2026 IL App (1st) 241683
No. 1-24-1683
Opinion filed November 6, 2026

SIXTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE CITY OF CHICAGO DEPARTMENT OF PUBLIC HEALTH, Plaintiff-Appellee, v. THE CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS and GENERAL III, LLC, Defendants (General III, LLC, Defendant-Appellant).	Appeal from the Circuit Court of Cook County, Illinois in an Administrative Review Law Action of a Decision by the Chicago Department of Administrative Hearings. No. 2023 CH 06165 The Honorable Allen P. Walker, Judge, Presiding.

JUSTICE PUCINSKI delivered the judgment of the court, with opinion.
Justices Hyman and Evans concurred in the judgment and opinion.

OPINION

¶ 1 This action under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2022)) stems from the decision of the City of Chicago Department of Public Health (CDPH) to deny a permit sought by appellant General III, LLC (General III) to operate a large recycling facility on the southeast side of Chicago. After General III sought review in the City of Chicago Department

of Administrative Hearings (DOAH), an administrative law judge (ALJ) vacated the permit denial. CDPH sought administrative review, after which the circuit court reversed the ALJ's decision and reinstated the permit denial. General III then sought relief in this court.

¶ 2 For the following reasons, we agree with the circuit court that the ALJ made errors of law in the course of vacating the permit denial. Thus, we affirm the circuit court, reverse the ALJ's decision, and reinstate the CDPH's denial of the permit.

I. BACKGROUND

¶ 3 This matter stems from the February 2022 decision by the Commissioner of CDPH to deny a permit to operate a new large recycling facility on the southeast side of Chicago. Before we delve into the facts, we find it helpful to review the regulatory scheme that governs the powers of the CDPH and the permitting process for recycling facilities.

¶ 4 A. CDPH Powers Under the Code

¶ 5 First, we review the provisions of the Municipal Code of Chicago (Code) governing the CDPH, which are contained in Chapter 2-112 of the Code. Chicago Municipal Code § 2-112-005 *et seq.* (amended Feb. 24, 2021). Section 2-112-010 of the Code establishes the CDPH and specifies that it shall be administered by a Commissioner, who is either a licensed physician or a person with an advanced degree in a field related to public health. Chicago Municipal Code § 2-112-010 (amended March 20, 2024). The Code states: "All matters pertaining to the administration of the staff of the [CDPH] and the proper protection and promotion of public health shall be in charge of the Commissioner of Public Health." Chicago Municipal Code § 2-112-030 (amended February 24, 2021).

¶ 6 At the relevant time, section 2-112-110 specified the Commissioner's authority to issue permits under Chapter 11-4 of the Code (the Chicago Environmental Protection and Control

Ordinance). Chicago Municipal Code § 2-112-110(b)(9) (amended Feb. 24, 2021) (since amended); Chicago Municipal Code § 11-4-010 *et seq.*(amended Oct. 27, 2021). Section 2-112-110 of the Code set forth several additional powers of the Commissioner, including the power to "conduct studies, investigations and research, including joint cooperative investigation and research with public and private agencies and organizations" and the power to "advise, consult and cooperate with other agencies of the state and federal governments." Chicago Municipal Code § 2-112-110(b)(12), (13) (amended Feb. 24, 2021) (since amended).[1] Additionally, section 2-112-110(c) gave the Commissioner power to do what "may be necessary" for the "proper protection and promotion of public health." *Id.* § 2-112-110(c); Chicago Municipal Code § 2-112-030 (amended Feb. 24, 2021).

¶ 7 The Code further authorizes the Commissioner "to issue rules necessary or proper for the administration or enforcement of health ordinances." Chicago Municipal Code § 2-112-070 (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025).

¶ 8 B. Code Provisions and Rules Regarding Recycling Permits

¶ 9 This case also requires familiarity with provisions of Chapter 11-4 of the Code, the Chicago Environmental Protection and Control Ordinance, pertaining to recycling facilities.

