

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

**In the Matter of
Markley Group, LLC**

**OADR Docket _____
DEP File No.: 24-AQ02F-0002-APP
Lowell, Massachusetts**

NOTICE OF CLAIM / REQUEST FOR AN ADJUDICATORY HEARING

The undersigned residents group (collectively, “Residents” or “Honest Future for Lowell”) respectfully submits this Notice of Claim and Request for an Adjudicatory Hearing on the Massachusetts Department of Environmental Protection’s (“MassDEP”) July 3, 2025 approval of Markley Group, LLC’s (“Markley Group” or “Markley”) Non-Major Comprehensive Plan Application (“Application”), Approval No. NE-25-002, for the construction and operation of diesel back-up generators and related infrastructure at the Markley Group’s data center facility located at One Markley Way in Lowell, Massachusetts (“Facility”).¹ Residents request that MassDEP vacate its Plan approval and deny Markley Group’s Application for Non-Major Comprehensive Plan (the “Plan”). Residents submit this appeal and request for an adjudicatory hearing as a ten-person group pursuant to 310 Code of Mass. Regs. (CMR) 1.01(6) and (7), 310 CMR 7.51, and M.G.L. c. 30A § 10A and are represented in this appeal by Alternatives for Community & Environment (“ACE”) and the Environmental Justice Law and Advocacy Clinic (“Clinic”) of Jerome N. Frank Legal Services Organization.

¹ MassDEP’s July 3, 2025 Air Quality Plan Approval is attached as Attachment A hereto. Markley Group’s April 28, 2025 Application is attached as Attachment B hereto.

I. Residents Bringing this Appeal

Residents, members of the ten-persons group referred to collectively as Honest Future for Lowell, who file this notice of claim and request for adjudicatory hearing are:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]

Residents submit this appeal and request for an adjudicatory hearing pursuant to 310 CMR 7.51(1)(g)(3) as a group of ten or more residents aggrieved by the decision of MassDEP to approve the Application. Each member of Honest Future for Lowell resides within the municipality—Lowell, Massachusetts—in which the permitted activity is located, where they are

directly affected by the air pollution emitted by the Facility and by the adverse environmental, economic, and social impacts its expansion under the Plan would have on their community and property.

Residents are aggrieved by and substantially and specifically impacted by MassDEP's approval of Markley Group's Application because the Plan will increase diesel particulate matter emissions, degrading localized air quality in the vicinity of their homes; increase noise and dust pollution already experienced by Residents from Facility operations; and compound existing environmental burdens in the State-designed Environmental Justice (EJ) community in which members of Honest Future for Lowell reside. Residents live in close proximity to the Markley Facility, where they already experience air pollution, noise, and dust created by the Facility's current reliance on diesel backup generation, cooling towers, and flatbed chillers, which will be worsened by the Plan. Many Residents and their family members are particularly susceptible to the air pollution already emitted by the Markley Group's Facility due to their age and health and are likely to suffer further harm as a result of the Plan. Residents share an interest in reducing environmental burdens in their community and creating a healthy and thriving environment for current and future residents, which will be compromised by MassDEP's approval of the Plan.

Pursuant to 310 CMR 7.51(d), Residents presented their concerns with the Plan to MassDEP during the provided public comment period. ACE filed written comments with MassDEP on behalf of Lowell residents concerning the proposed approval.² Many residents, including members of Honest Future for Lowell, filed their own written comments with MassDEP in addition to the comments filed by ACE. Residents also participated in related public meetings held by the City of Lowell and the Markley Group and gave oral comments that

² Sofia Owen & Alternatives for Community & Environment, Comment on Proposed Plan, Mass. Dep't of Env'tl. Prot. (June 2025). Residents provide ACE's comments as Attachment C hereto and incorporated them reference as part of this Request for Adjudicatory Hearing.

directly relate to the Application.³ Residents bring this appeal and request for adjudicatory hearing because MassDEP approved the Plan despite Residents’ substantial and unaddressed concerns. Included with this Notice of Claim is an affidavit of each of the Residents stating that they intend to be a part of the Residents group appealing the conditional approval and to be represented by ACE and the Clinic in this proceeding.

II. Facts Underlying the Hearing Request

This request for an adjudicatory hearing concerns the Markley Group’s April 28, 2025 Application for a Non-Major Comprehensive Plan (Application No. 25-AQ02F-0001-APP) to expand diesel generation and related facilities at its data center in Lowell, Massachusetts. Markley Group sought approval to install and operate eight (8) additional diesel emergency generators at the Facility, for a total of 27 emergency generators at the Facility; the generators also require operation of sixteen cooling towers to support the Facility’s expansive electrical infrastructure.⁴ Markley Group seeks to install additional diesel generator units to expand data processing capacity at its Facility to accommodate its clients’ increased use of artificial intelligence.⁵

This is not the first time that Markley Group has sought permission to expand its diesel backup generation capacity in recent years. On November 3, 2023, MassDEP approved an application by the Markley Group to install and operate four diesel generators on top of the seven diesel generators already approved for the Facility.⁶ Markley Group’s Application submittals⁷ and MassDEP’s Air Quality Plan Approval for the instant Application state that the four

³ For documentation of one such oral comment at at public meeting related to the Application, see Mary Wambui, Comment on Proposed Data Center Expansion Plan, Mass. Dep’t of Env’tl. Prot. (“MassDEP”) (2024), https://www.linkedin.com/posts/mary-wambui-75228511_ajusttransition-activity-7243794463431475200-dmSY/.

⁴ MassDEP, Air Quality Plan Approval No. NE-25-002 at 3 (July 3, 2025) (hereinafter “Plan Approval”)

⁵ Markley Group, Air Quality Impact Analysis at 2 (Apr. 28, 2025).

⁶ MassDEP, Air Quality Plan Approval No. NE-22-016 (Nov. 3, 2023).

⁷ See, e.g., Markley Lowell NMCPA: Facility Description at 5 Table 1 (May 7, 2025) (hereinafter “Facility Description”) (identifying only seven of 19 permitted diesel generators as current installed).

generators subject to the November 2023 plan approval have not been installed as of filing, but observations from residents and drone footage of the Facility evidence installation of 21 diesel generators as of June 9, 2025.⁸ On March 25, 2025, MassDEP approved another application authorizing Markley Group to install and operate eight additional emergency generators, bringing the total to nineteen diesel generators. Markley Group's Application and MassDEP's July 3 Plan approval again state that the eight generators subject to the March 2025 plan approval have not been installed as of filing, despite visual documentation otherwise.⁹ Through the instant Plan, Markley Group is requesting permission to install and operate another eight diesel generators before documenting and testing installation of the diesel generators approved in November 2023 and March 2025 and before it has demonstrated the need for additional generation units at the Facility.

A. Facility's Siting in a State-Designated Environmental Justice Community

Lowell is the fifth most populated city in Massachusetts and a diverse and thriving community despite challenges posed by its industrial legacy. Lowell was founded as a textile town in the 1800s, but its economy suffered when the mills closed in the early 20th century. An influx of new commercial facilities has taken their place, bringing opportunities as well as new forms of social and environmental challenges for the City's 115,000 residents.

Today, the entire City of Lowell is a State-designated Environmental Justice (EJ) community. The City as a whole meets State EJ population designation criteria for income, community of color, and English isolation, and the vast majority of the population, 88.5% of residents, live in designated EJ neighborhoods.¹⁰ The census block in which the Facility is

⁸ Plan Approval at 2; *see* Chambers Field Neighborhood Drone Footage of Facility from June 9, 2025 providing visual evidence of installation of 21 diesel generators, <https://www.youtube.com/watch?v=REpmCwQQ2ts>.

