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September 4, 2020

VIA EMAIL AND CERTIFIED MAIL to: Title_VI_Complaints@epa.gov

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**Re: Complaint Under Title VI of the Civil Rights Act of 1964,
42 U.S.C. §2000d, 40 C.F.R. Part 7**

Dear Director Bailey and Deputy Chief Neal:

The following is a Complaint filed under the above-referenced authorities to the Environmental Protection Agency, Office of Civil Rights (“OCR”). Please feel free to contact our office regarding the Complaint. We look forward to your response.

Sincerely,

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**National Association for the
Advancement of Colored People,
Missouri State Conference;
National Association for the
Advancement of Colored People,
St. Louis City Branch; and
Dutchtown South Community
Corporation,**

**Title VI of the Civil Rights Act of 1964,
42 U.S.C. §2000d, 40 C.F.R. Part 7**

Complainants,

v.

**Missouri Department of
Natural Resources,**

Respondent/Recipient.

I. Introduction

This is a Complaint to the Environmental Protection Agency (“EPA”), Office of Civil Rights (“OCR”) by the National Association for the Advancement of Colored People, Missouri State Conference (“Missouri NAACP”), the NAACP St. Louis City Branch (“St. Louis City NAACP”), and the Dutchtown South Community Corporation (“DSCC”) under Title VI of the Civil Rights Act of 1964 and the U.S. Environmental Protection Agency’s implementing regulations, alleging discrimination by the Missouri Department of Natural Resources (“MDNR”) in its March 10, 2020 issuance of Part 70 Intermediate Permit OP2020-008 (the “Operating Permit”) to Kinder Morgan Transmix Company, LLC (“Kinder Morgan”).¹ The Operating Permit allows Kinder Morgan to emit various pollutants that are harmful to human health. MDNR is responsible for permitting emissions of air pollutants in the City of St. Louis, Missouri.

MDNR is a recipient of financial assistance from the United States Environmental Protection Agency (“EPA”), and approved the issuance of Kinder Morgan’s permit: (1) without complying with any of the EPA procedural safeguard regulations at 40 CFR Part 7 to prevent discrimination; and (2) without analyzing the potential for disproportionate environmental and human health effects on nearby minority and low-income communities. MDNR was required by Title VI and EPA’s implementing regulations to comply with these procedural safeguard regulations and to consider these disproportionate effects to prevent discrimination. MDNR’s actions and inactions have an adverse impact that is discriminatory on the bases of race, color, or national origin, and on the basis of economic status. As a result of MDNR approving the permit, residents near and within the Kinder Morgan facility, more of whom are minority-race and low-

¹ The Operating Permit is attached hereto and incorporated herein by reference as Exhibit 1.

income than residents of other areas in St. Louis, will be disproportionately exposed to air pollutants that are likely to threaten human health in violation of Title VI.

II. Parties

The Missouri NAACP, the St. Louis City NAACP, and DSCC bring this Complaint against MDNR for violations of Title VI of the Civil Rights Act and EPA implementing regulations specifically for issuing the Operating Permit to Kinder Morgan and generally for completely failing to comply or acknowledge its anti-discrimination obligations under 40 C.F.R. Part 7 as recipients of federal funding.

A. Complainants

The NAACP Complainants are the Missouri NAACP and the St. Louis City NAACP. The NAACP is a national non-profit organization with the mission to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The NAACP has an Environmental and Climate Justice Program (“ECJ”) that addresses environmental injustices that have a disproportionate impact on communities of color and low-income communities in the United States and around the world. The NAACP ECJ Program was created to provide resources and to support community leadership in addressing these types of human and civil rights issues by advocating to reduce harmful emissions, advance energy efficiency and clean energy, strengthen community resiliency and livability.² The NAACP furthers its mission through the work of its duly organized State/State-Area Conferences, Branches, Prison Branches, College Chapters, Youth Councils, Junior Youth Councils, High School Chapters and Authorized Committees of the Association.

The Missouri NAACP is the duly organized NAACP State Conference for the State of Missouri. The Missouri NAACP furthers the NAACP’s mission throughout the State of Missouri, including its work with the ECJ Program in communities within Missouri.

The St. Louis City NAACP is a duly organized branch of the NAACP. It is responsible for furthering the mission of the NAACP in the City of St. Louis. Members of the St. Louis City NAACP are residents of the Dutchtown, Mt. Pleasant, Marine Villa and Gravois Park neighborhoods in South St. Louis City, and are adversely affected by the air emissions from Kinder Morgan and the Operating Permit issued to it by MDNR. The St. Louis City NAACP is a member of the Missouri NAACP.

The mission of DSCC is advancing neighborhood vitality through community empowerment, housing stabilization & real estate development in the Dutchtown South neighborhood. Members of DSCC are residents of the Dutchtown neighborhood and are adversely affected by the air emissions from Kinder Morgan and the Operating Permit issued to it by MDNR.

² See <http://www.naacp.org/environmental-climate-justice-about/> (Last visited August 26, 2020).

B. Recipients

The Missouri Department of Natural Resources ("MDNR") is a state executive department created by Article IV, Section 47 of the Missouri Constitution and by the Omnibus State Reorganization Act of 1974.³ MDNR is authorized by state statute to implement and enforce various state environmental laws, including the Missouri Air Conservation Law ("MACL"), Chapter 643 RSMo. MDNR administers the state's Clean Air Act ("CAA"), Title V, Part 70 Operating Permit Program set forth in the MACL and the implementing regulations promulgated thereunder by the Missouri Air Conservation Commission ("MACC"). The MACL sets forth MDNR's powers and duties, which include evaluation of applications for permits for regulated air contaminant sources, and issuance of permits for sources which meet state and federal requirements.⁴ EPA has delegated MDNR the authority to implement and enforce Title V of the Clean Air Act in the State of Missouri.⁵ Within MDNR, the Air Pollution Control Program ("APCP") is responsible for implementing and enforcing the MACL and the CAA within the State of Missouri and the City of St. Louis. MDNR is a recipient of federal funds from EPA, as explained in more detail below.

III. Jurisdiction

EPA has jurisdiction over this Complaint because MDNR is a program that receives Federal funding, the Complaint is timely filed, and, as the Complaint is in writing, describes the alleged discriminatory acts and is filed by an authorized representative of Complainants with OCR, it otherwise meets EPA's prudential factors to assert jurisdiction over the Complaint.⁶

A. Program

MDNR is a program or activity that receives federal funding and is, therefore, subject to EPA's Title VI regulations in 40 C.F.R. Part 7. According to the Civil Rights Act and EPA Title VI regulations, "[p]rogram or activity...mean[s] all of the operations of...a department, agency, special purpose district, or other instrumentality of a State or of a local government...any part of which is extended Federal financial assistance."⁷ If a state or local governmental agency receives *any* federal funding, all of that agency's operations are covered by Title VI.⁸ MDNR and APCP process and issue air pollution control permits under the CAA and MACL, are programs and activities of a state government agency that receives Federal financial assistance, and are,

³ Revised Statutes of Missouri, Appendix B; *see also* Section 640.010 RSMo.

⁴ *See* Sections 643.073 to 643.078 RSMo.

⁵ EPA gave final approval for the Missouri Title V operating permit program on May 14, 1997 with an effective date of June 13, 1997. 62 Fed. Reg. 26405 (May 14, 1997). Through this delegation of the Title V permitting program, the Director of Department of Natural Resources became the Administrator's "designee" as referred to in 40 C.F.R. §70.2. For some time until 2011, the City of St. Louis held a Certificate of Authority from MDNR and the Missouri Air Conservation Commission to operate an air permitting program for air emissions sources in the City of St. Louis; however, funding cuts resulted in the disbandment of St. Louis City's Air Pollution Program, and MDNR has been the sole responsible agency for air permitting in the City of St. Louis since that time.

⁶ 40 C.F.R. §7.120.

⁷ 42 U.S. Code § 2000d-4a. *See also* 40 C.F.R. §7.25.

⁸ *Ass'n. of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-5 (9th Cir. 1999), *rev'd in part on other grounds*, 231 F.3d 572 (9th Cir. 2000) (en banc).

therefore, programs or activities as those terms are defined in 40 C.F.R. §7.25. Correspondingly, MDNR and APCP are subject to the requirements of Title VI and related regulations.

B. Federal Funding

MDNR receives federal funding as defined by EPA's Title VI implementing regulations. EPA's regulations define "[r]ecipient" as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient . . ."⁹

MDNR, a state agency, has received roughly \$1.14 billion in grants from EPA since 2000, including more than \$100 million in grants that extend in part through 2019 and 2020.¹⁰ It is immaterial that much of the funding that MDNR receives from EPA is unrelated to air pollution control permitting or air quality. By accepting any EPA funding, MDNR takes on an affirmative nondiscrimination obligation that extends to all of its programs and actions. Furthermore, MDNR does in fact receive substantial funding specifically used to operate the APCP and to implement and enforce the CAA and the MACL within the State and the City of St. Louis. MDNR's FY 2020 Budget Request Governor's Recommendations, which covers the State's 2020 fiscal year from July 1, 2019 to June 30, 2020 (during the period of time in which the Operating Permit was issued) states that \$2,707,507 of APCP's operating budget of \$13,027,560 for the year 2020 is federally funded, while the State's General Revenue provides no funds to the APCP.¹¹ In some sense, the APCP is entirely federally-funded to the clear benefit of the State of Missouri.

