IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GENERAL III, LLC d/b/a SOUTHSIDE RECYCLING,	)	
and	)	
RMG INVESTMENT GROUP, LLC,	)	Case No. 21-cv-02667
Plaintiffs,	)	Judge Robert M. Dow, Jr. Magistrate Judge Young B. Kim
v.	)	
CITY OF CHICAGO and DR. ALLISON ARWADY, in her Official Capacity as the Commissioner of the Chicago Department of Public Health,	)	
Defendants.	)	

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR A WRIT OF MANDAMUS AND/OR INJUNCTIVE RELIEF

On September 10, 2019, the City entered into an agreement with Plaintiff RMG in which the City promised to do the following:

> The City will reasonably cooperate with RMG in achieving the efficient, expeditious transition of the Business to the Southside Properties, including reasonable assistance with processing and review of license and permit applications, and scheduling of public hearings.

Exhibit A to Plaintiffs' Motion for a Writ of Mandamus and/or Injunctive Relief, and supporting Memorandum of Law (collectively the "Mandamus Motion"), ¶ 5. That Agreement was signed by the City's Chief Legal Officer and copied to Commissioner Arwady. As laid out in detail in the Mandamus Motion, RMG has complied with the Agreement and with every aspect of the rigorous rules that govern the issuing of a LRF permit. In fact, in the City's 22-page Response to the Mandamus Motion (the "Response"), the City does not allege a single deficiency in SR's

LRF permit application, nor does it cite any specific information that it still needs to make the permitting decision. SR's reliance on the binding Agreement, combined with its full compliance with the LRF Rules, give SR the "clear right" to a LRF permit, and establish SR's satisfaction of the mandamus requirements.

SR has complied with the Agreement to its substantial detriment. As required under the Agreement, SR ceased operations of its lawfully operated, profitable North Side operation on December 31, 2020. By that date, the City already knew that it was under a HUD investigation relating to its permitting processes and that SR's new facility faced vocal opposition. But the City did not attempt to call off its Agreement with RMG. It did not tell RMG to continue operating on the North Side because the City could not abide by the Agreement. Instead, the City insisted that RMG follow through on its promise to cease operations, said the permit was imminent, and told HUD, in writing, that HUD had no right or jurisdiction to interfere with the City's permitting process. In further reliance on the Agreement, Southside Recycling spent $80 million to build the most environmentally conscious recycling facility in the country. SR has met every requirement, demand and expectation of the City, and it is uncontested that Commissioner Arwady had decided on the merits to issue the LRF permit. *See* Tolin Declaration, Exhibit I to the Mandamus Motion, and Graham Declaration, Exhibit E to the Response.

The only possible interpretation of the Agreement is that SR's satisfaction of the permitting criteria obligates the City to issue the permit. This Agreement is obviously a seminal part of SR's Mandamus Motion. It is attached to the Mandamus Motion and referenced in its moving papers 28 times. It is thus remarkable that the City's Response *completely ignores* the Agreement, as if it never existed. The City's Response contains not a *single mention* of the

Agreement, let alone its implications or legal effect. This glaring omission alone demonstrates that the Agreement is dispositive in favor of SR's right to the LRF permit.

Rather than address the Agreement, the City argues that Commissioner Arwady has complete discretion to issue or not issue the permit, regardless of whether SR has satisfied the articulated permitting criteria. The City's complete disregard of its binding Agreement is fatal to its overly broad interpretation of the Commissioner's permitting discretion. But even without the Agreement, the City has inflated the discretion afforded to the Commissioner under the Rules. The City has also taken a far too narrow view of the mandamus remedy available under Illinois law.