¶ 10 Chapter 11-4, Article XX (sections 11-4-2510 to 11-4-2680) is entitled "Recycling Facility and Urban Farm Accessory Composting Permits." Chicago Municipal Code §§ 11-4-2510 to 11-4-2680. Section 11-4-2660 of the Code states that the Commissioner "shall promulgate rules and

[1]Analogous language now appears in section 2-112-100(c) of the Code. Chicago Municipal Code § 2-112-100(c) (amended Nov. 15, 2023) ("The Commissioner shall encourage and conduct such studies, investigations and research as in his judgment will promote and improve public health. Such activity may be carried out jointly with public or private entities.").

regulations necessary to implement the provisions of this Article XX." Chicago Municipal Code § 11-4-2660 (amended May 6, 2015).

¶ 11 Section 11-4-2530 specifies that an application for a recycling facility must be made "to the Commissioner in a manner specified by the Commissioner for such purpose." Chicago Municipal Code § 11-4-2530 (amended July 29, 2015) (subsequently amended Nov. 15, 2023). That section identifies certain minimum information that must be provided but also states that the applicant must provide "[a]ny other information requested by the Commissioner." *Id.* § 11-4-2530(I).

¶ 12 Pursuant to its rulemaking authority, the Commissioner has issued two sets of rules pertinent to recycling facilities. First, the Commissioner issued "Recycling Facility Permits Rules and Regulations" in March 2014 (2014 Rules). Chi. Dep't of Pub. Health, Recycling Facility Permits (Mar. 19, 2014), https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/RECYCLINGFACILITYPERMITSFINAL.pdf [https://perma.cc/HUT5-P5AU].

¶ 13 Pertinent to this appeal, Rule 3.0 of the 2014 Rules sets forth "Conditions of Permit Issuance," including that an application must pass a "compliance history evaluation" described in Rule 4.0. *Id.* In turn, Rule 4.0 states that, before granting a permit for a recycling facility, the Commissioner "will conduct an evaluation of the applicant's prior experience in recycling or junk facility operations or other waste handling operations." *Id.* Under Rule 4.0, the Commissioner may deny a permit based on an applicant's violations of laws, regulations, standards, permit conditions, or ordinances in the past three years or if conditions at a previously permitted facility "pose a material threat to continued compliance" with any such laws, regulations, standards, permit conditions, or ordinances. *Id.*

¶ 14 The Commissioner issued a second set of rules, titled "Rules for Large Recycling Facilities" (LRF Rules), in June 2020. Chi. Dep't of Pub. Health, Rules for Large Recycling Facilities (June 5, 2020), https://www.chicago.gov/city/en/depts/dol/rules-and-regulations-portal/rules-for-large-recycling-facilities.html#docaccess [https://perma.cc/7AXU-JVKH]. The LRF Rules set forth additional requirements for the operation of a "Large Recycling Facility", which was defined to mean a "Facility that is authorized to accept 1,000 tons or more per day of Recyclable Materials, operates a metal Shredder that Processes vehicles that has a rated capacity of greater than 25 tons per hour, or utilizes Mechanical Sorting Equipment in the Processing of ASR [Auto Shredder Residue]." *Id.* There is no dispute that the facility underlying the instant appeal meets the definition of a Large Recycling Facility.

¶ 15 The Code states that the Commissioner may deny an application for a permit "where such application does not meet all applicable requirements set forth in the Code." Chicago Municipal Code § 11-4-040(a) (amended July 29, 2015) (subsequently amended Nov. 15, 2023). It also provides that "[t]he Commissioner may impose reasonable permit conditions to protect the public health, safety or welfare of the city." *Id.* § 11-4-040(e).

¶ 16 Elsewhere, section 11-4-2525 of the Code states that "[n]o permit shall be renewed or issued to" an applicant "whose permit issued under this article has been revoked for cause within the past three years" or to entities with a 25% or larger ownership stake in a party whose permit was revoked for cause within that time frame. Chicago Municipal Code § 11-4-2525 (added Apr. 9, 2008).