Additionally, MDNR has received two grants totaling \$168,648 "to operate and maintain the national ambient air toxics site in St. Louis...to improve air quality."¹² These funds were granted to support "[p]rojects [which] should also focus on addressing environmental justice (EJ) concerns in communities," through "fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income."¹³ Again, it is not clear that MDNR is fulfilling the stated purpose for this grant based on the violations of Title VI and EPA's implementing regulations described herein.

* * *

⁹ 40 C.F.R. §7.25.

¹⁰ USASpending.gov, located at: <https://www.usaspending.gov/#/recipient/617fd8af-fb0c-9fb1-b3f5-ad6f7305dae7-C/all> (last visited September 2, 2020).

¹¹ MDNR's FY 2020 Budget Request Governor's Recommendations House, Page 79, located at: https://oa.mo.gov/sites/default/files/FY_2020_Natural_Resources_Budget_Gov_Rec.pdf. (last visited August 28, 2020). This Budget became Bill 6 (2019) and was signed into law June 10, 2019 and effective August 28, 2019.

¹² USASpending.gov, located at: https://www.usaspending.gov/#/award/ASST_NON_97764201_6800 (last visited August 28, 2020) and https://www.usaspending.gov/#/award/ASST_NON_97782701_6800 (last visited August 28, 2020).

¹³ *Id.*

Table 1: Significant EPA funding for 2019-2020¹⁴

Funding Period	Funding Purpose	Total Grant Amount
10/01/2019-09/30/2024	Clean Water State Revolving Fund	\$44.0 million
10/01/2017-03/31/2020	Performance Partnership Grant	\$24.1 million
10/01/2019-09/20/2024	Drinking Water State Revolving Fund	\$19.4 million
10/01/2019-09/30/2021	Performance Partnership Grants	\$12.4 million
04/01/2017-03/31/2021	Superfund Site-Specific Cooperative Agreement	\$5.0 million
07/01/2017-06/30/2021	State Response Program Grants	\$3.8 million
04/01/2016-06/30/2019	Leaking Storage Tank Corrective Action Program	\$2.9 million
04/01/2019-03/31/2022	Leaking Storage Tank Corrective Action Program	\$2.0 million
10/01/2019-/09/30/2024	Nonpoint Source Implementation Grant	\$1.8 million

Based on these various federal funding sources, it is indisputable that MDNR is a recipient of federal funds for its various programs and activities, including the ACP, and is subject to Title VI of the Civil Rights Act and EPA's regulations at 40 C.F.R. Part 7.

C. Timeliness

This Complaint is timely filed because it is based on the issuance of an intermediate operating permit that occurred less than 180 days ago. EPA Title VI regulations require complaints to be filed with 180 days of the alleged discriminatory act.¹⁵ MDNR issued permit OP2020-008, for Kinder Morgan Transmix Terminal, on March 10, 2020.¹⁶ Therefore, this complaint alleging discriminatory acts in the issuance of the Operating Permit is timely, as it is being filed on or before September 6, 2020. In addition, OCR has ongoing authority to review recipients' programs and activities for Title VI compliance, including MDNR's air permitting program.¹⁷ While Complainants are specifically filing this Complaint against MDNR over the issuance of the Kinder Morgan Operating Permit issued less than 180 days ago, the agency's involvement in other permitting situations with MDNR over the last several years has uncovered and demonstrated a pattern and practice of MDNR avoiding its Title VI obligations.¹⁸ This complaint is timely because the discriminatory acts described herein are ongoing or within OCR's investigatory authorities.

¹⁴ USASpending.gov, located at: <https://www.usaspending.gov/#/search/39ebc654cfda0e8487b31d8f7d0d5571> (last visited September 2, 2020).

¹⁵ 40 C.F.R. §7.120(b)(2).

¹⁶ See Exhibit 1, Page 1.

¹⁷ 40 C.F.R. §7.115(a).

¹⁸ Complainants have submitted comments on two other air pollution control permits over the last several years in addition to the Kinder Morgan Operating Permit: Mallinckrodt and MSD Bissell Point. The public comments and MDNR responses thereto are attached hereto and incorporated by reference as Exhibit 2 (Mallinckrodt) and Exhibit 3 (MSD Bissell Point). These permits are discussed below in Section VI.A.1.

D. Other Prudential Factors

This Complaint satisfies all other jurisdictional and prudential considerations laid out in EPA's Title VI implementing regulations, as well as EPA's guidance in its Interim Case Resolution Manual.¹⁹ Specifically, this Complaint is submitted in writing, describes the alleged discriminatory acts, and is filed by an appropriate authorized representative on behalf of a Complainant group entitled to submit a Title VI complaint with OCR to redress adverse and disparate impacts experienced by its members as a result of MDNR's violations of EPA's Title VI implementing regulations.²⁰

EPA has subject matter jurisdiction over this Complaint because it alleges racially and economically disparate impacts that violate Title VI of the Civil Rights Act of 1964, as implemented through agency regulations. This Complaint contains unique allegations that have not been alleged in other proceedings, and that specifically address MDNR's persistent refusal to address, procedurally or substantively, the disparate impacts of its permit approvals.

This Complaint seeks MDNR's compliance with Title VI, relief which can only be granted through EPA action. Complainants respectfully request EPA to investigate this Complaint and take affirmative steps to remedy MDNR's noncompliance with Title VI, including through conditions on future federal funding.

IV. Factual Background

MDNR's issuance of the Operating Permit, Kinder Morgan's operations at the facility, MDNR's permitting history in the vicinity of the Kinder Morgan facility, as well as MDNR's failure to comply with Title VI, have disproportionately impacted the surrounding community. As demonstrated by the following factual background, this is because the surrounding impacted community is predominantly a community of color, it is economically disadvantaged as compared to the rest of St. Louis City, the St. Louis Metropolitan area and Missouri, and the area is ethnically diverse.

A. The Impacted Community

The communities most impacted by the decision to issue Kinder Morgan the Operating Permit are the Dutchtown, Mt. Pleasant, Marine Villa and Gravois Park neighborhoods in South St. Louis City, which are together outlined in blue on Figure 1 below (collectively hereinafter referred to as "Dutchtown" or the "Impacted Community"). These neighborhoods are located within zip codes 63111, 63116 and 63118, and are within the 9th, 11th, 13th, 20th and 25th wards of the City of St. Louis.²¹

¹⁹ EPA Case Resolution Manual (2017) located at: https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_earco_crm_january_11_2017.pdf (last visited September 2, 2020).

²⁰ 40 C.F.R. §7.120(a) and (b)(1).

²¹ Dutchtownstl, *About Dutchtown*, located at: <https://www.dutchtownstl.org/about/> (last visited August 29, 2020).

1. Location



Figure 1 – Boundaries of the Impacted Community²²

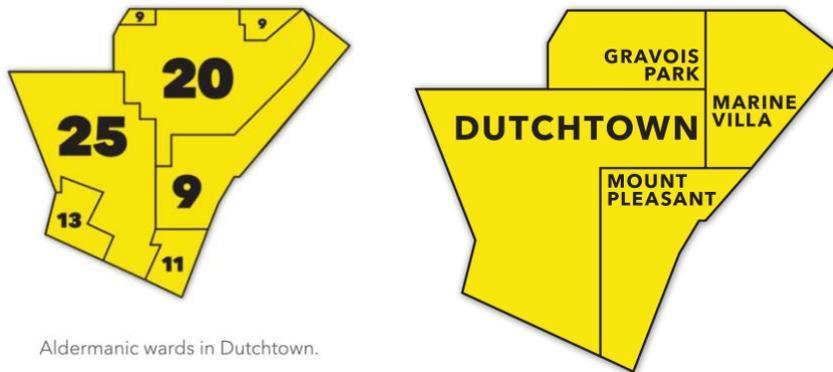


Figure 2: Wards and neighborhoods within Dutchtown²³

²² Google Earth.

²³ Dutchtownstl, *Wards and Neighborhoods within Dutchtown*, located at: <https://www.dutchtownstl.org/about/> (last visited August 27, 2020).