⁹ *See, e.g.*, Facility Description at 5-6; Plan Approval at 2.

¹⁰ Under Massachusetts law, an EJ population is a neighborhood where one or more of the following criteria exist: (1) the annual median household income is 65% or less of the statewide annual median household income, (2) minorities make up 40% or more of the population, (3) 25% or more of households identify as speaking English less than "very

located is 65% minority, and 15% of households experience language isolation.¹¹ Language isolation in nearby census blocks is as high as 45%, and multiple abutting census blocks fall well below the income threshold for EJ designation. In addition, the entirety of the area within a one-mile radius of the Facility falls within several EJ block group categories.¹² Languages spoken in these areas by over 5% of the population are: Spanish or Spanish Creole, Portuguese or Portuguese Creole, and monKhmer/Cambodian.¹³

Environmental justice populations encompass only a small portion of the land area of the Commonwealth, but they host or are located near many of the state's most contaminated sites and large emitters of air pollutants.¹⁴ Such is the case for Lowell, where localized air pollution and other environmental health burdens show up in the bodies of residents. According to the Massachusetts Department of Public Health (DPH), Lowell meets the vulnerable health environmental justice criteria for childhood asthma hospitalizations, at well above 110% the statewide rate.¹⁵ The City also significantly exceeds 110% of the statewide rate for heart attacks, childhood blood lead levels, and low birth rates.¹⁶

well,” and/or (4) minorities make up 25% or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150% of the statewide annual median household income. Mass. Gen. Laws ch. 30, §§ 62 (2022)

¹¹ Mass. Office of Environmental Justice & Equity, Environmental Justice Maps 2022, <https://mass-eoeea.maps.arcgis.com/apps/MapSeries/index.html?appid=535e4419dc0545be980545a0eeaf9b53>.

¹² Plan Approval at 6.

¹³ Languages spoken in Massachusetts, ArcGIS Web app viewer, <https://mass-eoeea.maps.arcgis.com/apps/webappviewer/index.html?id=dffdbf9c109647fc9601f7524c1fd9f4> (last visited July 23, 2025); Tract 3121 in Lowell languages are 5.8% Spanish or Spanish Creole, 8.3% Portuguese or Portuguese Creole, and 6.7% MonKhmer/Cambodian.

¹⁴ Massachusetts Environmental Justice Community Index, GIS story maps, <https://storymaps.arcgis.com/stories/ca19c7c9c4ad46a28f2825aa2a3a5ed2> (last visited July 23, 2025); Luna, Marcos, and Dominic Nicholas, An environmental justice analysis of distribution-level gas leaks in Massachusetts, USA, Energy Policy (Mar. 2022), 162(1):112778, [10.1016/j.enpol.2022.112778](https://doi.org/10.1016/j.enpol.2022.112778).

¹⁵ Mass. Dept. of Env'tl. Health, Environmental Justice Tool, <https://www.mass.gov/dph/ej-tool> (last visited Jun. 16, 2025).

¹⁶ Mass. Dept. of Pub. Health Analytics-Lowell, MA DPH Environmental Justice Tool, https://dphanalytics.hhs.mass.gov/ibmcognos/bi/?perspective=authoring&pathRef=public_folders%2FMEPHTN%2Fcommunity%2FEJ%2BScreening%2FEJ%2BScreening%2Bv7-community&id=iB825DF5BD8CD4B01964E7FD480C5F473&prefetchsvc=disabled&closeWindowOnLastView=true&ui_appbar=false&ui_navbar=false&objRef=iB825DF5BD8CD4B01964E7FD480C5F473&action=run&format=HTML&cmPropStr=%7B%22id%22%3A%22iB825DF5BD8CD4B01964E7FD480C5F473%22%2C%22type%22%3A%22report%22%2C%22defaultName%22

Lowell residents are particularly vulnerable to public health concerns due to the placement of toxic waste sites, factories, and other polluting sources in their community. According to the U.S. Environmental Protection Agency’s former Environmental Justice Screening and Mapping Tool, EJSCREEN, the census block containing the Facility ranks in the 98th percentile for nitrogen dioxide emissions, the 63rd percentile for diesel particulate matter emissions, the 97th percentile for traffic proximity, the 96th percentile for Superfund proximity, the 92nd percentile for hazardous waste proximity, and in the 60th percentile for wastewater discharge.¹⁷

B. The Markley Group’s Data Center and Expansion Plans

In July 2015, the Lowell Planning Board granted an application by the Markley Group to open a new data center—the Facility—in the 350,000 square foot former Prince Pasta factory at 2 Prince Avenue (now 1 Markley Way).¹⁸ In the years since, the Markley Group has, through successive applications and site plan approvals, converted the building into an expansive—and still growing—telecommunications and data center facility. The Markley Group’s Lowell Facility provides data storage, cloud computing, and networking to clients. Now, with what the Markley Group characterizes as an “uptick in the use of Artificial Intelligence (AI), Markley is increasing its clients’ data capacity” and seeking again to expand Facility operations.¹⁹

To support data processing capacity—and, in particular, expansion of AI services—data centers need a significant source of electricity. Where they rely on grid-provided electricity, data centers often strain local utility infrastructure or require expanded infrastructure, the costs of

[%3A%22EJ%20Screening%20v7-community%22%2C%22permissions%22%3A%5B%22execute%22%2C%22read%22%2C%22traverse%22%5D%7D](#) (last visited July 23, 2025).

¹⁷ U.S. Environmental Protection Agency, Environmental Justice Screening and Mapping Tool (version 2.3), maintained by Public Environmental Data Partners and available at <https://pedp-ejscreen.azurewebsites.net/>.

¹⁸ Staff Report RE 2 Prince Ave, 1 Markley Way – Site Plan Review Amendment, Dept. of Planning & Development (Sept. 1, 2020), https://www.lowellma.gov/DocumentCenter/View/12957/2-Prince-Ave-1-Markley-Way_DPD-Comments-20200901.

¹⁹ Air Quality Modeling Report at 2.

which are then born by local ratepayers.²⁰ Data centers also impose significant strains on local water sources and other resources required for the cooling necessary for computing functions.²¹

Although the Markley Group primarily relies on utility electrical infrastructure for its expansive power needs, the Facility, according to the Markley Group, requires backup power generation for reliable and continuous computing functions for its clients in the event of a grid outage. The Markley Group has chosen to rely for backup power on diesel generators—a particularly polluting source of power—which partially encircle the Facility, as shown in Figure 1 below and in recent drone footage of the Facility.²² Notably, this facility abuts local recreational facilities, including a park and baseball field frequented by residents, including children.

²⁰ Ari Peskoe & Eliza Martin, *Extracting Profits from the Public: How Utility Ratepayers Are Paying for Big Tech's Power*, Harv. Elec. L. Initiative (Mar. 5, 2025), <https://eelp.law.harvard.edu/extracting-profits-from-the-public-how-utility-ratepayers-are-paying-for-big-techs-power/> (last visited July 24, 2025); Ivan Penn, *Data Centers' Hunger for Energy Could Raise All Electric Bill*, <https://www.nytimes.com/2025/05/16/business/energy-environment/data-centers-utilities-electricity-bills.html> (May 16, 2025).

²¹ See Eli Tan, *Their Water Taps Ran Dry When Meta Built Next Door*, <https://www.nytimes.com/2025/07/14/technology/meta-data-center-water.html> (July 14, 2025).