¶ 17 The Code contemplates review of a CDPH permit denial by the DOAH. After denial of a permit application, the applicant may demand a hearing within 15 days, after which the "Commissioner shall initiate an administrative hearing at the Department of Administrative

Hearings, Environmental Safety and Consumer Affairs Hearings Division." Chicago Municipal Code § 11-4-040(d) (amended July 29, 2015) (subsequently amended Nov. 15, 2023). Upon the conclusion of the DOAH hearing, the "administrative law officer shall have the authority to affirm or vacate the Commissioner's denial decision." *Id.*

¶ 18 C. Prior Operations at the Site of the Proposed Facility

¶ 19 For several decades, General Iron Industries Inc. (General Iron) owned and operated a metal scrap recycling business in the Lincoln Park neighborhood of Chicago. Beginning around 2015, the City advised General Iron that it desired the closing of the operations in Lincoln Park.

¶ 20 By July 2018, General Iron had agreed to sell certain of its assets to Reserve Management Group (RMG). There is no dispute that RMG is an affiliate of General III, with overlapping ownership. Specifically, General III is 80 percent owned by another LLC, General II, which, in turn, is owned by two holding companies, RMG Investment Group and RMG Development Group II. As stated by the circuit court, this relationship indicates that RMG entities own 80 percent of General III; General III does not dispute this point.

¶ 21 Notably, for many years preceding the permit application at issue, RMG and affiliated entities owned and operated four recycling facilities at a 175-acre site at 116th Street and Burley Avenue on the south side of Chicago, referred to as the "Burley site." This appeal concerns an application to operate a large recycling facility on the Burley site.

¶ 22 In February 2019, General III applied to the Chicago Zoning Board of Appeals (Zoning Board) for a special use permit. Following a public hearing, in April 2019, the Zoning Board issued findings and authorized the permit application.

¶ 23 In September 2019, the City entered into an agreement with General Iron, General Metals, LLC, and RMG, titled "TERM SHEET REGARDING GENERAL IRON/RMG INTERIM

OPERATING PLAN, CESSATION OF NORTHSIDE OPERATIONS, AND SOUTHSIDE TRANSITION." It recited that RMG and General Iron agreed to cease the Lincoln Park metal recycling operations, and "RMG intends to transition to a new metal recycling operation to be developed" at the Burley site. The City agreed to "reasonably cooperate * * * in achieving the efficient, expeditious transition" of operations to the Burley site, "including reasonable assistance with processing and review of license and permit applications, and scheduling of public hearings." However, the City specified that it would "enforce its ordinances, rules, regulations, licenses, permits, and policies as necessary to protect the public health and safety and welfare, applying such enforcement neutrally and consistently to General Iron, RMG, and other metal recycling facilities in the City." The agreement called for General Iron to close most of its operations at the Lincoln Park facility by December 31, 2020.

¶ 24 D. Illinois EPA Permit Granted in 2020

¶ 25 On September 25, 2019, General III applied to the Illinois Environmental Protection Agency (IEPA) for a permit to operate a new scrap metal recycling facility at the Burley site. The IEPA issued a notice of public comment period and conducted two public hearing sessions in May 2020. On June 25, 2020, the IEPA issued a construction permit to General III.

¶ 26 In July 2020, General III applied to CDPH for an air pollution control (APC) permit pursuant to section 11-4-620 of the Code. Chicago Municipal Code § 11-4-620 (amended Nov. 16, 2011) (subsequently amended Nov. 7, 2022). On September 15, 2020, CDPH issued the permit.

¶ 27 E. Construction of Facility from 2020-21

¶ 28 The record reflects that General III began construction of a new facility at the Burley site in September 2020, before it had formally submitted an LRF permit application to CPDH. Construction continued until March 2021, before CPDH had rendered a decision on a permit

application for a large recycling facility. According to General III, the cost of constructing the facility was approximately $80 million.

¶ 29 F. General III Applies for a Large Recycling Facility Permit

¶ 30 In November 2020, General III filed its LRF permit application for the Burley site. On December 23, 2020, CDPH informed General III that its application was incomplete, setting forth 34 categories of additional information to be provided in an updated application. On January 13, 2021, General III filed a revised application containing approximately 1165 pages.