2. History of the Impacted Community

Ironically, Dutchtown experienced significant growth and settlement in the mid-1800s because it was a place to avoid the growing industrialization and pollution found in the City center.²⁴ The lack of pollution in the area can likely be tied to St. Louis Board of Health prohibitions put in place to prevent polluting industry from operating in the Dutchtown area.²⁵ This led to Dutchtown becoming an attractive place for white immigrants, often Germans, to settle.²⁶ However, massive changes resulted in the Impacted Communities after World War II, including an overall decline in population and a shift that saw the residential population becoming significantly less white.²⁷ Dutchtown, once 90% white, is today a predominantly minority community.²⁸ The story of this transformation is a common one seen in other United States cities at the same time. Post-World War II, families flocked to St. Louis' newly constructed suburbs to embrace home ownership that was made possible through the G.I. Bill. This led to the rapid growth and expansion of St. Louis' suburbs at the cost of communities like Dutchtown.²⁹ As restrictive covenants and new discriminatory zoning laws barred non-whites from buying houses in St. Louis' new suburbs, the suburban expansion seen in St. Louis in the mid-1900s was limited almost exclusively to white families.³⁰ Bank redlining policies, which made it much more difficult, if not impossible, to obtain mortgages in black or mixed-race communities furthered the segregation that resulted in the St. Louis metropolitan area, resulting in many more non-whites remaining in the City's neighborhoods, rather than taking part in the suburban flight.³¹

The growth of the interstate highway system during the same time period also took its toll on Dutchtown. The construction of Interstate 55 in the 1960s bisected the eastern side of Dutchtown, not only leading to the demolition of many households, but also physically dividing the neighborhood. The highway and the resulting property demolition literally shrank the size of the community, and the neighborhood population diminished. In addition, pollution and noise from vehicle traffic made the area a less desirable place to live, further encouraging residents to move away. Industrial businesses began to replace residences on the east side of the highway. The unsightliness and fumes generated by these facilities also diminished the desirability of living in the Impacted Communities.

In the 1970s and 1980s, black St. Louisans began to move into Dutchtown, filling the space left behind by whites moving to the suburbs.³² Dutchtown's affordable and plentiful

²⁴ Historic Preservation Services, LLC, *Old Dutchtown and Benton Park West Survey* (August 30, 2003), p. 46, located at: <https://dnr.mo.gov/shpo/survey/SLCAS021-R.pdf> (last visited August 31, 2020).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Cambria, N. et al., *Segregation in St. Louis: Dismantling the Divide*, Washington University in St. Louis (2018), located at: <https://cpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/3/1454/files/2018/06/Segregation-in-St.-Louis-Dismantling-the-Divide-22ih4vw.pdf> (last visited August 31, 2020) (“Dismantling the Divide”).

²⁸ Dutchtownstl, “*Dutchtown Demographics*,” located at: <https://www.dutchtownstl.org/about/demographics/> (last visited August 29, 2020).

²⁹ *Dismantling the Divide*, Chapter 2.

³⁰ *Id.*

³¹ *Id.*

³² Dutchtownstl, *Dutchtown Demographics*, located at: <https://www.dutchtownstl.org/about/demographics/> (last visited August 31, 2020).

housing stock attracted residents displaced by the gentrification that started to happen in the City in the 1990s which continues today. The net effect of all of these changes has been a transformation of Dutchtown into the economically depressed, predominantly minority community it is today.

Suburban sprawl continues to plague St. Louis and its urban neighborhoods, such as Dutchtown, today. In a 2013 study examining the 35 largest metropolitan areas across the United States, St. Louis ranked fifth in terms of land area, but only 17th in overall population.³³ More strikingly, the city ranked third from the bottom in terms of the city's share of the metro population.³⁴ Further, the city's share of the metro population in the area declined more than 8% within the last decade.³⁵ U.S. Census data confirms that St. Louis remains a very segregated city, even today.³⁶

3. Demographics of the Impacted Community

More than 30,000 people live in the Impacted Community.³⁷ The population of the area is very young—a third of the residents are under the age of 18.³⁸ In addition, a significant number are under the age of four—8.2%, 7.6% and 8.5% within the 63111, 63116 and 63118 zip codes respectively.³⁹ The area is very densely populated with residential property—9,827 residents per square mile. In contrast, the average population density for the City of St. Louis was 5,028, for St. Louis County was 1,967, and for Missouri was 89 in 2018.⁴⁰ Nineteen schools serving children of early childhood, elementary, middle and high school ages are located in Dutchtown, as well as one university.⁴¹ The Impacted Community is also the home of numerous retail establishments, parks, churches and community centers.⁴²

Most importantly for the purpose of this Complaint, the Impacted Community remains primarily a community of color. Approximately 52% of Dutchtown residents were identified in the 2010 census as black, 4% as Asian, and 8% as Hispanic.⁴³ 74% identified themselves as

³³ East-West Gateway Council of Governments, *Where We Stand: Twenty Years Later*, located at: <https://www.ewgateway.org/wp-content/uploads/2017/08/WWS6EdNo3.pdf> (last visited August 28, 2020) (“Where We Stand”).

³⁴ *Id.*

³⁵ *Id.*

³⁶ William H. Frey, *Black-white segregation edges downward since 2000, census shows*, located at: <https://www.brookings.edu/blog/the-avenue/2018/12/17/black-white-segregation-edges-downward-since-2000-census-shows/> (last visited August 28, 2020).

³⁷ Dutchtownstl, *About Dutchtown*, located at: <https://www.dutchtownstl.org/about/> (last visited August 29, 2020).

³⁸ U.S. Environmental Protection Agency, *EJScreen ACS Summary Report* (Sept. 3, 2020), copy attached hereto as Exhibit 4; U.S. Environmental Protection Agency, *EJ Screen Census 2010 Summary Report* (Sept. 3, 2020), copy attached as Exhibit 5.

³⁹ City of St. Louis Department of Health, *Understanding Our Needs, Update* (2016), page 15, located at: <https://www.stlouismo.gov/government/departments/health/documents/upload/UON-20160102.pdf> (last visited August 30, 2020) (“Understanding our Needs”).

⁴⁰ Open Data Network, *2018 Population Density St. Louis City, MO*, located at: https://www.opendatane트워크.com/entity/0500000US29510/St_Louis_city_MO/geographic.population.density?year=2018 (last visited August 29, 2020).

⁴¹ See Google Maps.

⁴² *Id.*

⁴³ Exhibits 4 and 5.

having a racial identity other than white.⁴⁴ These percentages are significantly higher than the St. Louis City average of 51%, the St. Louis County average of 30%, or the state average of 17%.⁴⁵ The schools in the Impacted Communities mirror the community around them: 85% of the students are minority, and 98% are economically disadvantaged.⁴⁶

The area is also economically depressed, as a disproportionately high number of the residents live in poverty or are considered low-income.⁴⁷ The median annual household income of the Impacted Community is approximately \$26,000, compared to an average median income of \$41,000 for St. Louis City, \$65,000 for St. Louis County and nearly \$54,000 for Missouri.⁴⁸ ⁴⁹ Approximately 35% of Dutchtown households have annual incomes below the poverty line, while between 60% and 70% are low-income or moderate-income households.⁵¹ 32% of residents in the 63118 zip code, 35% in the 63111 zip code and 20% in the 63116 zip code live below the poverty level.⁵² In contrast, the average is 9.7% for St. Louis County, and 14.1% for Missouri.⁵³ Further, it is notable that single mothers are head of the household in 15% of households in the 63111 zip code, 7% in the 63116 zip code and 16.5% in the 63118 zip code.⁵⁴

Dutchtown is also ethnically diverse – close to 20% of its residents speak languages other than English at home.⁵⁵ In addition, as many as 10% of households in the area are considered linguistically isolated – those in which no one aged 14 or over speaks English very well.⁵⁶

4. Health and Pollution Burdens Affecting the Impacted Community

The Impacted Community's linguistic isolation and low access to resources predispose it to being excluded from environmental permitting decisions. These barriers result in the Impacted Community being deprived of meaningful access to the available regulatory processes to hold polluters in their community accountable. For example, close to a quarter of the households in

⁴⁴ *Id.*

⁴⁵ See U.S. Environmental Protection Agency, *EJScreen Report* (Sept. 3, 2020), copy attached hereto as Exhibit 6.

⁴⁶ See List of Schools Located in Impacted Community, attached hereto as Exhibit 7.

⁴⁷ Exhibit 6. See also, *Understanding Our Needs* at pp. 31-35.

⁴⁸ Dutchtownstl, *Demographics*, located at: <https://www.dutchtownstl.org/about/demographics/> (last visited August 30, 2020).

⁴⁹ U.S. Census Bureau, *QuickFacts St. Louis City, Missouri*, located at: <https://www.census.gov/quickfacts/fact/table/stlouiscitymissouri/INC110218#INC110218> (last visited August 30, 2020).

⁵⁰ U.S. Census Bureau, *QuickFacts Missouri*, located at: <https://www.census.gov/quickfacts/MO> (last visited August 30, 2020).

⁵¹ Dutchtown South Community Corporation, *Federal Reserve Bank of St. Louis Investment Connection Proposal* (August 20, 2018), located at: https://www.stlouisfed.org/~media/files/pdfs/community-development/investmentconnection/stl-sept-2018/stl_2018_filling_demand_larger_affordable_rentals_dutchtown_proposal.pdf?la=en (last visited August 30, 2020).

⁵² Missouri Census Data Center, located at: <http://mcdc.missouri.edu/> (last visited August 31, 2020). See also, *Understanding Our Needs* at p. 33.

⁵³ Missouri Census Data Center.