Finally, the City relies on what appears to be a carefully orchestrated letter from USEPA suggesting that the City suspend the permitting process, citing what it believes to be magic words: environmental justice.[1] The City and USEPA have abused the concept of environmental justice by using the term not in the context of a serious or rigorous evaluation of the air quality of the subject Southeast Side community, but rather as a catch phrase whose mere utterance justifies any departure from law or contract. Ironically, SR is the only party in this matter that has given environmental justice the serious, data driven analyses it deserves. SR actually reviewed the available air quality data from the Southeast Side air monitors at Washington Park High School, and used that data to perform an air dispersion modeling analysis under the direction of IEPA to make sure that the community's air quality would be properly protected. SR also spent $80 million

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[1] Notably, the USEPA letter (Mandamus Motion, Ex. B) does not contain any demand or threat of litigation by USEPA, feigned by the City in its Response. *See* Response at 20-21. Moreover, the USEPA has not commanded—and, indeed, cannot command—the City or Commissioner Arwady to ignore their own regulations or the Agreement to enact a federal program or requirement. *Cf. Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1477 (2018) ("The Federal Government" may not "command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. This rule applies . . . not only to state officers with policymaking responsibility but also to those assigned more mundane tasks.") (citations omitted). The City's mischaracterization of USEPA's May 7 letter further proves it is a manufactured, political excuse for not issuing the permit.

on a facility which will control those emissions. Further, the facility is equipped with air monitors that will record emissions on a continuous basis, ensuring that the air quality of this environmentally burdened community will be protected. Notably, of all of the agencies and advocates who have reviewed this analysis and SR's permit application, not one has provided data or analyses to refute the conclusions of SR's modeling. Most importantly, USEPA's May 7, 2021 letter does not reference any specific air emissions data, nor does it dispute, or even acknowledge, the modeling analysis that was performed by SR and independently reviewed and approved by experts at IEPA and CDPH. That analysis was also reviewed by USEPA's own technical staff (not political appointees). Finally, the USEPA letter fails to prescribe any specific environmental justice analyses to be done.

On May 10, 2021, Commissioner Arwady sent a letter to Steve Joseph, promising a plan for the environmental justice review in "the coming weeks." Exhibit M, attached hereto, at p. 2. So far, in response to several inquiries from SR, the City has provided no description whatsoever about what further environmental justice analyses it plans to do or when, and apparently has taken no action at all on USEPA's request for such review. *See* Exhibit N, attached hereto. Moreover, no one—not the City, not USEPA, not HUD, and not the environmental advocates—has addressed the real and striking environmental justice concerns for the Pilsen community, exacerbated by the delay of SR's permit. Instead, everyone just wants to cite the phrase "environmental justice" and be accorded a free pass on all subsequent action.

The Court's actions are needed here to prevent a city from ignoring its agreement and the law in favor of its own political expediency. No doubt, cities are political bodies which need to be responsive to their citizens and the political process. But a city needs to do that within the confines of the law. It is equally important that the people can rely on the City to honor its

agreements and follow its rules and regulations. For these reasons, this Court should order the writ of mandamus and/or provide the injunctive relief requested in Plaintiffs' Mandamus Motion.

I. THE UNDISPUTED FACTS PRESENT AN EXEMPLARY CASE FOR MANDAMUS.

No one disputes that mandamus is an extraordinary remedy—a point the City makes no less than 5 times in its Response. But the remedy exists for a reason, and this Court should consider how SR's mandamus request compares with other writs of mandamus that have been granted by Illinois courts. Such a comparison makes clear that mandamus is the necessary and appropriate result in this case. A discussion of the relevant case law proves that SR presents a much more favorable case even than others where mandamus has been granted, let alone where it has been denied.

As cited in SR's moving papers, the Illinois Appellate Court in *1350 Lake Shore Assocs. v. Hill*, 761 N.E.2d 760, 767-68 (Ill. App. Ct. 2001) ("*Hill*"), the petitioner sought a Part II Approval letter, a pre-requisite to the issuance of a building permit, for a high-rise apartment building. Faced with community opposition, the planning commissioner decided to delay decision on the petitioner's application. During that delay, the city down-zoned the subject area to prohibit a high-rise. The Illinois Appellate Court reversed the circuit court's denial of petitioner's writ of mandamus and ordered the issuance of the Part II Approval letter, holding that "LSA [the petitioner] has established a clear right to the issuance of a Part II Approval letter" because the submitted plans met the applicable development ordinance criteria that existed prior to the zoning change.[2] *Id*. at 768.

