/depts/zhlp/Sustainable\\_Development/Publications/Chicago\\_Sustainable\\_Industries/Chicago\\_Sustainable\\_Book.pdf](https://www.chicago.gov/content/dam/city/depts/zhlp/Sustainable_Development/Publications/Chicago_Sustainable_Industries/Chicago_Sustainable_Book.pdf).

<sup>4</sup> Gina Ramirez et al., *Ending Chicago’s Sacrifice Zones*, NAT. RES. DEF. COUNCIL (June 30, 2022), <https://www.nrdc.org/experts/gina-ramirez/ending-chicagos-sacrifice-zones>.

<sup>5</sup> Telephone Interview with Carlos Enriquez, Community Organizer, Southeast Environmental Task Force (Oct. 26, 2022).

<sup>6</sup> CITY OF CHI., *supra* note 1, at 4; ALL. FOR THE GREAT LAKES, *HEALTH IMPACTS OF CLIMATE CHANGE IN THE CALUMET INDUST. CORRIDOR* (2021), [https://greatlakes.org/wp-content/uploads/2021/02/Calumet\\_DataBook\\_Appendix\\_Climate\\_Change.pdf](https://greatlakes.org/wp-content/uploads/2021/02/Calumet_DataBook_Appendix_Climate_Change.pdf).

have reported respiratory disease they credit to the surrounding industry.<sup>7</sup> It was in this context that the City of Chicago entered into an agreement with Reserve Management Group (“RMG”) in 2019 to open a metal scrapper facility on the Southeast side.<sup>8</sup> RMG, which had recently acquired General Iron, would move its facilities from the affluent and majority white northside neighborhood of Lincoln Park to the working class, majority Black and Latino Southeast side, further concentrating industrial facilities in the area.<sup>9</sup> The agreement sparked two years of community pushback, leading to federal involvement and the city ultimately denying RMG the necessary permits to start business at its Southeast side facility. The outcome marks a significant win for community-based environmental justice groups in Chicago. Through a review of General Iron’s attempted move to the Southeast side, this article brings attention to the sustained need for both reactive and proactive strategies to curb the cumulative effects of concentrated industry.

### SACRIFICE ZONES

The term sacrifice zones has been adopted within the environmental justice movement to refer to areas of dense industrial concentration. The practice essentially sacrifices the health, quality of life, and property of those in the vicinity of industrial facilities in the name of retaining the industry’s economic benefit for the larger community. As noted by Peter C. Little, the term has been “revived and recycled as a trope used to describe disadvantaged communities and landscapes disproportionately contaminated and neglected in the name of capital accumulation.” These disadvantaged communities, where residents are predominantly low-income and people of color (“POC”), reflect the invisible lines created by a legacy of racist housing policies in America.<sup>10</sup> Environmental justice groups have justly identified the racist underpinnings of sac-

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<sup>7</sup> *Id.*

<sup>8</sup> Brett Chase, *General Iron’s Move to South Side Got a Boost, Emails Show*, CHI. SUN-TIMES (April 12, 2021), <https://chicago.suntimes.com/2021/4/12/22376462/general-iron-rmg-recycling-lincoln-park-southeast-side-sue-garza-lincoln-yards>.

<sup>9</sup> *Id.*

<sup>10</sup> Lylla Younes et al., *Poison in the Air*, PROPUBLICA (Nov. 2, 2021), <https://www.propublica.org/article/toxmap-poison-in-the-air>; Danielle Vermeer, *Redlining and Environmental Racism*, UNIV. MICH. (Aug. 16, 2021), <https://seas.umich.edu/news/redlining-and-environmental-racism>.

rifice zones and continue to dedicate significant efforts to eradicating them through legislative and legal means.<sup>11</sup>