⁵⁴ Missouri Census Data Center.

⁵⁵ Exhibit 4.

⁵⁶ *Id.*

Dutchtown do not have a computer, and more than 10% of those have no access to the internet.⁵⁷ These limitations make it challenging, if not impossible, for community members to stay on top of researching those sources of pollution around them that are only publicized through email and internet. In a minority and low-income community such as Dutchtown, long-term daily exposures to air pollution can lead to health effects that go unaddressed due to the limited financial and health care resources of residents. As illustrated below, these cumulative effects come from the numerous polluting facilities regulated for air and water emissions located within a close proximity of the Impacted Community, as well as several other environmental hazards to which the area is exposed.

Dutchtown residents live immediately adjacent and alongside more than 600 regulated sources of pollution, 11 of which are considered major sources.⁵⁸ Most of these sources are located along the St. Louis' riverfront. The City of St. Louis' port system is the second-largest inland port system in the United States.⁵⁹ The St. Louis regional port system is responsible for 8% of the 855 miles of the Mississippi River, but carries one-third of the river's total freight. In 2018, the region's barge industry handled more than 534,000 tons per mile – more than 2.5 times more efficient than the closest competitor.⁶⁰ As a result, it is not surprising that the riverfront corridor – located immediately adjacent to Dutchtown and separated from the community's residential zone only by interstate Highway 55 – is home to such a large number of industrial businesses. In contrast, industrial pollution sources are much fewer and farther between in suburban areas in St. Louis County, or even other sections of St. Louis City.⁶¹

Residents of Dutchtown disproportionately suffer health risks from these sources of air pollution. Minority, low-income communities bear an increased risk of cancer from exposure to air toxics.⁶² In particular, residents of the Dutchtown neighborhood have an elevated risk of developing cancer as a result of increased exposure to air toxics.⁶³ This risk is notably absent for people living in the sections of St. Louis County that are predominantly white and higher income.⁶⁴ Further, the American Lung Association has awarded St. Louis City the rank of “F” for its ozone exposure, and “B” for its annual particulate matter exposure.⁶⁵ The City ranks 28th worst amongst metropolitan areas for ozone exposure, and 25th worst for annual particulate matter exposure.⁶⁶ These risks dissipate for people living outside of the City limits, and disappear completely for most Missourians.⁶⁷ Ozone and particulates form in the atmosphere as a result of

⁵⁷ Missouri Census Data Center.

⁵⁸ See, e.g., U.S. Environmental Protection Agency, *ECHO Enforcement and Compliance History Online*, located at: <https://echo.epa.gov> (last visited August 30, 2020).

⁵⁹ City of St. Louis, *St. Louis Port Authority*, located at:

<https://www.stlouis-mo.gov/government/departments/sldc/slpa/> (last visited August 30, 2020).

⁶⁰ *Id.*

⁶¹ See, *ECHO Enforcement and Compliance History Online*.

⁶² Ekenga, et al., “Cancer risk for air toxics in relation to neighborhood isolation and sociodemographic characteristics: A special analysis of the St. Louis metropolitan area, USA”, *Environmental Research* 179 (2019).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ American Lung Association, *State of the Air*, located at:

<http://www.stateoftheair.org/city-rankings/states/missouri/st-louis-city.html#> (last visited August 30, 2020).

⁶⁶ *Id.*

⁶⁷ *Id.*

pollutants emitted from power plants, industries and automobiles.⁶⁸ Exposure to fine particulates and ozone have been linked with increased risks of heart attacks, asthma, reduced lung function and increased risk of lung illnesses, diabetes, kidney disease, adverse birth outcomes and negative impacts to child neurological development.⁶⁹

In fact, residents of Dutchtown zip codes have significantly higher rates of asthma-related emergency room visits than Missouri and National averages.⁷⁰ The City of St. Louis has the dubious honor of ranking first out of the 35 largest United States metropolitan areas in terms of asthma risk.⁷¹ This risk has increased over the last decade.⁷² Perhaps more startlingly, in a recent equity study compiled by the City of St. Louis, the City was awarded an equity score of 1 out of a possible 100 in the category of child asthma. The exceedingly low score was bestowed as a result of data showing that black children living in the City of St. Louis are more than 10 times as likely as white children to visit emergency rooms for asthma-related complications.⁷³

These environmental risk factors are further exacerbated by Dutchtown residents' heightened exposure to lead and mold in their environments, their proximity to vehicle pollution, their subjection to frequent illegal trash and hazardous waste dumping in their neighborhoods, and the increased incidence of building demolition, leading to the further spread of harmful dust, lead and asbestos into the air.⁷⁴ Together these air contaminants create a cumulative burden on

⁶⁸ U.S. Environmental Protection Agency, *Particulate Matter Basics*, located at: <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics> (last visited August 30, 2020); U.S. Environmental Protection Agency, *Ground-level Ozone Basics*, located at:

<https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics> (last visited August 30, 2020).

⁶⁹ *Id.*; U.S. Environmental Protection Agency, *Health and Environmental Effects of Particulate Matter*, located at: <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm#:~:text=Exposure%20to%20such%20particles%20can,with%20heart%20or%20lung%20disease&text=decrease%20lung%20function> (last visited August 31, 2020); U.S. Environmental Protection Agency, *Health Effects of Ozone Pollution*, located at <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> (last visited August 31, 2020); University of Washington, *Air pollution can accelerate lung disease as much as a pack a day of cigarettes* (August 13, 2019), located at: <https://www.washington.edu/news/2019/08/13/air-pollution-can-accelerate-lung-disease-as-much-as-a-pack-a-day-of-cigarettes/#:~:text=Air%20pollution%20%E2%80%94%20especially%20ozone%20air,and%20the%20University%20at%20Buffalo> (last visited August 31, 2020); Washington University School of Medicine in St. Louis, *Breathing dirty air may harm kidneys* (September 21, 2017), located at: <https://medicine.wustl.edu/news/breathing-dirty-air-may-harm-kidneys/> (last visited August 31, 2020); Brockmeyer, Sam and Amedeo D'Angiulli, "How air pollution alters brain development: the role of neuroinflammation," *Translational Neuroscience* 7(1): 24-30 (2016); Zarami, Farhad and Prashant Kumar, "Ambient exposure to coarse and fine particle emissions from building demolition," *Atmospheric Environment* 137:62-79 (2016); Guarneri, Michael and John R. Balmes, "Outdoor air pollution and asthma," *Lancet* 383 (9928): 1581-1592 (May 3, 2014).

⁷⁰ *Understanding Our Needs* at p. 97.

⁷¹ *Where We Stand* at p. 16.

⁷² *Id.*

⁷³ City of St. Louis, *Equity Indicators Toward a St. Louis Region that works for us all, Baseline Report* (2018), at pp. 36-37, located at: <https://www.stlouis-mo.gov/government/departments/mayor/initiatives/resilience/equity/documents/upload/Equity-Indicators-Baseline-2018-Report-Documents.pdf> (last visited August 30, 2020).

⁷⁴ See, *Equity Indicators* and *Understanding Our Needs*. See also, Union of Concerned Scientists, *Cars, Trucks, Buses and Air Pollution* (Updated July 19, 2018), located at: <https://www.ucsusa.org/resources/cars-trucks-buses-and-air-pollution#:~:text=Cars%20trucks%20and%20buses%20produce,vehicle%20operation%20and%20fuel%20production.&text=Primary%20pollution%20is%20emitted%20directly,between%20pollutants%20in%20the%20atmosph>

the community that magnifies the adverse impacts of the air contaminants identified above. Further, they are burdens not shared by other Missouri residents living outside of the Impacted Community.

Not surprisingly, EPA’s EJScreen Report for Dutchtown confirms the cumulative toxic burden that is experienced by residents of the area, in contrast to other residents of Missouri and Region 7. The Impacted Community is in the 90th percentile within Region 7 for almost all of EPA’s environmental indicators⁷⁵:

Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Environmental Indicators							
Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$)	9.21	8.29	86	7.77	94	8.3	75
Ozone (ppb)	46.1	43.1	85	42.5	92	43	74
NATA* Diesel PM ($\mu\text{g}/\text{m}^3$)	0.794	0.447	85	0.367	90-95th	0.479	80-90th
NATA* Cancer Risk (lifetime risk per million)	38	32	91	27	95-100th	32	70-80th
NATA* Respiratory Hazard Index	0.52	0.42	93	0.36	95-100th	0.44	70-80th
Traffic Proximity and Volume (daily traffic count/distance to road)	950	370	90	330	92	750	80
Lead Paint Indicator (% Pre-1960 Housing)	0.84	0.29	94	0.34	94	0.28	94
Superfund Proximity (site count/km distance)	0.21	0.099	91	0.1	90	0.13	87
RMP Proximity (facility count/km distance)	1.5	0.63	89	0.94	79	0.74	86
Hazardous Waste Proximity (facility count/km distance)	5.6	0.99	97	0.8	98	4	91
Wastewater Discharge Indicator (toxicity-weighted concentration/m distance)	0.0022	1.6	66	0.97	66	14	71

Further, when these harmful environmental indicators are combined with the EJScreen demographic index, the resulting Environmental Justice Index for the Impacted Community shows similarly high percentile rankings for all variables⁷⁶:

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
EJ Indexes			
EJ Index for PM2.5	94	95	81
EJ Index for Ozone	94	95	81
EJ Index for NATA* Diesel PM	95	96	86
EJ Index for NATA* Air Toxics Cancer Risk	94	96	81
EJ Index for NATA* Respiratory Hazard Index	95	96	81
EJ Index for Traffic Proximity and Volume	96	97	86
EJ Index for Lead Paint Indicator	97	97	93
EJ Index for Superfund Proximity	97	97	89
EJ Index for RMP Proximity	96	95	89
EJ Index for Hazardous Waste Proximity	98	98	92
EJ Index for Wastewater Discharge Indicator	92	92	88

here (last visited August 20, 2020) and Interdisciplinary Environmental Clinic at Washington University School of Law, *Environmental Racism in St. Louis*, located at: <https://assets.documentcloud.org/documents/6367937/2097-STL-EnvirRacism-Report-04-Web.pdf> (last visited August 30, 2020).