²² See Chambers Field Neighborhood Drone Footage of Facility (June 9, 2025), <https://www.youtube.com/watch?v=REpmCwOO2ts>

Figure 1 Site Layout



Legend

- Additional 8 Generators
- Existing and Previously Approved Equipment
- Property Line 10-ft Sound Wall
- Markley Property Line



(Source: Markley Group, Facility Description at 5 (May 7, 2025))

At the time of its Application, the Markley Group asserted that it had installed seven diesel backup generators at the Facility—three along the Facility’s north side and four at its south side.²³ MassDEP’s Plan approval NE-22-016, issued on November 3, 2023, allowed Markley Group to install and operate four additional diesel generators, for a total of eleven diesel generators at the Facility. Next, Markley Group applied for and obtained plan approval

²³ Facility Description at 5 Table 1.

NE-24-014 (issued March 25, 2025), which allowed Markley Group to install and operate eight more 3,000 kilowatt (kW) diesel generators, for a total of nineteen diesel generators. The Markley Group told MassDEP in its Application submittals that the 12 diesel generators permitted in November 2023 and March 2025 had not yet been installed at the Facility.²⁴ But as noted above, drone footage of the Facility dated June 9, 2025 provides visual documentation of installation of 21 diesel generators at the Facility—14 more diesel generator installations than Markley Group reported to MassDEP and to the public and two more installations than plan approvals at the time authorized. Seeking to service its clients’ increasing reliance on AI, Markley accelerated its plans to add more backup power by submitting yet another application for diesel generation capacity only a month later.

In its April 28, 2025 Application, Markley seeks to add an additional eight Caterpillar 3516E 3,000 kW generators, bringing the total number of existing or approved diesel generators at the facility to twenty-seven. To ensure that the generators are fail-safe, the Markley Group reports that it will conduct weekly testing of the generators, with each generator running for around five minutes, one at a time. In the case of a power emergency or grid disruption, the Markley Group plans for all twenty-seven generators to run their shared loads simultaneously based on their groupings.²⁵ In addition to two existing cooling towers, Plan Approval NE-24-014 authorized installation of fourteen additional cooling towers on the east side of the Facility to support the electrical infrastructure within the Facility, for a total of sixteen cooling towers.

In sum, Markley Group’s Non-Major Comprehensive Plan Approval Application seeks to:

- Establish that the eight (8) proposed emergency engines shall comply, in full, with Regulation 310 CMR 7.26(42), upon installation,

²⁴ Facility Description at 5-6 Table 1.

²⁵ Air Quality Report at 3.

- establish that each of the twenty-seven (27) emergency engines shall be operated only during an emergency as defined in 310 CMR 7.26(41) and for restricted routine maintenance, testing and non-emergency periods,
- establish federally enforceable emission limits on the twenty-seven (27) emergency engines in order to maintain the Facility’s minor source status, restricting potential emissions below the major source threshold of fifty (50) tons per year for Oxides of Nitrogen (NOx) emissions, so as to not be subject to the Operating Permit Program under 310 CMR 7.00 Appendix C,
- demonstrate via air dispersion modeling, that the proposed operation of the twenty-seven (27) emergency engines, under typical and redundancy operation scenarios, will not cause a violation of National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide (NO₂), Carbon Monoxide (CO), Particulate Matter (PM_{2.5} and PM₁₀), and Sulfur Dioxide (SO₂),
- demonstrate via a sound assessment, that the Facility’s operation of the twenty-seven (27) emergency engines and supporting cooling systems comply with 310 CMR 7.10 Noise regulation and that appropriate and effective noise mitigation measures will continue to be taken to prevent unnecessary sound emissions, and
- maintain the existing 10-foot sound wall along the eastern property line with new sound attenuation design to mitigate sound generated by the cooling towers.²⁶

In support of its Application, the Markley Group, through a third-party contractor, conducted air dispersion modeling for the diesel generators to confirm compliance with the National Ambient Air Quality Standards (NAAQS).²⁷ VHB, the third-party contractor, concluded that the operation of the eight new generators together with the nineteen previously approved diesel generators will comply with the respective NAAQS for carbon monoxide, particulate matter, nitrogen dioxide, and sulfur dioxide, and therefore, comply with 310 CMR 7.02(5)(c).²⁸

C. Plan Approval Over Residents’ Concerns

The location of the Facility in a designated EJ population required MassDEP to ensure adequate public outreach to affected residents prior to approval of Markley Group’s latest Plan to

²⁶ Plan Approval at 4-5.

²⁷ See VHB, Air Quality Impact Analysis, Prepared for Markley Group LLC (Apr. 28, 2025) (hereinafter “Air Quality Impact Analysis”); 310 CMR 7.02(3)(j)(1)

²⁸ Air Quality Impact Analysis at 1.

expand diesel generation at the Facility. Public outreach comprised a neighborhood meeting on June 2, 2025, a Lowell Environmental Flood Issues Subcommittee meeting on June 3, 2025, an “open-house” at the Markley Group Facility on June 16, 2025, and a Lowell City Council meeting on June 24, 2025.²⁹ MassDEP released a public notice for a thirty-day comment period on the Plan on its ePLACE portal along with a translated EJ fact sheet, with a June 17, 2025 deadline for comments. Despite robust public interest in the Plan, MassDEP did not hold a public hearing on the Plan approval to hear and respond to Residents’ concerns.³⁰ At least one resident also requested an extension to the public comment period to provide residents sufficient time to document their concerns with the Application, but MassDEP denied the request.

Despite limited opportunities for public participation, residents and their representatives raised numerous concerns during the public comment period about the adequacy of Markley Group’s disclosures and MassDEP’s evaluation of the Plan and about the unmitigated impacts its approval would have for local residents. Residents informed MassDEP of disruptive noise from diesel generators and cooling towers at the Facility, while dirt piles along the Facility’s emergency exit road kick up dust that coats homes, cars, and outdoor gathering spaces.³¹ Residents reported needing to keep their windows closed in the summer heat, cancel outdoor activities for children, and to regularly clean particulate-laden surfaces of their homes. Lingering fears about Legionella from inadequately maintained cooling towers and unassessed

²⁹ See, e.g., South Lowell Group (May 29, 2025) <https://www.facebook.com/groups/611519308973857/posts/9650647915060906/>; Lowell Environmental Flood Issues Subcommittee (June 3, 2025), <https://www.youtube.com/watch?v=StKeqFKXPqc> (last visited July 23, 2025); Lowell City Council Regular Meeting Agenda, Lowell MA (June 24, 2025), https://www.lowellma.gov/AgendaCenter/ViewFile/Agenda/_06242025-3536.

³⁰ According to MassDEP, public hearings on air quality plans will be scheduled at the department’s discretion. See MassDEP, *How to Participate in MassDEP Air Quality Permitting Decisions*, <https://www.mass.gov/info-details/how-to-participate-in-massdep-air-quality-permitting-decisions> (last visited July 24, 2025).

³¹ Holly Flynn, Eileen Castle, Sofia Owen, Comments on Proposed Data Center Expansion Plan, Mass. Dep’t of Env’tl. Prot. (June 2025); 310 CMR 7.09

contamination of Meadow Brook and the Concord River Reservoir undermine residents' sense of security and ability to fish, garden, and recreate. These impacts compound health, environmental, and economic burdens already experienced by this community.