Amongst these groups are Chicago-based community organizations such as SETF, People for Community Recovery, and Chicago Southeast Side Coalition to Ban Petcoke. They have identified the Southeast side as an example of a contemporary sacrifice zone, with demographics and industrial concentration that reflect a larger national issue. Nationwide, predominantly POC areas are exposed to 40 percent higher concentrations of cancer-causing industrial air pollution.<sup>12</sup> The neighborhoods of South Chicago, East Side, Hegewisch, and South Deering, or the Southeast side, have a long history of industrial involvement and once comprised one of the largest steel producing regions in the world.<sup>13</sup> Even today, the area continues to be Chicago's largest industrial corridor by land area.<sup>14</sup> It is also home to predominantly Black and Latinx residents who experience disproportionate adverse health outcomes.<sup>15</sup> A recent study from the Alliance for the Great Lakes found residents in the area have higher rates of coronary disease and COPD when compared to the rest of Chicago, including its other industrial corridors.<sup>16</sup> Similar studies from the University of Illinois Chicago and the National Resources Defense Council help explain these health outcomes by mapping disproportionately high cumulative environmental pollution on the Southeast side surrounding the Calumet Industrial Corridor.<sup>17</sup> And while some data may lead to environmental reform, the *Chicago Sun-Times* reported that air pollution sensors may be flawed or too disparate to fully capture the cumulative impact of industrial concentration in Chicago, leaving residents with questions about the full impact of their sur-

<sup>11</sup> See LUKE W. COLE ET AL., FROM THE GROUND UP: ENV'T RACISM AND THE RISE OF THE ENV'T JUSTICE MOVEMENT (Richard Delgado et al. eds., 2001).

<sup>12</sup> *Id.*

<sup>13</sup> Sellers, *supra* note 2, at 12.

<sup>14</sup> *Calumet Connect Databook*, ALL. FOR THE GREAT LAKES, <https://greatlakes.org/databook/>, (last visited Oct. 25, 2022).

<sup>15</sup> *Community Data Snapshots*, CHI. METRO. AGENCY FOR PLAN. (Oct. 25, 2022), <https://www.cmap.illinois.gov/data/community-snapshots>.

<sup>16</sup> ALL. FOR THE GREAT LAKES, *supra* note 14.

<sup>17</sup> University of Illinois Chicago School of Public Health, *The Burden of Pollution on Chicago Communities*, UNIV. OF ILL. CHI. (Apr. 19, 2021), <https://publichealth.uic.edu/news-stories/the-burden-of-pollution-on-chicago-communities/>; Meleah Geertsma, *New Map Shows Chicago Needs Environmental Justice Reforms*, NAT. RES. DEF. COUNCIL (Oct. 25, 2018), <https://www.nrdc.org/experts/meleah-geertsma/new-map-shows-chicago-needs-environmental-justice-reforms>.

roundings.<sup>18</sup> Southeast side residents, and Chicago residents across the city, should have a fuller picture of the environmental risks associated with their zip codes and a voice in deciding the extent of those risks.

### GENERAL IRON'S MOVE

The story of General Iron's attempted move to the Southeast side implicates not only corporate interests but deep municipal involvement from two Chicago mayors' administrations. General Iron operated a metal scrapper facility in the Lincoln Park neighborhood up until 2018, garnering hundreds of complaints from residents regarding fumes, air-borne "fluff", and loud noises.<sup>19</sup> In 2018, it received a citation for excessive air emissions and settled with the city for \$18,000.<sup>20</sup> Simultaneously, Mayor Rahm Emanuel's administration was facilitating the multi-billion Lincoln Yards project with developer Sterling Bay.<sup>21</sup> In light of the history of complaints and air pollution, Sterling Bay wanted General Iron shut down before starting the project.<sup>22</sup> In response, the Emanuel administration coordinated with General Iron as it was acquired by Reserve Management Group ("RMG"), with the Lightfoot administration later signing an agreement with RMG to assist General Iron's move to the Southeast side in 2019.<sup>23</sup> Upon this announcement, Southeast side residents began organizing in opposition, pointing out the already-existing concentration of heavy industry, poor air quality, and associated adverse health outcomes in their neighborhoods.<sup>24</sup> This evolved into a multi-year campaign against General Iron's move, going so far as to involve a 2021 hunger strike in

<sup>18</sup> Smarth Gupta et al., *The Dangers In Our Air: Mapping Chicago's Air Pollution Hotspots*, CHI. SUN-TIMES (May 16, 2022), <https://chicago.suntimes.com/2022/5/16/23069860/dangerous-air-we-breathe-mapping-chicago-air-pollution-hotspots-pm2-5-particulate-matter>.