⁷⁵ Exhibit 6.

⁷⁶ *Id.*

From this data, it is clear that the Impacted Community is disproportionately impacted by air pollutants as compared to higher income, non-minority residents living in other locations within Missouri.

B. Kinder Morgan

Kinder Morgan is an energy infrastructure company that operates a 16 acre bulk transport loading facility for gasoline and fuel oil products immediately adjacent to the Dutchtown neighborhood.⁷⁷ The facility is located at 4070 South First Street, just south and east of First and Gasconade Streets along the south St. Louis riverfront corridor.⁷⁸ At this facility, the company receives and stores fuel on site, and loads fuel into tanks and onto transport vehicles.⁷⁹ The facility loads various grades of distillate fuels into tanks and onto transport vehicles, resulting in emissions of volatile organic compounds (VOCs), hazardous air pollutants (HAPs), particulate matter less than ten microns in diameter (PM₁₀), sulfur oxides (SO_x), nitrogen oxides (NO_x), and carbon monoxide (CO).⁸⁰ As a result, the facility contributes to the air pollution burden borne by the Dutchtown community. In addition, the facility has the potential to catastrophically harm nearby residents in the event of an accidental release of the highly volatile compounds, large quantities of which are stored at the facility.⁸¹ Further, the facility subjects nearby residents to increased risk of fire and explosion that could be caused by ignition of flammable vapors or gases from the materials stored at the plant.⁸²

C. Operating Permit History

Kinder Morgan Transmix Company, LLC submitted an application for an intermediate state operating permit on April 10, 2015 for its facility located at 4070 South First Street in St. Louis. On November 13, 2019, the DNR issued a draft intermediate state operating permit for the facility. On December 13, 2019, the NAACP submitted comments to the DNR objecting to the draft permit. These comments asserted that by issuing the draft permit without offering the impacted public any meaningful opportunity to be involved in the permit decision making process, the DNR violated Title VI. The NAACP further asserted that the DNR failed to consider any disparate impacts the draft permit would have on minority and low-income communities in violation of Title VI. The NAACP requested that the DNR establish a program under Title VI to ensure public involvement in the agency's permit decision making processes, and conduct an analysis of the disproportionate impacts associated with the draft permit before issuing a final permit. On March 10, 2020, the DNR issued the final permit, without conducting any analysis of the disparate impacts associated with the permit, or without establishing a program under Title VI to ensure public involvement in the agency's permit decision making processes. In particular, the DNR asserted in its response to the NAACP's comments that "[n]either the Department nor Kinder Morgan Transmix Company LLC are required to conduct the analyses requested", and

⁷⁷ *Kinder Morgan*, <https://www.kindermorgan.com/> (last visited August 30, 2020).

⁷⁸ *See*, Intermediate State Permit to Operate ("Final Permit"), Kinder Morgan Transmix Company, LLC; Google Maps.

⁷⁹ Exhibit 1.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

that “[t]he Department believes that it has complied with Title VI of the Civil Rights Act of 1964 in developing this permit.”⁸³

V. Legal Background

Recipients of federal funding are prohibited from taking actions that have a discriminatory impact on minority populations. Title VI of the Civil Rights Act of 1964 states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving any Federal financial assistance.⁸⁴

EPA’s implementing regulations further prohibit recipients of EPA funding from discriminating. Specifically, EPA’s Title VI regulations provide that an EPA funding recipient:

...shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.⁸⁵

EPA’s regulations make clear that discrimination on the basis of race is a violation of Title VI whether such discrimination is the purpose of the decision or its effect.⁸⁶

As a condition of receiving federal funding such as that described in Section III.B above, recipient agencies must comply with EPA’s Title VI regulations, which are incorporated by reference into the grants. These regulations proscribe discrimination on the basis of race, color or national origin by any program or agency receiving financial assistance from the EPA.⁸⁷ In other words, Title VI creates for recipients a nondiscrimination obligation that is contractual in nature, in exchange for Federal funding. Acceptance of EPA funding creates an obligation on the recipient to comply with the regulations for as long as that funding is provided.⁸⁸ As detailed above, MDNR, a state agency, is a recipient governed by these requirements.

In particular, a state agency accepting EPA funding may not issue permits that are intentionally discriminatory or have a discriminatory effect based on race, color, or national origin.⁸⁹ Although compliance with national ambient air quality standards (“NAAQS”) and other emissions limits are an important baseline in avoiding such effects, EPA no longer presumes on

⁸³ *Id.* at pp. RPC-1 and RP-2.

⁸⁴ 42 U.S.C. Section 2000d.

⁸⁵ 40 C.F.R. 7.35(b).

⁸⁶ *Id.*

⁸⁷ 40 C.F.R. §7.30.

⁸⁸ U.S. Environmental Protection Agency, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14207, 14209 (Mar. 21, 2006) (“Final Recipient Guidance”).

⁸⁹ Final Recipient Guidance at p. 14209.

the basis of compliance with NAAQS that permitting decisions have not created adverse and disproportionate impacts on minority and low-income communities.⁹⁰ State agencies that still rely on this presumption in their permitting process are exposing communities in their jurisdiction to potential disparate impacts because, as stated by EPA, “presuming compliance with civil rights laws wherever there is compliance with environmental health-based thresholds may not give sufficient consideration to other factors that could also adversely impact human health.”⁹¹

The EPA has explained that an important way for a recipient agency to avoid issuing discriminatory permits is to ensure that impacted communities are allowed substantial involvement in the agency’s decision-making process, particularly throughout the permitting decision-making process.⁹² In addition, each recipient of EPA funding must designate a Title VI compliance coordinator, shall “adopt grievance procedures that assure the prompt and fair resolution of complaints,” and shall conspicuously post notice of nondiscrimination, in languages other than English where appropriate.⁹³

These requirements are fully applicable to permit renewals, as well as the issuance of new permits. Since 1998, the EPA has explained that permit renewals should be treated and analyzed as if they were new facility permits,⁹⁴ since “permit renewal is, by definition, an occasion to review the overall operations of a permitted facility and make any necessary changes.”⁹⁵ EPA has also explained that “[v]iolations of Title VI or EPA’s Title VI regulations can be based solely on...the procedural aspects of the permitting process,” and that “complaints often center around allegations of discrimination that may have been prevented, mitigated, or resolved if certain public involvement practices had been implemented by recipient agencies.”⁹⁶ Thus, a single action or inaction may give rise to both substantive and procedural violations of a recipient’s Title VI obligations, by, for example, creating disparate impacts that could have been prevented, mitigated, or resolved through procedural safeguards.

VI. Violations

MDNR has violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 40 C.F.R. Part 7 in the issuance of Kinder Morgan’s Operating Permit by: (1) failing to comply with any of the EPA procedural safeguard regulations at 40 CFR Part 7 to prevent discrimination; and (2) failing to analyze the potential for disproportionate and disparate environmental and human health effects on nearby minority and low-income communities. MDNR’s discriminatory acts plainly result in adverse and disproportionate impacts on minority and low-income communities. Additionally, less discriminatory alternatives to MDNR’s current program and activities exist

⁹⁰ Environmental Protection Agency, *Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental and Health-Based Thresholds* 4 (January 24, 2013).

⁹¹ *Id.*

⁹² Final Recipient Guidance at p. 14211.

⁹³ 40 C.F.R. §§ 7.85 -7.95.

⁹⁴ U.S. Environmental Protection Agency, Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits, (February 1998).

⁹⁵ *Id.*

⁹⁶ Final Recipient Guidance at 14210.

that would avoid the discrimination that results from MDNR's current unlawful permitting process.

A. Discriminatory Acts

MDNR's complete lack of a Title VI program that complies with EPA regulations constitute discriminatory acts that lead to disparate impacts to minority and low-income communities. Similarly, MDNR's failure to conduct a disparate impacts analysis before issuing the Operating Permit constitute discriminatory acts that lead to disparate impacts to minority and low-income communities.