¶ 31 G. Federal HUD Investigation and the City's Response

¶ 32 Certain community members raised complaints with the United States Department of Housing and Urban Development (HUD) about the potential detrimental environmental and discriminatory impacts of the new facility at the Burley site. In October 2020, HUD began an investigation in response to a complaint that the City engaged in racial discrimination by facilitating the relocation of General Iron's metal recycling operations from Lincoln Park, a majority white neighborhood, to a majority Black and Hispanic neighborhood.

¶ 33 In November 2020, HUD contacted the City and expressed concerns about the expansion of operations at the Burley site. HUD asked the City to "refrain from issuing the final permit" while HUD conducted conciliation discussions with the complaining parties and the City.

¶ 34 In a letter dated November 20, 2020, the City of Chicago Law Department responded to HUD, stating that the "claims of discrimination advanced in the complaint lack any merit." The City also stated that "RMG has been conducting metal recycling operations" at the Burley site "in a lawful and environmentally safe manner for decades." The City denied that the new facility would "perpetuate racial segregation by 'facilitating the relocation' of General Iron's Lincoln Park facility to the Southeast side of Chicago." The City stated: "[T]he planned RMG expansion is not

a relocation of General Iron's Lincoln Park operation, but an entirely distinct effort undertaken by a different legal entity."

¶ 35 We again note that, although General III was the specific entity that applied for the LRF permit at issue, there is no dispute that General III's ownership overlaps with the ownership of RMG and its related entities that previously operated at the Burley site.

¶ 36 H. The Federal EPA and Chicago Mayor Request a Health Impact Assessment

¶ 37 On May 7, 2021, the administrator of the United States EPA, Michael S. Regan, sent a letter to Chicago's then mayor, Lori Lightfoot, expressing concern about the proposed facility and suggesting that the City delay a decision on the permit application. The letter stated:

> "Substantial data indicate the current conditions facing Chicago's southeast side epitomize the problem of environmental injustice, resulting from more than a half century of prior actions. This neighborhood currently ranks at the highest level for many pollution indicators * * * including fine particulate matter, air toxics cancer risk, respiratory hazard, traffic proximity, lead paint, Superfund site proximity, hazardous waste proximity, and wastewater discharges."

¶ 38 The EPA also stated that the proposed site on Chicago's southeast side "raised significant civil rights concerns," referencing HUD's investigation. The EPA advised:

> "Prior to reaching a decision on the permit, U.S. EPA suggests that the City complete an environmental justice analysis, such as a Health Impact Assessment, to meaningfully consider the aggregate potential health effects of the proposed RMG facility on the southeast side of Chicago. * * * We believe it is prudent for the City

> to delay a decision on the pending permit until such an analysis can be conducted."

¶ 39 Three days later (May 10, 2021), the CDPH commissioner advised General III that the City was following the U.S. EPA's recommendation and had suspended its review of the permit application. Mayor Lightfoot also publicly stated that she had directed CDPH to initiate an environmental study, as recommended by the U.S. EPA.

¶ 40 I. The HIA Recommends Denial of the Permit

¶ 41 With the assistance of the U.S. EPA, CDPH began work on the "Health Impact Assessment" (HIA) in May 2021. In February 2022, CDPH issued the HIA regarding the permit application. The HIA acknowledged that it was "conducted in close coordination with and reliance on" the U.S. EPA and an environmental consultant.

¶ 42 The HIA noted that compared to Chicagoans overall, residents of the southeast side are "more vulnerable to the health effects of pollution based on their health and social status." Acknowledging the existing facilities at the Burley site, the HIA noted that "highly sensitive groups may be harmed by the particulate matter pollution currently caused by RMG and other local industries." It found that "[e]ven incremental additional emissions would exacerbate this harm." The HIA found that "when the proposed Southside Recycling operation is considered as contributing to the cumulative burden experienced by the surrounding neighborhoods, it has the potential to exacerbate pre-existing environmental, health, and quality of life impacts associated with industrial development on the Southeast side."