<sup>19</sup> Hannah Alani, *General Iron's \$18k Fee For Years of Pollution 'Too Little, Too Late,' Activists Say – And Secrecy From City Makes It Worse*, BLOCK CLUB CHI. (Nov. 10, 2020), <https://blockclubchicago.org/2020/11/10/general-irons-18k-payment-for-years-of-pollution-is-too-little-too-late-activists-say-and-neighbors-are-again-being-left-in-the-dark/>.

<sup>20</sup> *Id.*

<sup>21</sup> Brett Chase, *Feds Zero In On Emanuel Administration's Role In General Iron Move*, CHI. SUN-TIMES (Mar. 3, 2021), <https://chicago.suntimes.com/2021/3/3/22310037/hud-housing-urban-development-general-iron-rahm-emanuel-administration-rmg>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Keith Harley, *SETF Comments General III Permit Application*, CITY OF CHI. (Jan. 14, 2021), <https://www.chicago.gov/content/dam/city/sites/rgm-expansion/organization-comments/Comment-from-Southeast-Environmental-Task-Force-1.14.21.pdf>.

protest of the city's persistence in carrying out the planned move.<sup>25</sup> Finally, in May 2021, the head of the Environmental Protection Agency stepped in to urge the city to halt its permit process and conduct an environmental justice analysis.<sup>26</sup> The city agreed and produced a health impact assessment in February 2022, finding that the permit allowing RMG's operation should be denied due to "concerns for health, environment, and quality of life in an already over-burdened community; the inherent risks of recycling operations; as well as concerns about the company's operating history, including apparent violations of existing permit requirements."<sup>27</sup> The Lightfoot administration simultaneously denied a key occupancy permit, halting RMG's plans to open its recycling facility.<sup>28</sup>

As part of their sustained campaign, SETF and other community organizations leveraged a common strategy used in disparate impact regulation cases; they filed a complaint with the United States Department of Housing and Urban Development ("HUD"), alleging violation of Title VI of the Civil Rights Act of 1964 and The Fair Housing Act.<sup>29</sup> Title VI prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin.<sup>30</sup> When HUD reported in July 2022 that Chicago's plans were not compliant with Title VI, the city faced real economic consequences. Between 2017-2021, Chicago received an average of \$76 million in HUD funding per year.<sup>31</sup> A Title VI violation risked major funding to at least 13 departments involved in regulating industrial placement in the city, including the Department of Planning and Development and the Department of Public

<sup>25</sup> Gina Ramirez, *One Year After Hunger Strike to Stop General Iron*, NAT. RES. DEF. COUNCIL (Feb. 8, 2022), <https://www.nrdc.org/experts/gina-ramirez/one-year-after-hunger-strike-stop-general-iron>.

<sup>26</sup> Michael S. Regan, EMAIL, (May 7, 2021), [https://www.chicago.gov/content/dam/city/sites/rgm\\_expansion/documents/USEPA\\_Letter\\_RMG\\_5.7.21.pdf](https://www.chicago.gov/content/dam/city/sites/rgm_expansion/documents/USEPA_Letter_RMG_5.7.21.pdf).

<sup>27</sup> CHI. DEP'T OF HEALTH, HEALTH IMPACT ASSESSMENT 33 (2022), [https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG\\_RecyclingPermit\\_HealthImpactAssessment\\_Feb2022.pdf](https://www.chicago.gov/content/dam/city/sites/rgm-expansion/documents/RMG_RecyclingPermit_HealthImpactAssessment_Feb2022.pdf).