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[2] The City's Response points out that in their Mandamus Motion, Plaintiffs referred to the Part II Approval letter as the "building permit." *See* pp. 21-22. Despite this misnomer, the principles outlined in *Hill* hold. Contrary to the City's Response, the key point was made stronger—not overruled—by the Illinois Supreme Court in *1350 Lake Shore Assocs. v. Healey*, 861 N.E.2d 944 (Ill. 2006) ("*Healey*"). By the time the case reached the Illinois Supreme Court, there was no longer a contention that the LSA petitioners were

Other Illinois courts have similarly held that, where an applicant has met all requirements for a permit, and a municipality improperly denied or unevenly applied its ordinances or rules (as the City does here), mandamus is proper, and the permit must be issued. *See, e.g.*, *Heerey v. City of Des Plaines*, 587 N.E.2d 1119, 1125 (Ill. App. Ct. 1992) (affirming mandamus where petitioner sought permit for remodeled building on 5-acre property and stating that "[i]n order to compel the issuance of a building permit by *mandamus,* plaintiff must show that the refusal to issue the permit was improper and that he complied with the proper application procedures."); *see also People ex rel. Pielet Bros. v. Vill. of McCook*, 123 N.E.2d 142, 145 (Ill. App. Ct. 1954) (affirming trial court's grant of mandamus ordering village to issue junk yard license and finding village's actions toward applicant were discriminatory where applicant met all criteria imposed by ordinances, including those newly implemented by village, while application was pending in an effort to hinder license approval, and others were not required to meet the new criteria).

Likewise, in *Am. Nat'l Bank & Tr. Co. of Chicago v. City of Chicago*, 311 N.E.2d 325, 330 (Ill. App. Ct. 1974), the developer of a 44-story building made a large expenditure in anticipation of the permit. Because the zoning ordinances at the time the developer purchased and began design and construction on the property allowed for such a building, the Court ordered mandamus relief, even though the city had provided notice of rezoning prior to the submission of

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entitled to mandamus relief for the Part II Approval letter. Rather, the Illinois Supreme Court addressed the right to mandamus relief for the final step in the process, a building permit. By then, the zoning ordinance had been down-graded to no longer allow for high-rise buildings and, so, that ordinance no longer provided a "clear right." But the Illinois Supreme Court held that the developer could nevertheless obtain mandamus by establishing a "vested right to build under the former RPD 196 zoning ordinance," even without a clear right under the existing ordinance. *Healey*, 861 N.E.2d at 957. Thus, the Illinois Supreme Court confirmed that a vested right is another manner of establishing a clear right to mandamus. Applied to the case at hand, in addition to its clear right to the issuance of the LRF permit because its application meets all existing requirements under the Agreement, Guidelines, and Code, SR has a clear right to mandamus relief because SR gained a vested right to the LRF permit by entering into the Agreement, closing its North Side operation, and spending $80 million on the new facility, all in reliance on the City's written and oral communications.

the developer's building permit. In affirming the mandamus relief, the Illinois Appellate Court concluded that "the record show[ed] that the petitioners expended substantial sums in reliance on the probability a permit would issue," and the respondents had not shown that "the petitioners did not rely on existing zoning at the time the expenditures were made." *Id.*

Other Illinois courts have also allowed mandamus actions where a petitioner has substantially changed its position in reliance on a municipality's actions or promises. *See, e.g.*, *New-Mark Builders, Inc. v. City of Aurora*, 233 N.E.2d 44, 46-49 (Ill. App. Ct. 1967) (reversing dismissal of petition for writ of mandamus to compel city's annexation of developed land where city previously approved annexation plans, accepted two parcels, and developer relied on same in improving third parcel).