¶ 43 The HIA separately discussed RMG's "compliance history," stating there were "several instances of RMG's failure to comply with City regulations and existing permit requirements to the detriment of the surrounding community." It commented that, given the environmental burdens

that the facility could bring to the southeast side, "CDPH should only grant a permit if it is confident that RMG would operate Southside Recycling in accordance with strict permit conditions." The HIA stated: "[t]he history of non-compliance exhibited here * * * indicates that the company is not currently acting in the best interest of the community and CDPH is not confident that it will do so with respect to Southside Recycling."

¶ 44 The HIA concluded that CDPH should deny the permit application "based on a combination of factors, including: concerns for health, environment, and quality of life in an already over-burdened community; the inherent risks of recycling operations; as well as concerns about the company's operating history, including apparent violations of existing permit requirements."

¶ 45 J. CDPH Denies the Permit

¶ 46 On February 18, 2022, CDPH issued a 12-page letter in which it denied the permit application. The denial was largely based on the HIA, but it also relied on the compliance history of pre-existing facilities at the Burley site, which were operated by entities affiliated with General III.

¶ 47 CDPH's denial letter noted its authority under the Code to adopt rules "necessary or proper" to administer environmental ordinances, including with respect to recycling facilities. CDPH recited that Rule 4.0 calls for an "evaluation of the applicant's prior experience in recycling or junk facility operations" and allows denial of an application based on violations within the prior three years of regulations, standards, permit conditions, or ordinances. Chi. Dep't of Pub. Health, Recycling Facility Permits (Mar. 19, 2014), https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/RECYCLINGFACILITYPERMITSFINAL.pdf [https://perma.cc/HUT5-P5AU]. CDPH also noted that the Code authorized the

Commissioner to cooperate with state and federal government agencies and to "do any and all other acts which may be necessary for the implementation of other powers" conferred by the Code. Chicago Municipal Code § 2-112-110 (amended Feb. 24, 2021) (since amended).

¶ 48 CDPH's denial letter cited "an unacceptable risk that the proposed facility would produce an increase in particulate matter, noise, and diesel emissions, the negative effect of which are magnified in a population with the health vulnerabilities identified and documented in the HIA." CDPH found "potential adverse changes in air quality and quality of life" plus the "health vulnerabilities in the surrounding communities described in the HIA—together with the Applicant's track record in operating similar facilities within this campus—presents an unacceptable risk."

¶ 49 CDPH's denial letter cited a number of "Past and Present Environmental Compliance Issues" involving pre-existing recycling operations at the site. CDPH recognized the majority of the site was occupied by Reserve Marine Terminal (RMT), and there were "smaller operations conducted by three other recycling businesses." CPDH's review of information submitted with General III's application found a number of issues with operations of the existing facilities, namely: (1) the volume of material processed exceeded the permitted tonnage under RMT's permit; (2) RMT failed to obtain proper permits for its foundry sand operation; (3) RMG failed to notify CDPH of a December 2019 violation it received from the Illinois Environmental Protection Agency; and (4) CDPH issued a notice of violation to RMT in June 2019 for failure to control dust at the site. The CDPH also noted that December 2021 soil samples showed high levels of lead on site; CDPH observed certain unpermitted recycling activity at the site in December 2021; and CDPH had learned that RMG failed to report a July 2021 warehouse collapse.

¶ 50 In denying General III's permit application, CDPH stated that "the Applicant's track record in operating similar facilities" gave it reason to weigh the "unpredictable risks and hazards associated with large metal recycling more heavily in assessing the likelihood of adverse outcomes for an already-burdened community." The denial letter advised that, pursuant to section 11-4-040(b) of the Code, General III could request a hearing within 15 days.

¶ 51 K. Proceedings in the DOAH

¶ 52 General III sought review in the Department of Administrative Hearings (DOAH). An ALJ, Mitchell C. Ex, conducted a hearing in January 2023. The ALJ heard testimony from several witnesses, including CDPH officers and representatives of General III.