In particular, residents pointed to the local and global harms from the Facility's expanding reliance on diesel generators. Diesel particulate matter is recognized as a toxic air contaminant because of its acute and chronic health impacts. The Commonwealth's 2016 Diesel Particulate Matter Inventory documents that diesel particulate matter can cause short-term problems such as coughing and asthma exacerbations—a particular concern given the high incidence of asthma in neighborhoods surrounding the Facility—as well as long-term respiratory damage and cancer. The expansion of Markley's Facility and continued reliance on additional diesel generators is particularly concerning, because diesel generators emit more pollutants per unit of fuel than utility-scale generation, and those pollutants can result in acute localized effects, creating smog that can “exacerbate respiratory conditions, like asthma, chronic obstructive pulmonary disease, and lung cancer, especially for children and older adults.”³² In contrast to large generation sources, the impacts are inherently local, as backup diesel generators do not have a tall smokestack to separate the release of pollutants from air that residents breathe or other pollution control equipment that utility-scale facilities require. MassDEP's guidance on toxic air pollutants further highlights that diesel exhaust contains forty EPA-listed hazardous air pollutants, fifteen of which are classified as probable or known human carcinogens. In response to these serious risks, MassDEP's 2021 Heavy-Duty Omnibus regulation requires new diesel engines to reduce nitrogen-oxide emissions by 75% and particulate-matter emissions by 50% in its first phase,

³² Diesel Back-Up Generator Population Grows Rapidly in the Bay Area and Southern California, M.CUBED (2021), available at <https://bit.ly/3LENog4>.

underscoring that diesel exhaust remains one of the Commonwealth's most dangerous air pollutants for public health.

The impact of the Plan on the environment and quality of life for residents extends beyond air pollution. The Facility's noise already exceeds allowable levels, with emergency generators operating more than 10 Decibels (dB(A)) above ambient levels, and two flatbed chillers producing sustained noise levels up to 65.9 dB(A), disrupting residents' sleep and use of outdoor private property. Commenters pointed out that the Plan would eliminate the five-foot sound wall on the eastern property line, removing the only effective barrier against this noise intrusion. Neighbors also described mist drifting from the cooling towers that settles on homes and yards, raising acute fears among residents of Legionnaires disease, particularly with little public information from the Markley Group or MassDEP about maintenance work being done on the cooling towers to prevent bacterial growth. Equally pressing are residents' concerns about engine exhaust, with commenters reporting that fumes from the Facility's south-side generators force residents to keep their windows closed and avoid outdoor spaces. One abutter reported never receiving advance notice of so-called "maintenance burns," which often extend to eight hours further than the four hours claimed, and pointed out the Markley Group's failure to retrofit all engines with the same scrubbers and noise reduction technology installed on new units. Residents also questioned whether Markley Group would comply with its stated Plan limits given ongoing and unaddressed violations of its existing plans.

Commenters also raised concerns about Markley Group's and MassDEP's failure to seriously consider alternative energy sources that would be less damaging to the local and global environment and avoid undercutting the State's Environmental Justice and climate goals. In particular, commenters pressed for non-fossil fuel alternatives such as natural gas turbines or

hydrogen fuel cells, which would deliver greater reliable power with far lower emissions and noise. No such alternatives analysis appeared in the Application or MassDEP's review.

Residents raised further concerns with the adequacy of Markley Group and MassDEP's consideration of environmental justice impacts. Commenters stressed, for instance, that mere publication of notices and fact sheets is insufficient. And community members urged MassDEP to undertake a full cumulative-impact and Environmental Justice review—rather than piecemeal approvals—because the Facility sits within a designated EJ population already burdened by asthma and industrial pollution.

MassDEP's response to comments brushed aside residents' concerns. MassDEP, for instance, defended its refusal to consider impacts of and risks presented by the cooling towers, stating that cooling towers are exempt from air quality plan approval prior to installation per 310 CMR 7.02(2)(b)(6). It denied the need for installation or maintenance of additional sound barriers or to investigate non-fossil-fuel alternatives to diesel generation. And it disclaimed the requirement for Markley Group to conduct a cumulative impact analysis because, in its assessment, the Plan approval would not increase facility-wide potential emissions of criteria pollutants, air pollutants, or air toxics by a qualifying amount. It also defended Markley Group's air quality monitoring, asserting that modeling for the Application using the Environmental Protection Agency's Atmospheric Dispersion Module (EPA-AERMOD) predicts 24-hour Particulate Matter (PM) 2.5 concentrations of 27.9 micrograms (one-millionth of a gram) per cubic meter air ($\mu\text{g}/\text{m}^3$), reaching 80% of the National Ambient Air Quality Standards (NAAQS), and a maximum annual PM_{2.5} impact of 6.53 $\mu\text{g}/\text{m}^3$, reaching 72% of the annual NAAQS. MassDEP accordingly issued an Air Quality Plan Approval (Approval No.

NE-25-002) on July 3, 2025, without cumulative impact analysis or robust mitigations for criteria pollutant emissions. This appeal follows.

III. Specific Objections to MassDEP’s Approval of the Application

A. MassDEP’s Approval Violates Requirements for Meaningful Involvement of Environmental Justice Communities

MassDEP’s approval of the Markley Group’s Application should be vacated and Markley’s Application denied because the Department failed to comply with the Executive Office of Energy and Environmental Affairs’ (EEA) Environmental Justice Policy (“EJ Policy”), Executive Order 552, and the 2021 Roadmap Law.³³ Markley Group’s Application and DEP’s Approval acknowledge that the “entirety of the area within 1 mile radius of the Facility circle” meets the State’s designation for an EJ population. This designation triggered MassDEP’s duty to conduct an inclusive public-participation process for actions relating to the Markley facility.³⁴

Recognizing the historic exclusion of disadvantaged communities from decision-making that affects them, Massachusetts law insists that agencies ensure meaningful involvement of residents of EJ populations in environmental planning, reviews, and approvals. The State’s EJ Policy describes meaningful involvement as follows: “all neighborhoods have the right to participate in partnership with government in environmental decision-making including needs assessment, planning, implementation, enforcement, and evaluation, and neighborhoods are enabled and administratively assisted to participate fully through education and training means, and encouraged to develop environmental stewardship.”³⁵ The right to meaningful involvement

³³ Exec. Order 552; M.G.L. c. 30, § 62.

³⁴ Environmental-Justice-Policy, Massachusetts Office of Environmental Justice & Equity (Updated June 2021), <https://www.mass.gov/doc/2002-environmental-justice-policy/download> (last visited Jun. 16, 2025)

³⁵ *Id.* at 3.

extends to activities that concern energy, climate change, and other aspects of environmental decision-making.

MassDEP and the Markley Group failed to meet these conditions for the instant Application and Plan approval. First, the limited opportunities for engagement with MassDEP and rapid timeline for public comment prevented residents from participating effectively in the Plan approval process. The extensive use of jargon, technical terms, and legalese were additional barriers to full participation. The provision of environmental justice fact sheets to local organizations, translated by MassDEP into languages spoken in the community, was a welcome first step in engaging residents, but should not have been the end of the process. Instead of meaningfully engaging with neighbors and residents to robustly hear and address concerns and involve the community in planning, MassDEP refused residents' request to extend the comment deadline on the April 2025 Application to allow for adequate participation from the impacted community and issued its Plan approval without a public hearing. Even the date on which the current plan was approved—July 3, 2025—presented a barrier to meaningful engagement, as the Plan approval was issued the day before a federal holiday, shrinking the time that aggrieved residents had to prepare an appeal.

Complicating participation further, MassDEP initiated the comment period of the instant Application and granted the Plan approval while an appeal of the prior plan approval, number NE-24-014, was still pending. Specifically, [REDACTED] two members of the residents' group Honest Future for Lowell—filed an appeal on April 3, 2025 of MassDEP's March 2025 plan approval authorizing installation of eight additional diesel generators. The presiding officer issued a ruling and order on June 13, 2025 denying in part motions to dismiss by MassDEP and the Markley Group, just days before the close of public comment on the instant

Application.³⁶ The overlapping public processes on these two related plans created confusion for the public and further frustrated meaningful participation, as the instant Plan was framed as superseding prior approvals that were still subject to ongoing proceedings and therefore not yet final at the time the Plan approval was issued.