Southside Recycling's "clear right" to mandamus is even stronger than the right in every one of the above cases where mandamus issued. In none of those cases had the municipality entered into a written agreement promising not only to follow its permitting rules, but to do so "efficiently and expeditiously." In none of those cases did the plaintiff stop operating a lawful and profitable business in reliance on the promise that the municipality would follow the permitting rules. In none of those cases did the plaintiff already receive multiple other related permits after being subjected to rigorous review of criteria similar to the permit process at issue. In none of those cases had the plaintiff spent $80 million, including going above and beyond the applicable permitting criteria.[3] Finally, in none of those cases had the plaintiff been repeatedly told by

[3] There is no genuine dispute that all of SR's $80 million investment was made in reliance on the Agreement, the permitting rules, and CDPH's repeated statements that the permit would be issued. *See* Expanded Declaration of Steve Joseph, ¶ 4(a), attached hereto as Exhibit O. No discovery is needed on this simple issue, nor was any requested.

high-ranking municipal officials that the permit should be issued. These undisputed facts call for the "extraordinary" remedy of mandamus.

Given that this case compares even more favorably than successful mandamus cases, it should not be surprising the cases cited by the City, where mandamus is denied, run far afield from the facts here. For example, in *Harrison v. People ex rel.*, 101 Ill. App. 224 (1st Dist. 1902), the municipality denied a license for a bowling alley. But the applicant had no prior agreement with the municipality, no vested rights, and offered no analysis of or solutions for the potential negative impacts. Similarly, in *Burnidge Bros. Almora Heights, Inc. v. Wiese*, 491 N.E.2d 841, 849 (Ill. App. Ct. 1986), the court denied mandamus and noted that the "affirmative acts" of the municipality did not include any prior agreement with the municipality, and did not establish any prejudice to the petitioner. Moreover, the ordinance at issue there expressly provided that the commissioner "shall exercise the power to provide street lighting, 'when, *in his opinion*, such lighting is necessary . . .'". *Id*. at 847. Here, nothing in the Code, Rules, or Guidelines indicate that the permit decision can turn on Commissioner Arwady's "opinion."

Furthermore, unlike some other cases cited by the City, SR is not seeking a writ ordering a different process than already established for LRF permitting. *Cf. Chicago Police Sergeants Ass'n v. City of Chicago*, No. 08-cv-4214, 2011 WL 2637203, at *8 (N.D. Ill. July 6, 2011) (finding that plaintiffs failed to demonstrate that they have a "clear right" to a promotional process other than the one that they were subject to); *Chicago Ass'n of Com. & Indus. v. Reg'l Transp. Auth.*, 427 N.E.2d 153, 157 (Ill. 1981) (reversing writ requiring Regional Transportation Authority to "adopt and promptly implement a policy to provide adequate transportation" and "consider and decide upon the proper and specific course or courses of action to be taken"). SR has followed the City's process—in the Code, Rules, and Guidelines. Having

jumped through every hoop the City has constructed and abided by every requirement of the Agreement, SR is entitled to the operating permit.

Finally, in some cases cited by the City, the underlying facts establishing the relief requested by mandamus were uncertain. *See*, *e.g.*, *Bengson v. City of Kewanee*, 43 N.E.2d 951, 956 (Ill. 1942) (reversing mandamus grant where petitioners requested payment of salaries "from the funds available" but finding "[n]o amounts are fixed in the judgment" and could not "be determined" and was "left wholly to future determination, and possibly litigation"); *see also Thomas v. Vill. of Westchester*, 477 N.E.2d 49, 54 (Ill. App. Ct. 1985) (remanding grant of mandamus for further proceedings where circuit court issued writ without considering defendant's answer or responses to requests for admission). Here, SR is seeking the final operating permit for the facility it already expended $80 million to build based on undisputed compliance with the permitting criteria, not to mention several other successful permit applications for the facility on related issues.[4]

The City ignores these comparisons and attempts to spin the permitting rules and the law of mandamus in its favor. First, the City claims that the Commissioner has complete discretion whether to delay or deny a LRF permit, regardless of how clearly a permit application satisfies the applicable rules. This argument fails for several reasons. First, it completely ignores