1. MDNR's Lack of a Title VI Program Leads to Discriminatory Impacts

MDNR lacks any Title VI compliance program, including those elements specifically required by EPA's implementing regulations at 40 C.F.R Part 7. As a result, MDNR regularly issues permits that have discriminatory impacts, which could be prevented or mitigated by the procedural safeguards that EPA requires in its regulations. Specifically, MDNR has: (a) failed to provide a complete notice of nondiscrimination in a way that is prominent and accessible to the public when providing public notices regarding permits and otherwise when disseminating information about its programs and activities;⁹⁷ (b) failed to appoint and utilize a nondiscrimination coordinator for its federally-funded programs and activities;⁹⁸ and (c) failed to establish and maintain a nondiscrimination grievance procedure that assures prompt and fair resolution of complaints.⁹⁹ The only nondiscrimination material easily uncovered on MDNR's website concerns workplace discrimination for its employees; no materials reference MDNR's nondiscrimination obligations to the public as a recipient of EPA funding.¹⁰⁰ All evidence described below suggests that that MDNR makes no effort to comply with its nondiscrimination obligations.

While Complainants are specifically filing this Complaint against MDNR over the issuance of the Kinder Morgan Operating Permit issued less than 180 days ago, several permits issued by MDNR over the last several years demonstrate a pattern and practice by the agency to avoid its Title VI obligations. Between July of 2017 and November of 2019, MDNR issued at least three Part 70 and intermediate operating permits with discriminatory impacts without any compliance with EPA's Title VI regulations: Mallinckrodt, MSD Bissell Point, and Kinder Morgan.¹⁰¹ In response to each draft permit, MDNR received a public comment from Complainants advising it of the risk of disparate impacts related to the permit and MDNR's obligations under Title VI and EPA's implementing regulations.¹⁰² In each case, MDNR declined to take any action to investigate, mitigate, or otherwise address the discrimination concerns raised to the agency as demonstrated by their responses to public comments.¹⁰³ In two cases,

⁹⁷ 40 C.F.R. § 7.95(a),(b).

⁹⁸ 40 C.F.R. § 7.85(g).

⁹⁹ 40 C.F.R. § 7.90(s).

¹⁰⁰ See, dnr.mo.gov. A perusal of the various subpages indicates that no notices about non-discrimination appear anywhere on the agency's website.

¹⁰¹ See Exhibit 1, Exhibit 2, and Exhibit 3.

¹⁰² *Id.*

¹⁰³ *Id.*

including the Kinder Morgan and Mallinckrodt permits, MDNR dismissed the relevant public comments without meaningful justification.¹⁰⁴ In the remaining case, the MSD Bissell Point permit, MDNR failed to respond at all to the section of the comment alleging disparate impacts and failure to comply with EPA's Title VI regulations.¹⁰⁵

In its responses to public comments for the Kinder Morgan and Mallinckrodt permits, MDNR claims that it must issue a permit “[i]f an application complies with the requirements of the State’s authorized permit program, and the source is in compliance with its construction permit(s),” citing Section 643.078 RSMo.¹⁰⁶ This conclusion by MDNR is an affront to, and blatant disregard for, the agency’s federally-mandated obligations to comply with EPA’s Title VI regulations when it accepts federal funds for its programs and activities. In fact, MDNR *must* comply with these regulations as a first step to ensure that it is not issuing permits with disparate impacts on minority and low-income communities. The implicit claim that MDNR’s hands are tied, such that it must issue permits regardless of the potential impacts to vulnerable communities in spite of its affirmative nondiscrimination obligations, is unfounded and in direct violation of federal law and regulation. MDNR’s failure to comply with EPA’s Title VI regulations results in discrimination in its permitting programs, generally, and in the issuance of the Kinder Morgan Operating Permit, specifically.

MDNR issues permits that are likely to and do impose adverse and disproportionate impacts on minority and low-income communities on a regular basis, dismissing comments from the public which raise concerns about these adverse and disproportionate impacts on the inadequate grounds that the permitted facilities are in compliance with NAAQS and other emissions limitations. Not only does MDNR not investigate adverse and disproportionate impacts in response to public comment, it does not consider less-discriminatory alternatives or proactively seek public input that might draw attention to potential adverse and discriminatory impacts as suggested by EPA guidance identified above. MDNR’s failure to facilitate meaningful public involvement, as recommended by EPA guidance, is felt most acutely in minority, low-income and limited English proficient communities, including the Impacted Community. These communities, such as the neighborhoods and citizens impacted by the Kinder Morgan facility who are members of Complainants organizations, are most impacted by air pollution from air pollution control permits issued by MDNR. Their input on permits needs to be heard and considered by MDNR.

In response to public comments regarding MDNR’s failure to provide adequate nondiscrimination notices, to institute a nondiscrimination coordinator, and to establish a grievance procedure for Title VI complaints, MDNR offers the following justifications for its noncompliance with EPA’s regulations:

Opportunities to express concerns are available. The Department maintains the following website to solicit public participation: <https://dnr.mo.gov/env/apcp/permit-public-notices.htm>. The public can sign up to receive e-mail notices when a new permit is posted for public comment by following the instructions on the form that appears after clicking

¹⁰⁴ Exhibit 1 and Exhibit 2.

¹⁰⁵ Exhibit 3.

¹⁰⁶ Exhibit 1, RPC-1; See also Exhibit 2, RPC-7.

on the graphic that reads, “Get Updates on this Issue.” This website contains information on permits that are open for public comment and other air quality issues for which the Department is soliciting public comments. Additionally, the public is encouraged to contact the Air Pollution Control Program and our Regional Offices to discuss any concerns. Contact information for the offices can be found at <https://dnr.mo.gov/regions/index.html>.¹⁰⁷

Contrary to MDNR’s position in response to public comments, there is no doubt that MDNR’s listserv and the public notice disseminated through it lack a nondiscrimination notice as required by EPA regulation. Moreover, the maintenance of a generic online public notice system to persons who have proactively signed up for a listserv regarding all statewide permits is not sufficient to meet its Title VI obligations because minority and low-income communities are least likely to be able to effectively access, navigate, and comment on digitally distributed public notices for draft permits. For example, persons with limited financial or technical resources may be in need of additional assistance in order to be able to review the proposed permit, ascertain its impact on their neighborhoods, or to be heard in response thereto. Many residents of the Dutchtown community, for example, lack access to a computer or the internet, and fall within this category.¹⁰⁸ No efforts appear to have been undertaken by the MDNR or Kinder Morgan to make such provisions for adequate and meaningful public involvement from low income and minority communities that are disproportionately burdened with pollution impacts from MDNR’s permitting program and the issuance of the Operating Permit, and lack any meaningful ability to participate in the permitting process.

Similarly, “opportunities to express concern” and “encourag[ement] to contact the [APCP]” are not grievance procedures required by EPA’s Title VI regulations. Neither commenting on public notices nor informal contact with an agency can reasonably constitute “prompt and fair grievance procedures” to address complaints of discrimination and, therefore, MDNR’s reliance on practices cannot meet its obligation under EPA’s regulations.

Notably, MDNR avoids the issue of a nondiscrimination coordinator, because the agency simply does not have one. Despite accepting significant sums of federal funds over the years, nondiscrimination and environmental justice simply are not on the agency’s radar as demonstrated by its boilerplate responses to public comments regarding these issues. If MDNR had a nondiscrimination coordinator, Complainant’s public comments on the Operating Permit would have elicited a response from such agency official. MDNR’s responses to public comment clearly indicate that they are in violation of EPA’s regulations. These procedural requirements that are designed as basic, minimum first steps in preventing discrimination in federally-funded programs and activities are clearly not being met by MDNR, and have resulted in discriminatory acts against Complainants members and other similarly situated persons.

¹⁰⁷ Id. at RPC-2; See also Exhibit 2, RPC-7.

¹⁰⁸ See, Missouri Census Data Center.

2. MDNR's Issuance of The Kinder Morgan Operating Permit Results in Disparate Impacts to Minority and Low-Income Communities

The Kinder Morgan facility inflicts significant health impacts on the minority and low-income communities living nearby to the facility. In issuing the permit, MDNR entirely avoided its Title VI obligation to ensure that its air permitting program in general and the health impacts caused by the Kinder Morgan facility specifically do not have the effect of discriminating against minority and low-income communities as required by 40 C.F.R. §7.35(b). Accordingly, by issuing the Operating Permit to Kinder Morgan, MDNR has caused a disparate impact to the minority and low-income community living nearby. In so doing, MDNR has committed discriminatory acts in violation of Title VI.