Second, MassDEP failed to ensure that the Markley Group provided relevant information to residents and engaged with them in a manner that would enable residents to fully participate in the decision-making process. As MassDEP recognized, the community surrounding the Facility is linguistically diverse, with at least three languages spoken by over 5% of residents. The 2021 Roadmap law and EEA's EJ Policy make limited English proficiency a criterion for designation as an EJ population, and make language translation, interpretation services, and other language access initiatives core to effective public participation by State agencies. The EJ Policy, in other words, recognizes that involvement in environmental decision-making is meaningless if community members cannot understand the information they are given or have their voices understood in a public forum.

MassDEP failed to satisfy the state requirements for language access during the planning and decision-making process. No interpretation services were provided for residents with limited English proficiency during community meetings or public meetings concerning Markley Group's application, such as the June 16, 2025 walkthrough at the Facility. Although MassDEP provided EJ Factsheets containing information in multiple languages, these factsheets covered only the most basic information about the

³⁶ The Commissioner granted the motions to dismiss the appeal on July 14, 2025, eleven days after MassDEP's issuance of the instant Plan approval. Interlocutory Decision and Order Granting the Applicant's and Department's Motions to Dismiss, OADR Docket No. 2025-006 (July 14, 2025).

Application and did not provide language access to the entire Application file nor Markley Group’s verbal comments during community meetings.

Third, MassDEP failed to ensure adequate public access to information about public meetings on the Application, continuing a pattern of neglect of meaningful involvement of members of the affected EJ community that has characterized decision-making on Markley’s applications. As noted in ACE’s June 17, 2025 comments, although a public meeting may not have been required, MassDEP must ensure that when meetings are held by a regulated entity, stakeholders are able to participate. This means presenting information in words residents understand, written or interpreted in languages that they speak, and providing them with an opportunity to ask questions and give feedback that has an impact on the proposed outcome.³⁷ Taken together, these and other shortcomings in the public engagement process on the Application demonstrate that environmental justice principles, including those governing meaningful involvement, were not “an integral consideration” in MassDEP’s approval of the Application.”³⁸

B. MassDEP Unlawfully Failed to Require a Cumulative Impact Analysis to Inform Plan Approval

A core provision of MassDEP’s plan approval regulations is the requirement for a robust cumulative impact analysis to “protect environmental justice populations from the harms of air pollution.” 310 CMR 7.02(14)(a)(1). MassDEP allowed the Markley Group to unlawfully circumvent these regulations by treating the Application as an incremental addition to existing

³⁷ M.G.L. Chapter 30A, Sec. 18-35; *see, e.g.*, Environmental Protection Agency, Environmental Justice Primer, available at:

<https://www.epa.gov/community-port-collaboration/environmental-justice-primer-ports-effective-community-engagement#:~:text=Meaningful%20community%20engagement%20is%20essential,input%20to%20inform%20decision%20outcomes>.

³⁸ MassDEP, Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs (June 24, 2021).

emitting sources even as it recognized that the Plan superseded all prior air quality plan approvals. It also allowed the Markley Group to commit multiple sleights of hand to characterize net emissions as falling below the threshold for cumulative impacts analysis when, by Markley's own data, emissions would significantly exceed the threshold triggering an analysis. This was plainly erroneous, and MassDEP's approval must be set aside and Markley Group's Application denied to ensure compliance with the letter and spirit of Massachusetts' cumulative impact analysis requirements.

Pursuant to 310 CMR 7.02(14), cumulative impact analyses must "include[] meaningful public involvement of environmental justice populations, assessment of existing community conditions, and analysis of the cumulative impacts of new or modified sources of air pollution that may affect environmental justice populations." Toward these ends, a cumulative impact analysis is required for a comprehensive plan application for any new emission unit that will not be a major source if it is located within one mile of an environmental justice population. 310 CMR 7.01(14)(a)(3)(a). If an existing facility or emission unit already has a comprehensive plan, a cumulative impact analysis is required if the application proposed to increase facility-wide potential emission of criteria pollutants, hazardous air pollutants, or toxics (excluding carbon dioxide equivalents), individually or in the aggregate, by an amount equal to or greater than one ton per year. 310 CMR 7.01(14)(a)(4). Special notice and public involvement procedures are required to ensure adequate community engagement where cumulative impact analyses are required. MassDEP misconstrued the applicability requirements for cumulative impacts review, allowing the Markley Group to evade these provisions and thereby evade the law's concern for cumulative burdens on EJ communities like Lowell.

First, MassDEP failed to consider Markley's entire project through the Cumulative Impacts Assessment by approving Markley Group's expansions to the Facility in segments. The various expansions to the data center are a single project, but MassDEP failed to treat them as such. MassDEP approved 11 generators in November 2023 (NE-22-016), approved eight more generators in March 2025 (NE-24-014), and has now approved another eight generators in July 2025 (NE-24-014). These generators, all installed at the same Facility, are demonstratively part of a common plan to provide backup generation to Markley's data center. The time interval between the approvals is minimal: only four months between the last two approvals and less than two years between the first and last. And the environmental impacts caused by the activities are cumulative, since additional generators produce additional air pollution in the same area, deepening health impacts on the same population.

Rather than treating the 27 generators as a single Plan, MassDEP allowed the Markley Group to treat the Application as an incremental addition to an existing plan. Specifically, in response to comments questioning the failure to perform a cumulative impacts analysis, MassDEP stated that:

Markley is not required to conduct a cumulative impact analysis because Markley's plan application and the Plan Approval do not propose to increase facility-wide potential emissions of criteria pollutants, hazardous air pollutants, or air toxics, excluding CO₂e, individually or in the aggregate, by an amount equal to or greater than one ton per year.³⁹

MassDEP should have treated the Facility as a new emissions unit or facility in an EJ community, for which a cumulative impacts analysis is categorically required. 310 CMR 7.10(14)(a)(3). Although the Facility has a comprehensive plan approval, the April 2025 Application would wholly supersede prior approvals; as a consequence, MassDEP required the Markley Group to assess NAAQS compliance based on operation of all 27 generators. It

³⁹ MassDEP, Response to Comments: Markley Group, LLC—Lowell at 8 (July 3, 2025).

inexplicably, however, allowed the Markley Group to assess cumulative impacts review as if the prior plan approvals were still in place, considering only the net change in emissions from the limits in the prior plan. In doing so, it has wrongly allowed the Markley Group to splice its various air quality plans into segments to evade comprehensive cumulative impacts review. MassDEP should not condone this plain sleight of hand, nor do its regulations allow it.

Second, even if it were appropriate to consider a net change in emissions against the prior Plan approval—which it was not—MassDEP and the Markley Group used the wrong denominator. Markley Group’s contractor, VHB, calculated the proposed permit limits and the current permit limits on hazardous air pollutants for the typical load operation and the failure load operation emission levels.⁴⁰ It then subtracted total emission across the 27 generators from the current permit limits to yield a “net change” in emissions for hazardous air pollutants under the new Plan approval (excluding CO₂ e) of –10.22 tons per year (TPY) for the “typical condition” and –0.46 TPY for the “failure condition.”⁴¹ Markley’s consideration of permit limits rather than actual emissions makes it look as if emissions will go down despite the installation of eight new 3,000 kW diesel generators.