<sup>28</sup> Maxwell Evans, *City Denied Controversial Metal Scrapper Southside Recycling's Permit After Activists Wage Years-Long Fight*, BLOCK CLUB CHI. (Feb. 18, 2022), <https://blockclubchicago.org/2022/02/18/city-denies-controversial-metal-scrapper-southside-recyclings-permit-after-activists-wage-years-long-fight/> [hereinafter HUD].

<sup>29</sup> Jacy Gaige, *Letter of Findings of Noncompliance with Title VI and Section 109*, U.S. DEP'T OF HOUS. AND URB. DEV. (Jul. 19, 2022), <https://news.wttw.com/sites/default/files/article/file-attachments/Letter%20of%20Finding%2005-20-0419%20%28City%20of%20Chicago%29.pdf>.

<sup>30</sup> 42 U.S.C.S. § 2000d.

<sup>31</sup> HUD, *supra* note 28.

Health.<sup>32</sup> In its findings, HUD strongly criticized the city for ignoring substantive concerns from the community and called the collaboration between General Iron, RMG, and the city unusual.<sup>33</sup> Critically, it confirmed what community organizers had been arguing; the city's plan "continued a broader policy of shifting polluting activities from white neighborhoods to Black and Hispanic neighborhoods despite the latter already experiencing a disproportionate burden of environmental harms."<sup>34</sup>

Although HUD's letter of noncompliance does not constitute formal legal proceedings, it did put the city on notice of serious financial repercussions, threatened the continued involvement of federal agencies, and implicated the continued power of Title VI in enforcing access to safe environmental conditions. As recently as 2016, HUD funds were implicated in a Title VI complaint from residents of the West Calumet Housing Complex.<sup>35</sup> Residents alleged that the East Chicago Housing Authority maintained public housing which was predominantly occupied by minorities on a site containing environmental contaminations such as lead.<sup>36</sup> The East Chicago Housing Authority subsequently entered into a Preliminary Voluntary Compliance Agreement which included a commitment for a Relocation Plan, continued monitoring, and the demolition of the contaminated site.<sup>37</sup> While the Lightfoot administration initially denied HUD's findings regarding General Iron's move, recent reports indicate that the city is in talks with HUD to discuss reforms.<sup>38</sup> While Title VI remains a powerful tool to communities, Carlos Enriquez points out that legal complaints are "always paired with every other tactic that [SETF]

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Preliminary Voluntary Compliance Agreement and Title VIII Conciliation Agreement*, U.S. DEP'T OF HOUS. AND URB. DEV. (Nov. 2, 2016), [https://www.hud.gov/sites/documents/ECHA\\_11032016.pdf](https://www.hud.gov/sites/documents/ECHA_11032016.pdf).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Interview, *supra* note 5.

had in their playbook,”<sup>39</sup> meaning that Title VI alone is not an adequate means of preventing further cumulative pollution in already burdened communities.

### PROACTIVE ENVIRONMENTAL ZONING

General Iron’s attempted move and the subsequent community backlash points to the need for systemic change in how the city assesses the impact of its industrial corridors. Chicago needs to announce land use plans that paint a clear vision of how the cumulative impacts of industries will be considered. Community organizations, including SETF, have formed the Coalition to End Sacrifice Zones, which has said its plans will look to other cities that have enacted cumulative impact laws.<sup>40</sup> These laws are proactive in nature; they create robust zoning review processes that require heavy industry to provide cumulative impact reports and municipal governments to incorporate community input. They also encourage cities to go beyond review process reform and introduce land use plans that establish and further environmental justice.<sup>41</sup> These plans should serve as inspiration for the city as well, as they discuss reforms with HUD and look ahead to more comprehensive land use plans. Such plans in Chicago have thus far lacked significant community input from environmentally burdened communities of color or environmental impact assessments, with the city’s Industrial Corridor Modernization Initiative almost exclusively focusing on locations on the north side of the city thus far.<sup>42</sup> Effectively reformed zoning ordinances and comprehensive land use plans could better protect communities from the cumulative impacts of concentrated industry.