¶ 53 L. The ALJ's Decision Vacates CDPH's Denial of the Permit

¶ 54 On June 1, 2023, the ALJ issued a 50-page "Findings, Decision and Order" that vacated the CDPH's denial of the permit application.

¶ 55 In its findings, the ALJ emphasized that before May 2021, there was no indication that an HIA would be conducted or have any role in the CDPH's permit decision. The ALJ found that hearing testimony from CDPH witnesses indicated that "By May 10, 2021, [General III] had submitted all required documentation" under CPDH rules.

¶ 56 The ALJ pointed out that CDPH witnesses acknowledged that an HIA does not appear in the Code and that Mayor Lightfoot directed the agency to initiate the HIA. Although the ALJ recognized that the Code authorized the Commissioner to issue rules necessary or proper for the implementation of environmental ordinances, the ALJ emphasized that a "Health Impact Assessment" does not appear in any City ordinance, rule, or regulation.

¶ 57 The ALJ rejected the notion that the Commissioner had authority to conduct the HIA, as there was no "specific ordinance" governing use of an HIA, and an HIA was "never formally

disclosed by publication in any way." Accordingly, the ALJ found the HIA findings were "improperly applied" and must be "disregarded as beyond the authority of the Commissioner to implement."

¶ 58 Separate from the HIA, the ALJ decision also found the CDPH erred insofar as the permit denial was premised on alleged instances of noncompliance, pursuant to the compliance review contemplated by Rule 4.0. In doing so, the ALJ found that Rule 4.0 conflicted with a Code provision.

¶ 59 Specifically, the ALJ reasoned that Rule 4.0 was legally inconsistent with section 11-4-2525 of the Code, which requires denial of a permit where the applicant has had a permit "revoked for cause within the past three years." Chicago Municipal Code § 11-4-2525 (added Apr. 9, 2008). According to the ALJ, Rule 4.0 impermissibly "lowers that bar by allowing permit denial for any violation *** of federal, state, or local laws, regulations, standards, permit conditions, or ordinances" in the operation of a facility. The ALJ determined that, in light of section 11-4-2525, the Commissioner could not "enact[ ] a rule that allows a permit to be denied for minor violations of law," as the ordinance "imposed a much higher standard." Thus, insofar as CDPH denied the permit based on "lesser violations" pursuant to Rule 4.0, the ALJ concluded this was beyond the Commissioner's authority and should be "disregarded."

¶ 60 Elsewhere, the ALJ remarked that the City made contradictory statements regarding the environmental safety of the facilities at the Burley site. It noted that in 2020 (before the HIA), the City made statements indicating that the new facility would be "clean, efficient and environmentally sensitive." The ALJ also noted that despite numerous inspections at the Burley site, CDPH had "never raised any concerns with RMG" or affiliates before the February 2022 denial letter, other than a minor ticket for dust.

¶ 61 The ALJ acknowledged but declined to address General III's independent claim that it had "vested rights" to approval of its permit, given its acts in reliance on prior dealings with City agencies. The ALJ found this argument was more appropriate for the circuit court.

¶ 62 The ALJ concluded that General III "had met the LRF rules and requirements for an operating permit" but that:

> "Instead, at the direction of Mayor Lightfoot, the Chicago Department of Public Health, acting without City Council legislative authority, paused the permit application process and initiated a health impact assessment, which itself lacked authorization from the Council. As a result of the HIA, additional concerns were raised and included in the Denial Letter. For the most part, these additional concerns had never been raised before although the Chicago Department of Public Health was aware of, or should have been aware of, the items prior to February 2022."

The ALJ thus determined that the CDPH denial of the permit should be vacated. The ALJ noted that its order was appealable under the Administrative Review Law.

¶ 63 M. The Circuit Court Reverses the ALJ and Affirms Denial of the Permit

¶ 64 CDPH filed a timely complaint for administrative review. In August 2024, the circuit court issued a 21-page decision, in which it disagreed with the ALJ's legal conclusions and affirmed the CDPH's denial of the permit. In doing so, it agreed with the CDPH that (1) Rule 4.0 permitted CDPH to consider the compliance history of related entities and (2) CDPH was authorized to employ and rely on the HIA. Because we find the circuit court's reasoning particularly thorough and persuasive, we review it in detail.