The regulations are not in accord. Where a comprehensive plan approval is in place, applicability for a cumulative impact analysis considers the “increase in facility-wide potential emissions,” not permit limits. 310 CMR 7.01(14)(a)(4). Here, Markley Group’s own analyses reports that the eight new generators would have the potential to emit 1.202 TPY of NO_x under typical load operations and a startling 2.291 TPY of NO_x under failure load operations, alone exceeding the one TPY threshold for increase in potential emissions, not even accounting for the

⁴⁰ Markley Lowell NMCPA, Regulatory Applicability and Potential Emissions at 40 (May 13, 2025).

⁴¹ Markley Lowell NMCPA, Regulatory Applicability and Potential Emissions at 40 (May 13, 2025).

significant increase in other hazardous air pollutants. This fact was itself sufficient to require a cumulative impacts analysis.

Third, Markley Group’s own Proposed Emissions Limit shows that NOx levels may reach 2.29 TPY for each of the new emission units that would be installed under the Plan—well above the one TPY threshold.⁴² This too is sufficient to require a cumulative impacts analysis based on the change from existing plan operations. Yet neither the Markley Group nor MassDEP considered the relevance of these unit emission limits or actual emission projections for application of a cumulative impacts analysis requirement. This failure contributed to a lack of trust and understanding among the impacted residents who are left bewildered as to how Markley could install eight new large diesel generators at its site on the heels of multiple similar approvals, without conducting a cumulative impacts analysis, particularly in light of the significant background concentrations of NOx and other criteria pollutants.

C. MassDEP Failed to Consider Alternatives to Diesel Generation, Undercutting the State’s Clean Energy Mandates and Commitment to Environmental Justice

MassDEP failed to comply with statutory and policy mandates to consider alternative energy sources that would have a less damaging impact on the global and local environment.

Chapter 21N of the Massachusetts General Laws (the “Next-Generation Roadmap for Massachusetts Climate Policy”) requires the Commonwealth to reduce greenhouse gas (GHG) emissions by at least 50% below 1990 levels by 2030 and achieve net-zero emissions by 2050. Accordingly, the Commonwealth’s Clean Energy and Climate Plan directs all state agencies to “promote and implement clean energy alternatives” and integrate GHG reduction into permitting decisions.⁴³

⁴² Plan Approval at 18.

⁴³ Mass. Exec. Office of Energy & Env’tl. Affairs, Clean Energy and Climate Plan for 2020 (2020), <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2020/download>.

Diesel generators emit disproportionately high levels of carbon dioxide, as well as NO_x and PM_{2.5}, compared to cleaner technologies. Under MassDEP's own toxic air guidance, diesel particulate matter is classified as a Toxic Air Contaminant with severe health impacts. The AERMOD modeling for the current Plan approval, NE-25-002, predicts up to 27.9 µg/m³ of PM_{2.5} (80% of the 24-hr NAAQS), approaching the EPA limits, and expected to rise cumulatively as more engines come online.

Residents pointed to multiple cleaner alternatives that MassDEP and the Markley Group could have considered rather than continuing to expand the Facility's reliance on polluting diesel generation. Solar arrays paired with battery back-ups are one such avenue to explore. Fuel cells are another option, also delivering near-zero emissions. MassDEP failed to consider these or any other cleaner alternatives, deepening the pollution burdens for neighborhoods already facing elevated asthma and cardiovascular hospitalization rates while undercutting the State's ability to meet statutory GHG targets and BACT mandates. This failure too warrants reversal of MassDEP's approval and denial of the Application.

C. Mass DEP Erroneously Concluded That MEPA Review Was Not Required

The Massachusetts Environmental Policy Act's (MEPA) purpose is "to provide meaningful opportunities for public review of the potential environmental impacts of Projects for which Agency Action is required, and to assist each Agency in using (in addition to applying any other applicable statutory and regulatory standards and requirements) all feasible means to avoid Damage to the Environment or, to the extent Damage to the Environment cannot be avoided, to minimize and mitigate Damage to the Environment to the maximum extent practicable." 301 CMR 11.01(1)(a). The Plan approval states that MassDEP concluded an Environmental Notification Form (ENF) was not required for this project. This finding was incorrect, as

Markley is illegally segmenting the project to evade MEPA review, and the project meets the requirements for the Secretary to order review under the Fail Safe provision. ACE's comments on the Draft Plan, submitted on June 17, 2025, filed with MassDEP and sent to the Secretary, included a request for the Secretary to initiate MEPA review, given the potential damage to the environment and additional burdens on surrounding Environmental Justice populations.

MassDEP's decision not to order MEPA review is also contrary to the mandate that participating agencies (here, MassDEP) and the EEA Secretary consider Environmental Justice Principles, to ensure that MEPA review "shall be conducted in a manner that provides sufficient disclosures to allow for a full consideration of Environmental Justice Principles in order to reduce the potential for unfair or inequitable effects upon Environmental Justice Populations."³⁷

For the purposes of MEPA, damage to the environment is "any destruction or impairment (not including insignificant damage or impairment), actual or probable, to any of the natural resources of the Commonwealth including, but not limited to, air pollution, GHG emissions, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites."⁴⁴ In this case, Markley's Application to increase the number of diesel generators and cooling towers will cause damage to the environment through increased emissions of criteria pollutants and GHG emissions; increased water use, which could result in reduction of groundwater levels and impair water quality; increased energy use; and excessive noise.

⁴⁴ 301 CMR 11.02(2).

According to 301 CMR 11.01(c), in determining whether a project is subject to MEPA review, the “Proponent, any Participating Agency, and the Secretary shall consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The proponent may not phase or segment a Project to evade, defer or curtail MEPA review.” In evaluating the entirety of a project, MEPA requires a project proponent, participating agencies, and the Secretary to “consider all circumstances as to whether various work or activities constitute one Project including, but not limited to, whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative.” 301 CMR 11.01(c). Notably, the regulations state that work or activities that constitute one Project include: the construction of “more than one structure (such as more than one single family dwelling) and appurtenant structures, facilities, and other improvements on a site.””

Here, Markley submitted an application to install four additional diesel generators for a total of eleven diesel generators on September 29, 2023. Less than eighteen months later, on March 25, 2025, Markley Group submitted an application for the addition of eight diesel generators, to operate a total of nineteen diesel generators. Included in this permit was a request to install fourteen cooling towers. A mere month later, on April 28, 2025, Markley Group submitted the current Application, bringing the total number of diesel generators to twenty-seven. The addition of diesel generators and cooling towers is precisely the type of work or activity that the regulations contemplate; it is part of a common plan to increase the capacity of the Markley facility, undertaken on a short time table (less than two years). And the environmental impacts of the work or activities are cumulative, as they inflict additional damage

to the environment in the form of increased emissions of criteria pollutants and GHGs, increased water and energy use, and excessive noise pollution, compounding the burdens already borne by the residents who live and work in the surrounding area.

According to 301 CMR 11.04, the Secretary has the authority to initiate Fail Safe or other MEPA review when a project: (1) is subject to MEPA jurisdiction; (2) has the potential to cause damage to the environment and the potential damage “involves new and unique circumstances that could not reasonably have been foreseen prior to or when 301 CMR 11.00 was promulgated;” and (3) the filing of an ENF and other compliance with MEPA and 301 CMR 11.00 is essential to avoid or minimize Damage to the Environment; and will not result in an undue hardship for the Proponent. The project in question meets each of these requirements.