In response to the draft operating permit for Kinder Morgan, Complainants advised MDNR that it had failed to consider these disparate impacts to a disproportionately minority and low-income community in its decision to issue the Operating Permit in violation of Title VI, yet these comments went ignored by the agency. In response to public comments informing the agency that it must consider whether the issuance of the Operating Permit results in disparate impacts to minority and low-income resident near the Kinder Morgan facility, MDNR asserts that:

Neither the Department nor the Kinder Morgan Transmix Company LLC are required to conduct the analyses requested. If an application complies with the requirements of the State's authorized permit program, and the source is in compliance with its construction permit(s), the Department must issue the permit in accordance with § 643.078, RSMo. The Department notes, however, that the state and federal regulations the Department applies in developing and issuing Title V Part 70 operating permits were promulgated to protect human health and the environment from potential adverse impacts of air pollution.¹⁰⁹

First, MDNR is required to analyze whether its activities, such as issuing the Operating Permit, have the effect of causing disparate impacts on minority and low-income communities that result in discrimination. Second, as explained above, MDNR's conclusion that it must issue a permit if it complies with state law is an abdication of its responsibilities as recipient of federal funding to prevent discrimination. Finally, since 2013, the EPA no longer assumes that compliance with environmental health-based thresholds is adequate to show that no adverse or disparate impacts are present. Analyses that rely exclusively on compliance "may not give sufficient consideration to other factors that could also adversely impact human health."¹¹⁰ A thorough analysis should evaluate other appropriate factors, "including the existence of hot spots, cumulative impacts, the presence of particularly sensitive populations that were not considered in the establishment of the health-based standard, misapplication of environmental standards, or the existence of site-specific data demonstrating an adverse impact despite compliance with the health-based threshold."¹¹¹ None of these considerations were addressed by MDNR in issuing the Operating Permit.

¹⁰⁹ See Exhibit 1, RPC 1-2.

¹¹⁰ See *Supra*, Note 86.

¹¹¹ *Id.*

In each instance where MDNR has refused to conduct a disparate impact analysis, public comment demonstrated that affected communities were exposed to cumulative impacts and contained sensitive populations, including the Impacted Community. The presence of these factors in the Impacted Community should have prompted MDNR to conduct some form of disparate impact analysis rather than claiming that it does not have to perform these mandatory duties. Failure to engage in any investigation after being notified by the impacted community was an abdication of MDNR's nondiscrimination obligations under Title VI. Given MDNR's lack of any Title VI program or staff, it is unsurprising that the Department has failed to uphold this obligation on several occasions, including in regards to the instant Operating Permit. Until EPA requires MDNR to engage in substantive enforcement of its Title VI regulations, including by requiring the creation and administration of a Title VI program, MDNR will likely continue to issue permits with disparate impacts without conducting any analysis of whether its programs and activities result in discrimination. Clearly, in issuing the Kinder Morgan Operating Permit, MDNR did not consider whether its decision would have a disproportionate impact on minority and low-income communities adversely impacted by the facility in violation of 40 C.F.R. §7.35(b)'s prohibition against administering its federally-funded program in a manner that causes disparate impacts to protected persons. By virtue of this failure to even consider whether disparate impacts were caused in issuing the Operating Permit, MDNR has engaged in discriminatory acts in violation of Title VI and EPA's implementing regulations. As explained below, the adverse and disparate impacts caused to the Impacted Community by MDNR's issuance of the Operating Permit constitute discriminatory acts, which may have been prevented had MDNR complied with its Title VI obligations.

B. Adverse Impacts

Because of the neighborhood's proximity to St. Louis' riverfront industrial corridor, Dutchtown residents live immediately adjacent to a large number of sources of industrial air pollution. More than 600 regulated sources of pollution are located within close proximity of the Impacted Community, including 85 sources of air pollution, 9 of which are considered major sources.¹¹² These sources of industrial air pollution, including Kinder Morgan, are responsible for a host of adverse health impacts to the community. In particular, residents of the Impacted Community suffer an elevated cancer risk as a result of exposure to air toxics.¹¹³ Dutchtown residents are exposed to high quantities of ozone and particulate matter.¹¹⁴ Exposure to ozone and particulates causes an increased risk of heart attacks, asthma, reduced lung function and increased risk of lung illnesses, diabetes, kidney disease, adverse birth outcomes and negative impacts to child neurological development.¹¹⁵ Accordingly, it is not surprising that Dutchtown

¹¹² See, e.g., U.S. Environmental Protection Agency, *ECHO Enforcement and Compliance History Online*, located at <https://echo.epa.gov> (last visited September 2, 2020).

¹¹³ Ekenga, et al., "Cancer risk for air toxics in relation to neighborhood isolation and sociodemographic characteristics: A special analysis of the St. Louis metropolitan area, USA", *Environmental Research* 179 (2019).

¹¹⁴ American Lung Association, *State of the Air*, located at <http://www.stateoftheair.org/city-rankings/states/missouri/st-louis-city.html#> (last visited August 30, 2020).

¹¹⁵ *Id.*; U.S. Environmental Protection Agency, *Health and Environmental Effects of Particulate Matter*, located at <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm#:~:text=Exposure%20to%20such%20particles%20can,with%20heart%20or%20lung%20disease&text=decrease%20lung%20function> (last visited August 31, 2020); U.S. Environmental Protection Agency, *Health Effects of Ozone Pollution*, located at <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> (last

residents have significantly higher rates of asthma-related emergency room visits than Missouri and National averages.¹¹⁶

Due to the age and often substandard condition of much of the housing in Dutchtown, the residents also often experience heightened exposure to lead and mold in their environments.¹¹⁷ Because a major highway bisects the neighborhood, vehicle pollution remains an additional exposure risk.¹¹⁸ Illegal dumping of trash and hazardous waste is a recurring problem in the neighborhood.¹¹⁹ Finally, the community experiences an increased incidence of building demolition, leading to the further spread of harmful dust, lead and asbestos into the air.¹²⁰ Together these air contaminants create a cumulative burden on the community that magnifies the adverse impacts of the air contaminants identified above.

As a result, it is clear that MDNR's issuance of the Operating Permit will add to the already adverse impacts suffered by the Impacted Community. Despite accepting federal funds and being advised by Complainants of their Title VI obligations, MDNR has failed to ensure that the Operating Permit was issued in a way that limits these adverse impacts to the surrounding community.

C. Disproportionality

MDNR's failure to issue the Operating Permit in accord with its Title VI nondiscrimination obligations causes the above adverse impacts to fall disproportionately on the Impacted Community. As outlined above, the Impacted Community is significantly more minority, low-income, and ethnically diverse than other parts of the St. Louis metropolitan area or Missouri. Almost three-quarters of the community's residents identify themselves as having a racial identity other than white, as compared to the Missouri average of 17%, the St. Louis

visited August 31, 2020); University of Washington, *Air pollution can accelerate lung disease as much as a pack a day of cigarettes* (August 13, 2019), located at <https://www.washington.edu/news/2019/08/13/air-pollution-can-accelerate-lung-disease-as-much-as-a-pack-a-day-of-cigarettes/#:~:text=Air%20pollution%20%E2%80%94%20especially%20ozone%20air,and%20the%20University%20at%20Buffalo> (last visited August 31, 2020); Washington University School of Medicine in St. Louis, *Breathing dirty air may harm kidneys* (September 21, 2017), located at <https://medicine.wustl.edu/news/breathing-dirty-air-may-harm-kidneys/> (last visited August 31, 2020); Brockmeyer, Sam and Amedeo D'Angiulli, "How air pollution alters brain development: the role of neuroinflammation," *Translational Neuroscience* 7(1): 24-30 (2016); Zarami, Farhad and Prashant Kumar, "Ambient exposure to coarse and fine particle emissions from building demolition," *Atmospheric Environment* 137:62-79 (2016); Guarnieri, Michael and John R. Balmes, "Outdoor air pollution and asthma," *Lancet* 383 (9928): 1581-1592 (May 3, 2014).

¹¹⁶ *Understanding Our Needs* at p. 97.

¹¹⁷ See, *Equity Indicators* and *Understanding Our Needs*. See also, Interdisciplinary Environmental Clinic at Washington University School of Law, *Environmental Racism in St. Louis*, located at <https://assets.documentcloud.org/documents/6367937/2097-STL-EnvirRacism-Report-04-Web.pdf> (last visited August 30, 2020).

¹¹⁸ Union of Concerned Scientists, *Cars, Trucks, Buses and Air Pollution* (Updated July 19, 2018), located at <https://www.ucsusa.org/resources/cars-trucks-buses-and-air-pollution#:~:text=Cars%2C%20trucks%20and%20buses%20produce,vehicle%20operation%20and%20fuel%20production.&text=Primary%20pollution%20is%20emitted%20directly,between%20pollutants%20in%20the%20atmosphere> here (last visited August 20, 2020).

¹¹⁹ *Environmental Racism in St. Louis*.

¹²⁰ See, *Equity Indicators*; *Understanding Our Needs* and *Environmental Racism in St. Louis*.