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[4] The other cases cited by the City are easily dismissed because the specific relief sought was expressly prohibited by another law. *League of Women Voters of Peoria v. Cnty. of Peoria*, 520 N.E.2d 626 (Ill. 1987) (in case concerning scope of rights under Illinois constitution, finding no clear right to mandamus because "county voters did not have the authority, by referendum, to change the number of members of the county board"); *Anderson v. Ill. State Bd. of Elections*, 589 N.E.2d 907, 908 (Ill. App. Ct.1992) (holding that mandamus "not a proper remedy at this late juncture," where election law prohibited accepting objections after 5 p.m. on prior date and primary election was "a few days" away); *Willie Pearl Burrell Tr. v. City of Kankakee*, 56 N.E.3d 1067, 1073-74 (Ill. App. Ct. 2016) (in examining competing ordinances, court denied the writ where the city could not issue rental licenses even where the petitioner abided by all permitting requirements because different provision of municipal code prohibited any business license to city debtors). No such legal prohibition is at issue here. Nor is there another concurrent pending proceeding. *Cf. Lenit v. Powers*, 257 N.E.2d 142, 148 (Ill. App. Ct. 1969).

the City's binding Agreement with RMG to cooperate in the transition of SR's recycling business to the Southeast Side property, including the efficient and expeditious processing of permit applications. That promise would be meaningless if the City had the unfettered discretion to delay or deny a conforming permit application. Agreements cannot be read to permit meaningless obligations. *Hufford v. Balk*, 497 N.E.2d 742, 744 (Ill. 1986) ("In construing the contract, effect must be given to each clause and word used, without rejecting any words as meaningless or surplusage.").

Moreover, the "discretion" the City craves is not provided anywhere in the Rules. To the contrary, the Rules are structured as follows:

> **3.0 Conditions of Permit Issuance.** The Commissioner shall not grant a new permit or renew an existing permit for any recycling facility in the City of Chicago unless the application for such permit meets each of the following conditions:
>
> (1) The application demonstrates that the facility is designed and located in accordance with the requirements set forth in Section 11-4-2640 of the Code, including, but not limited to, a demonstration that the facility is secure from unauthorized entry, is sufficiently screened from the surrounding area and is adequately lighted after dark;
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> * * *
>
> (7) The application meets all other applicable requirements of the Code.

Response at Exhibit B, pp. 2-3 (City of Chicago Department of Public Health – Rules and Regulations for Recycling Facilities – March 2014). In other words, the March 2014 Recycling Rules set parameters that an applicant must meet, and which Southside Recycling has met. Where a statute sets the conditions for permit issuance, an applicant can expect that satisfaction of the conditions will entitle the applicant to the permit. The City interprets CDPH's power to seek "any other information requested by the Commissioner" (Response, p. 5.) as unfettered discretion to

delay indefinitely the permitting process. This level of discretion could render the entire LRF permitting regime unconstitutional. *See Krol v. Cnty. of Will*, 233 N.E.2d 417, 420 (Ill. 1968) (invalidating unconstitutional ordinance, where "Health Authority [was] not controlled, limited or guided by any rules, criteria or requirements" and "power to approve or reject reside[d] utterly in the Health Authority" because "[a] law vesting discretionary power in an administrative officer without properly defining the terms under which his discretion is to be exercised is void as an unlawful delegation of legislative power."); *see also R.S.T. Builders, Inc. v. Vill. of Bolingbrook*, 489 N.E.2d 1151, 1154 (Ill. App. Ct. 1986) (invalidating ordinance because it "completely fails to prescribe adequate standards to control the actions of the Committee" to approve or disapprove applications). The Court must avoid that result.

Moreover, the CDPH Guidelines that the City hopes to devalue contain explicit directive language about issuing LRF permits. The City attempts to rename these Guidelines as applying only to the rules for "public engagement"; but they go beyond such considerations and state exactly when a permit must be issued. The title of the Guidelines is "CDPH Guidelines Regarding Permitting Processes for Consequential Large Recycling Facilities." The final section heading of those Guidelines is entitled "Permit Issuance and Summary Document," and it states the exact process for when the City "will finalize the permit." *See* Exhibit J to the Mandamus Motion. The notion that these Guidelines are limited to public engagement issues is not supported by their language, and the fact that they do not expressly reference the Municipal Code does not diminish their power.[5]

[5] The City notes that the Guidelines require a draft permit for public comment prior to issuance of the final permit. At this point, the public has already been afforded repeated opportunities to comment on the proposed facility: the zoning board hearing, the IEPA construction permitting process, and two rounds of comments on the subject LRF permit. No further public comment is required or necessary.