First, there is no debate that the project is subject to MEPA jurisdiction, as the agency responsible for approving the required permit—the Non-Major Comprehensive Plan—at issue is MassDEP, an agency within the Secretariat of Energy and Environmental Affairs which regularly participates in MEPA review.⁴⁵

Second, as stated above, Markley’s application and MassDEP’s approval indicate that the project will cause damage to the environment, at minimum by: adding diesel generators that have the capacity to increase emissions of GHGs and criteria pollutants and cause excessive noise; as well as reducing groundwater levels due to the amount of water needed to maintain the cooling towers. Further, the potential damage to the environment caused by the rapid growth of data centers, as well as detrimental effects on the electric grid and public health in the surrounding community are circumstances that could not have reasonably been foreseen when the MEPA

⁴⁵ For the purposes of MEPA, agency means “an agency, department, board, commission or authority of the commonwealth, and any authority of any political subdivision which is specifically created as an authority under special or general law.” MEPA establishes jurisdiction over: “aspects of a Project within the subject matter of any required Permit.”

regulations were promulgated⁴⁶ For example, utility companies are already struggling to meet the increased capacity that data centers demand, which can make the energy supply from the grid less reliable.⁴⁷ In the event there is an outage due to the unreliability of the grid, Markley Group will turn on the diesel generators, which is particularly concerning from a pollution and public health perspective, as backup diesel generators “can emit several times more pollution from each unit of fuel burned and unit of electricity delivered” than utility scale generation.⁴⁸ MEPA review is essential to avoid or mitigate the potential damage to the environment and other impacts described above, as it affords the otherwise unavailable opportunity to take a holistic look at these issues, quantify damage to the environment, consider environmental and climate justice, and address mitigation.

Finally, MEPA review is unlikely to create an undue burden on the proponent. Markley operates a privately held tech service-based company with a reportedly \$37.4 million dollar net worth, an estimated 195 employees, and a service radius spanning New England. In operation since 1991, and with other projects spanning the Northeast, Markley Group is well equipped both technically and financially to outsource consulting services to aid in its compliance with MEPA standards and regulations. The company has the appropriate staff, resources, and expertise to work with the MEPA Office to undertake MEPA review without creating an undue burden.

⁴⁶ Pollution from backup generators at data centers in Northern Virginia drifts into Maryland, West Virginia, Pennsylvania, New York, New Jersey, Delaware, and the District of Columbia, created regional public health costs of some \$190 million to \$260 million a year. If these backup generators emit at their maximum permitted level, the annual cost will become 10-fold and reach \$1.9 billion to \$2.6 billion. See <https://news.ucr.edu/articles/2024/12/09/ais-deadly-air-pollution-toll>.

⁴⁷ See Mary Cunningham, at “Beyond price increases, the heightened energy demand from data centers could also compromise the reliability of the grid, according to experts.”

⁴⁸ The Dirty Footprint of the Broken Grid, INTERNATIONAL FINANCE CORPORATION (Sept. 2019), available at <https://www.ifc.org/en/insights-reports/2010/dirty-footprint-of-broken-grid>.

Because the Markley Group failed to do so, and MassDEP failed to require MEPA review, the Plan approval should therefore be rescinded and the Application denied.

D. Markley Group and MassDEP Improperly Evaded Consideration of Cooling Tower Impacts and Failed to Adequately Address Noise and Other Operational Impacts

MassDEP concluded that the Markley Group's 16 cooling towers are exempt from Plan approval under 310 CMR 7.02(2)(b)(6). This was error. This provision exempts only a cooling tower with a maximum recirculation rate of 20,000 gallons per minute or less, a drift inhibitor, a non-chromium inhibitor, and total dissolved solids concentration in the blowdown less than 1800 milligrams per liter (mg/L). Here, the cooling towers each have a circulating water rate of 1,950 gallons per minute, for a total of 39,000 gallons per minute, well above the threshold for plan approval.⁴⁹ Although the Markley Group states that the towers have drift inhibitors and do not use chromium, it offers no evidence or information to support these assertions.⁵⁰ Even more troubling, Markley Group states that the cooling towers "have [total dissolved solids] expected to be below the [regulatory] threshold," but it fails to offer even its *expectation* for total dissolved solids, not to mention actual projections of the towers' maximum total dissolved solid concentrations. By failing to obtain and publicly disclose this information, together with its failure to consider the cumulative burden of the towers for water use and air emissions, MassDEP erred in allowing the Markley Group to proceed as if the cooling towers were categorically exempt from Plan approval. In a similar vein, Markley Group's failure to provide the information necessary to establish an exemption for the cooling towers is evidence that it has flouted regulatory requirements to maintain on-site and up-to-date records to substantiate emission unit exemptions from plan approval. *See* 310 CMR 7.02(2)(d).

⁴⁹ Markley Lowell NMCPA: Regulatory Applicability and Potential Emissions at 7.

⁵⁰ *Id.* at 5.

At the same time, MassDEP recognized that the cooling towers pose additional risks and impacts for residents, but it took no meaningful measures to mitigate them. MassDEP's Special Terms and Conditions for the Plan approval state that the Markley Group shall maintain the sixteen Facility cooling towers in good condition and ensure the operation complies with 310 CMR 7.10 governing noise pollution. However, MassDEP, in response to comments, stated that the mist falling onto residential property from the cooling towers is beyond the scope of their review and took no measures to address it.⁵¹ This contradicts MassDEP's own approval conditions. Controlling cooling tower mist should be part of Markley Group's duty to ensure the cooling towers are in good working condition, and MassDEP should have clarified as much for Markley Group and the public rather than disclaiming responsibility to address the issue.

MassDEP's Plan approval also failed to adequately address the noise impacts of the cooling towers, flatbed chillers, and diesel generator units. Noise pollution regulations at 310 CMR 7.10 provide that "[n]o person owning, leasing, or controlling a source of sound shall willfully, negligently, or through failure to provide necessary equipment, service, or maintenance or to take necessary precautions cause, suffer, allow, or permit unnecessary emissions from said source of sound that may cause noise," including "suppressible and preventable industrial and commercial sources of sound." Here, residents who reside near the Facility informed MassDEP in comments that noise from the Facility is often so loud that they cannot hold conversations when flatbed chillers are running. Markley employees have publicly acknowledged the noise level increase.⁵² Alarming, residents living at Iowa Street measured sound levels at 65.9 decibels during weekly testing and emergency operations, significantly

⁵¹ Mass DEP, Response to Comments- Markley Group, LLC Lowell (July 3, 2025).

⁵² Planning Bd. Meeting (Sept. 19, 2024), at 2:06:00 (remarks of Aaron Fernandes), YouTube, <https://www.youtube.com/live/XD77VeP20HA?si=vEvdIf3tmiFaI9Ba>.

higher than the 42.3 existing decibels recorded in the Plan approval.⁵³ Notably, studies show noise levels above 30 decibels can disrupt sleep, and levels above 55 decibels may cause deleterious health consequences.⁵⁴

In addition, Markley Group has not taken appropriate steps to maintain compliance with noise regulations in 310 CMR 7.10 and abate nuisance conditions associated with operation of the four oldest diesel generators that have been on property since the start of Facility operations. These older units have not been adequately maintained and given proper enclosures and Rypos air filtration systems like the other units installed.⁵⁵

E. Markley Group Has Failed to Adhere to Existing Permit Conditions

The existing permit conditions imposed by MassDEP and implemented by Markley Group are failing to provide the necessary public health and safety standards for Lowell residents. It is imperative that additional monitoring and reporting requirements are implemented to ensure that Markley Group is complying with the appropriate air quality standards.