County average of 30% or even the St. Louis City average of 50%.¹²¹ The median income is significantly lower and significantly more community residents live in poverty compared to averages for St. Louis County or Missouri.¹²² More community residents on average speak languages other than English at home and are considered linguistically isolated than other parts of St. Louis or Missouri.¹²³

Dutchtown is home to a larger number of sources of pollution than other parts of St. Louis and Missouri. Residents of the community live immediately adjacent and alongside more than 600 regulated sources of pollution, 11 of which are considered major sources.¹²⁴ A significant number of these sources are located along the St. Louis' riverfront. As a result, residents of communities such as Dutchtown, with its close proximity to the riverfront, experience increased pollution in their communities. In contrast, industrial pollution sources are much fewer and farther between in suburban areas in St. Louis County, or even other sections of St. Louis City.¹²⁵

The Impacted Community suffers disproportionately more health impacts as a result of this increased pollution burden. Dutchtown residents bear an increased risk of cancer as a direct result of exposure to air toxics – a risk that is notably absent in the western and southern reaches of the St. Louis Metro area.¹²⁶ Ozone and particulate matter exposure is very high in St. Louis City as compared to the metro area and Missouri.¹²⁷ Minority children living in the City of St. Louis are ten times more likely than white children to visit emergency rooms for asthma-related complications.¹²⁸ Not surprisingly, residents of Dutchtown suffer significantly higher rates of asthma-related emergency room visits as compared to other Missouri residents.¹²⁹ Further, it has been well documented that residents of Dutchtown experience comparatively heightened exposure to lead and mold in their environments, greater exposure to illegal trash dumping, more vehicular-related traffic pollution, and increased incidence of building demolition pollution than most residents of St. Louis County or Missouri.¹³⁰

¹²¹ See U.S. Environmental Protection Agency, *EJScreen Report* (Nov. 20, 2019), copy attached hereto as Exhibit 4. See also, Missouri Census Data Center, located at <http://mcdc.missouri.edu/> (last visited September 2, 2020).

¹²² Dutchtownstl, *Demographics*, located at <https://www.dutchtownstl.org/about/demographics/> (last visited August 30, 2020).; Missouri Census Data Center.

¹²³ Exhibit 2.

¹²⁴ See, e.g., U.S. Environmental Protection Agency, *ECHO Enforcement and Compliance History Online*, located at <https://echo.epa.gov> (last visited August 30, 2020).

¹²⁵ See, *ECHO Enforcement and Compliance History Online*.

¹²⁶ *Id.*

¹²⁷ American Lung Association, *State of the Air*, located at <http://www.stateoftheair.org/city-rankings/states/missouri/st-louis-city.html#> (last visited August 30, 2020).

¹²⁸ City of St. Louis, *Equity Indicators Toward a St. Louis Region that works for us all, Baseline Report* (2018), at pp. 36-37, located at <https://www.stlouis-mo.gov/government/departments/mayor/initiatives/resilience/equity/documents/upload/Equity-Indicators-Baseline-2018-Report-Document.pdf> (last visited August 30, 2020).

¹²⁹ *Understanding Our Needs* at p. 97.

¹³⁰ See, *Equity Indicators and Understanding Our Needs*. See also, Union of Concerned Scientists, *Cars, Trucks, Buses and Air Pollution* (Updated July 19, 2018), located at <https://www.ucsusa.org/resources/cars-trucks-buses-and-air-pollution#:~:text=Cars%2C%20trucks%20and%20buses%20produce,vehicle%20operation%20and%20fuel%20production.&text=Primary%20pollution%20is%20emitted%20directly,between%20pollutants%20in%20the%20atmosphere> here (last visited August 20, 2020) and Interdisciplinary Environmental Clinic at Washington University School of

Finally, it is notable that the Impacted Community is more likely to be excluded from environmental permitting decisions than other Missouri residents. Close to a quarter of the households in Dutchtown do not have a computer, and more than 10% of those have no access to the internet.¹³¹ These limitations make it challenging, if not impossible, for community members to stay on top of researching the sources of pollution around them that are only publicized through email and internet. When such barriers are paired with Impacted Community members' relative lack of time, education and resources available and necessary to invest in the regulatory processes, the net effect is to make it disproportionately less likely that the Impacted Community members will be involved in the regulatory process than other Missouri residents.

As a result, it is clear that the burden of MDNR's decision to permit the Kinder Morgan facility, and its failure to implement a Title VI-compliant program falls disproportionately on the Impacted Community. It is clear that communities such as Dutchtown experience more pollution, greater health effects from that pollution, and are less able to respond to an individual pollution siting decision by MDNR. To protect these communities, MDNR should be doing *more*, not *less* in terms of community involvement and disparate impact analysis. Unfortunately, less is exactly what MDNR has been doing in communities such as Dutchtown, in clear contravention of the letter and spirit of Title VI. EPA must step in and rectify this worsening situation.

D. Less Discriminatory Alternatives

During the public notice and comment period for the Operating Permit, and on prior instances of permit issuances, MDNR has declined to accept recommendations from Complainants about its processes and analysis which, if adopted, would mitigate the identified adverse and disparate impacts on Complainants' members and other members of the Impacted Community. The following less discriminatory alternatives were available, and continue to be available to MDNR:

1. MDNR has had the option and opportunity, but have continuously refused, to engage the Impacted Community in a meaningful process by which MDNR receives and incorporates the impacted community's input regarding permitting decisions. Specifically, MDNR has failed to provide notice actually intended to advise residents nearby Kinder Morgan regarding the permitting process and their rights to participate in the process. Options that have been offered by Complainants to use other methods of notice other than a listserv, such as at community centers or schools, have been ignored by MDNR. In addition, MDNR has failed to deliver information about the permitting process to the community, or to solicit comments in a way that meaningfully engages the impacted community. Options that could address these shortfalls include convening a series of public meetings, held at community centers or schools, at which MDNR could deliver information about a project, and provide the public with an opportunity to ask questions and orally deliver comments and express concerns. MDNR has failed to offer any such opportunities to the impacted public.

Law, *Environmental Racism in St. Louis*, located at <https://assets.documentcloud.org/documents/6367937/2097-STL-EnvirRacism-Report-04-Web.pdf> (last visited August 30, 2020).

¹³¹ Missouri Census Data Center.

2. MDNR has the option, but refuses, to consider the cumulative impacts of the full implementation of its permitting program in the Impacted Community and other minority, low-income communities. MDNR has the option, but refuses to conduct a disparate impact analysis regarding the issuance of its permits instead of relying on compliance with NAAQS, which do not assess cumulative impacts, hotspots or sensitive populations. MDNR also has the option to conduct modeling to examine the impact of permitting decisions such as the Kinder Morgan Operating Permit, but has failed to do so here, and fails on a routine basis to do when making similar permitting decisions.
3. MDNR has had the option, but refuses to comply with basic procedural safeguards required by EPA Title VI regulations such as providing a complete notice of nondiscrimination in a way that is prominent and accessible to the public when providing public notices regarding permits and otherwise when disseminating information about its programs and activities; appointing and utilizing a nondiscrimination coordinator for its federally-funded programs and activities; and establishing and maintaining a nondiscrimination grievance procedure that assures prompt and fair resolution of complaints.

VII. Relief Requested

Complainants request that the EPA External Civil Rights Compliance Office accept this complaint and investigate whether MDNR has violated Title VI of the Civil Rights Act and its implementing regulations, through its lack of required Title VI procedures and the issuance of the Kinder Morgan Operating Permit. To the extent that MDNR is in violation of Title VI, Complainants request that the agency be brought into compliance by:

- a) requiring the revocation or suspension of the Kinder Morgan permit until MDNR has conducted a robust analysis of disproportionate impacts to St. Louis City minority and low-income communities such as Dutchtown, including consideration of the cumulative impacts from other nearby permitted facilities regulated by MDNR under the CAA, including allowing public comment on that disproportionate impacts analysis, and considering less-discriminatory alternatives;
- b) requiring MDNR to create a position for an Environmental Justice liaison, who would operate across all MDNR programs that receive federal funding to engage and inform minority and low-income communities whenever MDNR conducts permitting and siting decisions that might have disproportionate impacts on such communities;
- c) requiring MDNR to proactively facilitate informational meetings for minority and low-income communities when environmental permitting and siting decisions are proposed that might impact those communities, such as the one relating to Kinder Morgan's operating permit;

d) requiring MDNR to provide public information about proposed permits and facilities in languages other than English, and offer translators and interpreters at public meetings;

e) requiring MDNR to establish and publish grievance procedures, in accordance with EPA's Title VI implementing regulations, to ensure the prompt and fair resolution of discrimination complaints; and

f) conditioning all future grants and awards from EPA to MDNR on adequate assurance that its actions will comply with Title VI, as detailed above.

EPA's regulations also authorize EPA to conduct a periodic compliance review of recipient's programs and activities.¹³² In light of the serious Title VI violations described in this complaint, and MDNR's complete failure to acknowledge its obligations to comply with EPA's civil rights regulations in response to comments submitted by Complainants regarding the issuance of various permits, Complainants request that EPA initiate a broader review of MDNR's programs and activities to ensure compliance with Title VI of the Civil Rights Act, which may very well identify many other instances of civil rights violations and identify a pattern and practice of MDNR ignoring its obligations under Title VI of the Civil Rights Act.

* * *

Sincerely,



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¹³² 40 C.F.R. § 7.115(a).