The City also attempts to limit mandamus to what it refers to as "ministerial" acts, as if an act with significant consequences can never be ministerial. Not true. Just by way of example, the issuance of a building permit that gives a developer the ability to build a high-rise is no more "ministerial" than issuing the LRF permit in this case. *Healey*, 861 N.E.2d at 947. Thus, a writ of mandamus to issue a building permit is no more appropriate than a writ of mandamus would be for the LRF permit at issue here. Both order the City to honor a private party's significant investment in its business assets in reliance on City rules.

Finally, the City wishes to dismiss the serious and significant reliance that Southside Recycling placed on the binding Agreement with the City, the City's Rules and Guidelines, and the repeated statements of high-ranking public officials with relevant authority. The City accuses SR of using this reliance to short-cut the mandamus requirement, but that is not a fair characterization of SR's vested rights argument. SR has taken no short-cuts in this process. It is undisputed that SR has met or exceeded every requirement for the LRF permit. The combination of SR's written Agreement with the City, its compliance with the permitting criteria, its serious and rigorous regard for environmental justice issues, and its significant detrimental reliance makes this the extraordinary case where mandamus is required to force the City to abide by its Agreement and its Rules. The Illinois Supreme Court's decision in *Healey* makes clear that this reliance supports mandamus relief. *Healey*, 861 N.E.2d at 950.

II. NEITHER USEPA NOR HUD CAN EXCUSE THE CITY FROM ADHERING TO ITS CONTRACTS OR LAWS.

There is no dispute that SR has satisfied all of the LRF permitting criteria and all information requests. Indeed, the City's Response does not identify any deficiency or outstanding information request, nor does it contest that Commissioner Arwady had already made the decision to issue the permit. The City rests its delay entirely on a suggestion from USEPA that the City

perform an environmental justice analysis, the scope and content of which is entirely undeveloped and undefined. While USEPA's May 7 letter makes general reference to pollution indicators in the subject area, the letter does not cite any rule or regulation requiring such analysis, use any specific data related to the facility in question, or acknowledge the air dispersion modeling analysis already performed by SR to address the same environmental justice concerns. This sophisticated air dispersion modeling, performed by SR's retained experts, took into account the existing air quality in the subject area. That modeling was independently reviewed and validated by CDPH and IEPA under the direct supervision of USEPA. IEPA then concluded that there would be no adverse air impact to the community from the SR facility. *See* June 25, 2020 IEPA Responsiveness Summary, Endnote 3 to the Mandamus Motion. No one has contested this conclusion or the underlying data and analyses on which the conclusion is based.

USEPA's May 7, 2021 letter is written as if SR's air dispersion modeling analysis was never performed. Although the letter tries to distance the priorities of the current USEPA administration from its predecessor, it contains no explanation whatsoever of why SR's comprehensive analysis of the cumulative impact on this specific community would come out any differently based on who is in charge at USEPA. Rather, it appears that this letter was orchestrated by the City, in search of an excuse to placate a vocal opposition to the facility. *See* City of Chicago Updates on Southside Recycling, https://www.chicago.gov/city/en/sites/rmg-expansion/home.html (last visited June 12, 2021) ("Earlier this year, the City of Chicago contacted the U.S. Environmental Protection Agency (U.S. EPA) seeking their guidance regarding RMG's application"). Since sending the letter, USEPA has not prescribed any particular environmental analysis for the City to complete. Likewise, in response to several inquiries from SR since

receiving the suspension letter from Commissioner Arwady, the City has failed to articulate any single step it has taken or even plans to take in response to the letter. *See* Exhibit N.