¶ 65 The circuit court first addressed whether there was a conflict between Rule 4.0 and section 11-4-2525 of the Code and "whether the Commissioner's reliance on Rule 4.0 [to deny the permit] was a proper exercise of her authority." It answered these questions in favor of the CDPH. That is, the circuit court agreed that a compliance history review pursuant to Rule 4.0 could support a permit denial.

¶ 66 In doing so, the circuit court rejected General III's claim that section 11-4-2525 enumerated the *only* three specific circumstances in which the Commissioner can deny a permit. The circuit court recognized that "CDPH, as the agency responsible for administering and enforcing the relevant provisions of the [Code], should be given deference in its interpretation of the municipal code." The circuit court also noted that agencies have "discretion to act beyond explicitly listed statutory powers when such actions are in line with their regulatory responsibilities." Citing the "deference owed to CDPH's expertise in administering its regulatory framework," it found Rule 4.0 was a proper exercise of the Commissioner's broad discretionary authority.

¶ 67 After concluding that Rule 4.0 was valid, the circuit court proceeded to find that the CDPH did not err, to the extent it denied the permit application based on "affiliated entities' history of noncompliance." The circuit court emphasized that CDPH's denial of the permit was not based "solely on the alleged instances of misconduct" but was "primarily grounded in the health risks posed" by the facility, as described in the HIA. The circuit court reasoned that "while unadjudicated allegations of noncompliance alone *cannot be used as the sole basis* for permit denial, an agency may consider these allegations if they are combined with a sufficient and non-prejudicial basis for denial, such as HIA risks." (Emphasis added.)

¶ 68 The circuit court next determined that the Code authorized the Commissioner to conduct the HIA and rely on it to deny the permit. The circuit court emphasized that the Code authorized

the Commissioner to "encourage and conduct studies, investigations and research" and to take actions necessary for the "proper protection and promotion of public health." Chicago Municipal Code § 2-112-110(b) (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025); Chicago Municipal Code § 2-112-030 (amended Feb. 24, 2021). The court also cited Code provisions giving the Commissioner power to "enforce all the laws of the state and provisions of this Code in relation to matters pertaining to the public health and sanitary conditions of the City." See Chicago Municipal Code § 2-112-110(a) (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025). The circuit court also noted that the Code granted the Commissioner the power to issue rules necessary and proper for the administration of health ordinances (Chicago Municipal Code § 2-112-070(a) (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025)) and to "supervise the execution of and implement all laws, ordinances, and rules pertaining to environmental protection and control." Chicago Municipal Code § 2-112-110(b) (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025). The court reasoned such provisions were "consistent with a legislative framework intended to empower the Commissioner to effectively manage public health risks associated with large-scale industrial operations."

¶ 69 The circuit court also determined that such legislative delegation of authority to CDPH was constitutionally permissible, pursuant to the test set forth by our supreme court in *Stofer v. Motor Vehicle Casualty Co.*, 68 Ill. 2d 361, 372 (1977). The court concluded:

> "[T]he Commissioner had the discretion to incorporate an HIA in the LRF permit evaluation process, even if such an assessment is not explicitly mandated by the municipal code. The HIA does not impose new criteria or standards for the permit process. Rather, it provides a comprehensive assessment of relevant environmental and

> health issues in the impacted area. In this Court's view, it falls within the Commissioner's broad duty to safeguard public health under the environmental ordinances of the City."

¶ 70 The circuit court thus determined that the ALJ "erred as a matter of law" when it concluded that the Commissioner lacked authority to rely on the HIA. Rather, it found that use of the HIA was a permissible tool "within the existing regulatory framework."

¶ 71 The circuit court then discussed the particular findings in the HIA. It noted that the HIA "highlighted significant health risks associated with the proposed facility" and that the surrounding community was "particularly susceptible to the potential health impacts" posed by a such a new facility. The court then concluded that the Commissioner's decision to deny the permit "was not arbitrary but grounded in the substantive data and analysis presented in the HIA."