Newark passed its Environmental Justice and Cumulative Impacts Ordinance in 2016 to ensure that future development would not exacerbate disproportionate and cumulative impacts in already overburdened areas.<sup>43</sup> Although the ordinance addresses commercial and light industrial work, its regulations

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<sup>40</sup> Brett Chase, *Pollution ‘sacrifice zones’ must end, groups say in pushing new law*, CHI. SUN-TIMES (May 18, 2022), <https://chicago.suntimes.com/2022/5/18/23124247/environmental-justice-pollution-coalition-end-sacrifice-zones-lori-lightfoot>.

<sup>41</sup> TISHMAN ENVIRONMENT AND DESIGN CTR., LOCAL POLICIES FOR ENVIRONMENTAL JUSTICE: A NATIONAL SCAN 19, 23 (2019).

<sup>42</sup> Chicago Department of Planning and Development, *Industrial Corridor Modernization*, CITY OF CHI. (Oct. 25, 2022), [https://www.chicago.gov/city/en/depts/dcd/supp\\_info/repositioning-chicago-s-industrial-corridors-for-today-s-economy.html](https://www.chicago.gov/city/en/depts/dcd/supp_info/repositioning-chicago-s-industrial-corridors-for-today-s-economy.html).

<sup>43</sup> Tishman, *supra* note 41, at 22.



on heavy industry zoning or rezoning applications are particularly notable. Heavy industry applicants must submit an Environmental Justice Checklist, which includes creating a cumulative impact report relevant to the area in which it proposes to develop, taking into account pre-existing environmental conditions.<sup>44</sup> A municipal Environmental Commission then reviews and makes recommendations on the application before being sent to the planning and zoning board.<sup>45</sup> Unfortunately, a denial from the Environmental Commission does not automatically disqualify a zoning application, however; it does provide increased municipal oversight and increased transparency and accessibility for public oversight. A report from the Tishman Environment and Design Center notes that this model is more successful than some because it has been properly funded.<sup>46</sup>

An example of successful proactive land use planning comes out of Los Angeles, where a 2015 ordinance created Green Zones, which specifically target overburdened communities.<sup>47</sup> The ordinance is comprehensive, addressing building codes, community notifications, information around financial assistance for green improvements, buffer zones, and outright bans of certain industrial activity.<sup>48</sup> In doing so, it seeks to mitigate existing burdens, prevent new toxic facilities, and improve community input. It's also highly place-specific, with different communities leveraging the ordinance to create regulations that work for their communities.<sup>49</sup> Such an ordinance is significant because it affirmatively establishes environmental aspirations and regulations for a community, bypassing the cycle of constant cumulative impact reviews, changing environmental regulations, and industry opposition.

Carlos Enriquez also points out that such reforms involve community input without placing the burden of regulation on impacted communities. Reflecting on SETF's successful campaign he notes, "It shouldn't be on us to force the city every time to take these kinds of impacts seriously."<sup>50</sup> Chicago has implemented multiple ordinances that address environmental inequity in a piecemeal fashion; from a ban of Coke and Coal Bulk Material Uses ban in 2014, a ban on Manganese-bearing Material Operation Uses in 2018, and

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 24.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Telephone Interview with Carlos Enriquez, *supra* note 5.

most recently an Air Quality Ordinance in 2021.<sup>51</sup> Instead of this strategy, the city needs to implement proactive reforms that protect communities and build a vision for the future.

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<sup>51</sup> *Id.*; Chicago Department of Planning and Development, *Chicago Air Quality Ordinance*, CITY OF CHI. (Oct. 25, 2022), [https://www.chicago.gov/city/en/depts/dcd/supp\\_info/chicago-air-quality-ordinance.html](https://www.chicago.gov/city/en/depts/dcd/supp_info/chicago-air-quality-ordinance.html).