The City also points to USEPA's supposed concern about a Title VI complaint to the Department of Housing and Urban Development over environmental justice issues. The letter notes that USEPA is closely following the HUD investigation. Notably, a companion civil rights case, making the very same allegations as the HUD complaint, was filed in this Court. After a lengthy briefing process and oral argument, the Court (per Judge Rowland) issued a 32-page decision finding that the Title VI complaint was unlikely to succeed on the merits. There is no reason to believe that HUD would or could reach a different result. USEPA claimed, in its May 7 letter, to be following the HUD investigation; yet, somehow it made no reference at all to Judge Rowland's decision in the parallel case. The City criticizes SR for suggesting that the City should tell USEPA to "pound sand." But that is exactly what the City told HUD to do in response to the HUD investigation. (*See* Letter from John Hendricks to Lon Meltesen, dated November 20, 2020, responding to the HUD complaint, attached hereto as Exhibit P.)

The choreographed dance between USEPA and the City is not a basis to deny the clear right to mandamus relief provided from the Agreement between the City and RMG, as well as from SR's complete compliance with all rules and regulations. (*See* footnote 2, *supra*.)

III. MANDAMUS OR INJUNCTIVE RELIEF IS NEEDED TO PREVENT IRREPARABLE HARM TO PLAINTIFFS AND OTHER CRITICAL STAKEHOLDERS.

As the City pretends that its Agreement with RMG doesn't exist, and the USEPA pretends that no environmental justice analysis has been done, they are each imposing irreparable harm on SR and other important stakeholders. In order to obtain the financing both for the $80 million facility and to continue to pay the average $80,000 per year salaries of the employees who were anticipating permanent positions there, RMG collateralized the assets of the new facility

and cross collateralized that debt with the assets of RMG's other companies around the country. *See* Exhibit O, Expanded Joseph Declaration, ¶ 7(a). If RMG does not obtain the permit, it will have no income from the facility to meet its debt service, leaving its entire 10-state operation vulnerable. As explained in the Mandamus Motion, and not contested by the City, the failure to permit the new facility has a spiraling effect on the employees and the many other small businesses that rely on Southside Recycling's economic engine to survive. *Id.* In addition, SR's inability to obtain its LRF permit and operate its business destroys its credibility with its suppliers and customers in a way that will be difficult, if not impossible, to repair. *Id.* Finally, as the Mandamus Motion is pending, the City's other large metal recycling facility continues to operate in Pilsen without any environmental controls on its shredder—an issue completely ignored in the City's Response and in USEPA's May 7 letter.

Plaintiffs well understand a court's typical reluctance to become involved in a local municipal dispute. But this is not a typical case. The City and federal agencies are engaged in a political charade in the false name of environmental justice. In the process, they are ignoring binding Agreements and Rules, and imposing irreparable harm, actually allowing environmental injustice to continue. Only this Court can put a stop to it by granting Plaintiffs' Mandamus Motion.[6]

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[6] That this Court can exercise supplemental jurisdiction to decide questions of municipal law is not in dispute. *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 165 (1997) ("The District Court had original jurisdiction over ICS' claims arising under federal law, and thus could exercise supplemental jurisdiction over the accompanying state law claims so long as those claims constitute 'other claims that ... form part of the same case or controversy.' § 1367(a)."); *see also E & E Hauling, Inc. v. Forest Pres. Dist. of DuPage Cnty., Ill.*, 821 F.2d 433, 436 (7th Cir. 1987) (in case involving Contract Clause and supplemental jurisdictional state law claims, reiterating long-standing principle that "[c]ourts should decide federal constitutional claims only when there is no other basis for deciding the case," and affirming district court's holding invalidating municipal ordinances as pre-empted by Illinois law).

Dated: June 17, 2021

Respectfully submitted,

GENERAL III, LLC d/b/a
SOUTHSIDE RECYCLING

and RMG INVESTMENT GROUP, LLC

By /s/ David J. Chizewer
One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on June 17, 2021, he caused a copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR A WRIT OF MANDAMUS AND/OR INJUNCTIVE RELIEF** to be filed via the Court's ECF/electronic mailing system upon all counsel of record.

/s/ David J. Chizewer