Markley Group is currently required to submit emissions reports to MassDEP every three years according to the NE-25-002 Approval in Table 5 Reporting Requirements and 310 CMR 7.12.⁵⁶ Since 2016, MassDEP has issued two notices of non-compliance and imposed fines due to lack of reporting, the most recent of which was in 2023.⁵⁷ On December 13, 2019, Markley Group failed to submit a 2017 Source Registration emissions report pursuant to 310 CMR 7.12(2).⁵⁸ On September 7, 2021, Markley Group again failed to submit to MassDEP a completed

⁵³ Plan Approval at 11.

⁵⁴ Demian Halperin, Environmental Noise and Sleep Disturbances: A Threat to Health?, 7 Sleep Sci. 209 (Nov. 15, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4608916/>.

⁵⁵ Resident comments

⁵⁶ NE-25-002 at 24; 310 CMR 7.12

⁵⁷ <https://eeaonline.eea.state.ma.us/Portal/#!/enforcements/3194970>

⁵⁸ Noncompliance Notice No: 00009372

Source Registration.⁵⁹ The specific section of 310 CMR 7.12(2)(b) that Markley Group violated in 2019 states that “a Responsible Official shall sign and submit a Source Registration to the Department by April 1 once every three years.”⁶⁰ Given the repeated failure to comply with these basic reporting requirements, additional conditions should be imposed to ensure that Markley is providing accurate data in a timely and responsive manner.

Residents have also brought up numerous concerns regarding Markley Group’s violation of additional existing permit conditions, which have not been adequately addressed. Concerns include Markley Group’s failure to comply with terms and conditions governing when the diesel generators and flatbed chillers are allowed to run, including Markley Group’s operation of diesel generators during holidays.

In a similar vein, the Markley Group has not attempted to install monitoring stations near surrounding EJ communities to ensure that the Facility is not exceeding requirements set by MassDEP and the NAAQS.⁶¹ The Plan Approval’s general requirement that Markley Group shall monitor operations to ensure compliance with NAAQS is inadequate without sufficient monitoring stations to assess actual emission levels.

F. Markley Group Failed to Submit Accurate Records to MassDEP

Markley Group’s Application and Plan approval documents state that only seven diesel generators are currently installed and operating. However, observations from residents and drone footage of the Facility evidence installation of 21 diesel generators as of June 9, 2025. Markley Group’s apparent misrepresentation of actual installations in its submittals to MassDEP violates both operative plan requirements and controlling regulations.

⁵⁹ Reporting Penalty Assessment Notice (RPAN) -00015627

⁶⁰ Notice of Noncompliance No. 00009372; 310 CMR 7.12(2)(b)

⁶¹ Resident comments; Approval No. NE-25-002 at 6.

Section sixteen of the Record Keeping Requirements in the NE-25-002 Approval states:

The Permittee shall maintain records described in 310 CMR 7.26(42)(f)1. through 4. Such records shall be maintained and shall be made available to MassDEP or its designee upon request. The owner/operator shall certify that records are accurate and true in accordance with 310 CMR 7.01(2)(a) through (c).

1. Information on equipment type, make and model, and rated power output;
2. A log of operations, including date, time and duration of operation and reason for each start per 310 CMR 7.26(42)(d)1., fuel type and supplier; and
3. Purchase orders, invoices, and other documents to substantiate information in the log.
4. Copies of certificates and documents from the manufacturer related to certificates.⁶²

In addition, regulations governing Markley Group’s submittal preclude any person from mailing “any false, inaccurate, incomplete, or misleading statements in any application, record, report, plan, design, statement or document at which a person submits to the Department.”⁶³

Recent drone footage from June 2025 appears to document the installation of fourteen more generators than Markley Group reported to MassDEP. If Markley Group has indeed installed more than seven generators at its Facility, then it is in clear violation of 310 CMR 7.01(2)(a) and operative plan conditions. More than one resident reported concerns to MassDEP that Markley Group had installed as many as twenty-one generators at the Facility despite telling MassDEP that it had only installed seven.⁶⁴ When residents questioned Vice President of Markley Group, Jeff Flanagan, and Senior Legal Officer, Devon Cutchins, about these additional installations, Flanagan and Cutchins informed the residents that the Markley Group had installed nineteen generators on site—again well over what it reported to MassDEP.⁶⁵ Additionally, the

⁶² NE-25-002; See also 310 CMR 7.26(42)(f)1-4.

⁶³ 310 CMR 7.01(2)(a).

⁶⁴ Jake Fortes, Comment on Proposed Data Center Expansion Plan, Mass. Dep’t of Env’tl. Prot. (June, 2025), (“I also asked in the Monday meeting why there’s 21 generators on site. Devon and Jeff Flanagan both said there were only 19 on-site. However, there is 21.”); Eileen Castle, Comment on Proposed Data Center Expansion Plan, Mass. Dep’t of Env’tl. Prot. (June, 2025), (Once again I am expressing my adamant opposition to the 7 new generators being proposed at the Markley site. As usual before you approve them they already have 21 on site. They only have permission for 19.)

⁶⁵ Id.

commenter found that the generator that was tested on the weekend of April 12, 2025 is marked as a proposed generator for this Plan Approval NE-25-002.⁶⁶ This comment suggests that Gen1_21 was installed and tested prior to the Plan Approval being posted on MassDEP's website on April 28, 2025.⁶⁷

Based on these numerous discrepancies between Markley's reporting to MassDEP and drone footage documentation, resident observations, and statements by Markley officials to residents, Markley Group appears to be in clear violation of requirements for faithful and accurate reporting and record-keeping. On this basis too, the Plan approval should be rescinded and the Application denied.

IV. Relief Sought through the Adjudicatory Hearing

In light of the above, the Residents request that MassDEP's approval be vacated and Markley's Application for a Non-Major Comprehensive Plan Approval be denied.

V. Service of Notice of Request for Adjudicatory Hearing

A copy of the instant Notice of Claim and Request for Adjudicatory Hearing has been sent to the Applicant at the following address:

Markley Group, LLC
c/o Mr. Jack Montanaro
1 Markley Way
Lowell, MA 01852
jmontanaro@markleygroup.com

A copy of the instant Notice for Claim and Request for Adjudicatory Hearing has been sent to the municipal office of the city or town where the Project is located care of the following:

Mayor Daniel P. Rourke
City of Lowell

⁶⁶ Jake Fortes, Comment on Proposed Data Center Expansion Plan, Mass. Dep't of Env'tl. Prot. (June, 2025), ("Based on a review of the Air Quality Impact analysis submitted by Markley on May 7, 2025 for this plan approval, the generator that was tested on the weekend of April 12, 2025 is marked as proposed in this document and is labeled as engines Gen1_21.").

⁶⁷ Id.; See also Attachment_A_April_28_2025_Application.pdf.

375 Merrimack Street
2nd Floor, Room 50
Lowell, MA 01852
c/o
Lowell Health Department – lgolden@lowellma.gov
Lowell City Fire Department – lfdfireprevention@lowellma.gov

A copy of the instant Notice for Claim and Request for Adjudicatory Hearing has been sent to the issuing office of MassDEP care of the following:

Edward J. Braczyk, Permit Chief
Dr. Mir S. Waez, Environmental Engineer
Heidi Zisch, Regional Counsel
MassDEP/NERO
150 Presidential Way
Woburn, MA 01801
Email: Edward.Braczyk@mass.gov
Email: Mir.Waez@mass.gov

And to:

MassDEP Office of Appeals and Dispute Resolution
Case Administrator
100 Cambridge Street, Suite 900
Boston, MA 02114
Caseadmin.OADR@state.ma.us

Respectfully submitted for the Residents Group,
Honest Future for Lowell, by their attorneys and
authorized representatives,

/s/Sofia E. Owen_____
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Dated: July 24, 2025