¶ 72 The circuit court determined that the decision to deny the permit, "grounded in the findings of the HIA and supported by legal authority under the [Code], is upheld as a valid exercise of administrative discretion aimed at safeguarding public health." Thus, it reversed "the ALJ's decision to disregard HIA as part of the permit review process."

¶ 73 The circuit court concluded that the CDPH "possessed the discretion and authority under both the applicable municipal ordinance and Rule 4.0 to deny the permit based on the findings of the HIA." On that basis, the circuit court (1) affirmed the CDPH's denial of the permit and (2) reversed the ALJ's decision vacating the denial. The circuit court specified that this was a final and appealable order.

¶ 74 General III filed a notice of appeal, in which it requested that this court reverse the circuit court order, affirm the ALJ's decision, and remand this matter "with instructions to order that the Large Recycling Facility permit be issued."

¶ 75 This matter has been fully briefed and orally argued. In addition to the parties' briefs, this court has considered the *amici curiae* brief submitted in support of CDPH by certain community groups (Southeast Environmental Task Force, People for Community Recovery, and Southeast Side Coalition to Ban Petcoke), as well as the *amici curiae* brief in support of General III filed by the Illinois Chamber of Commerce, Illinois Manufacturers' Association, Illinois Environmental Regulatory Group, and Calumet Area Industrial Commission.

¶ 76 II. ANALYSIS

¶ 77 On appeal, General III argues that our review is directed to the propriety of the ALJ's decision (which vacated the permit denial) and that we should affirm that decision. General III primarily attacks the validity of the CDPH's use of the HIA as a basis for the permit denial. General III maintains that the ALJ properly determined as a matter of law that CDPH was not authorized to use the HIA as a basis to deny the permit.

¶ 78 Separate from the HIA, General III asserts that denial of the permit was improperly based on the compliance history of related entities. In this respect, it claims that (1) Rule 4.0 is invalid because it conflicts with section 11-4-2525 of the Code, (2) mere "allegations" of noncompliance cannot be used to deny a permit, and (3) even if Rule 4.0 was valid, the alleged compliance issues did not justify denial of the permit.

¶ 79 General III alternatively claims it has a "vested right" to operate the facility, given its prior dealings with the City and its acts in reliance thereon. Finally, General III asserts that the ALJ should have gone farther by directing the Commissioner to issue the permit, rather than merely vacating the permit denial.

¶ 80 In its appellee brief, CDPH frames the appeal as whether its February 2022 denial (rather than the ALJ's order) was arbitrary or capricious. CDPH maintains that the Commissioner was

authorized by the Code to conduct and rely on the HIA and that it was authorized by Rule 4.0 to consider the compliance history of related entities in denying General III's permit.

¶ 81 A. Standard of Review

¶ 82 Before we turn to the merits, we must clarify the standard of review. And because there are two underlying administrative decisions, we must clarify whether deference is owed to CDPH or the ALJ.

¶ 83 In this regard, it is helpful to reiterate basic principles of jurisdiction in the context of administrative review. As summarized by our supreme court:

> "The Illinois Constitution grants an appeal as a matter of right from all final judgments of the circuit court (Ill. Const. 1970, art. VI, § 6) but further provides that final administrative decisions are appealable only 'as provided by law' (Ill. Const. 1970, art. VI, § 9). A circuit court's exercise of review over a final administrative decision is thus limited to the specific dictates of the Administrative Review Law. [Citation]. In other words, a court exercises special statutory jurisdiction when it reviews a final administrative decision, and such jurisdiction is limited to the language of the statute conferring it and the court has no powers from any other source. [Citation.]" *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 45.

¶ 84 On administrative review, "this court 'reviews the administrative agency's final decision, not the circuit court's decision.' " *Austin Gardens, LLC v. City of Chicago Department of Administrative Hearings*, 2018 IL App (1st) 163120, ¶ 15 (quoting *Sloper v. City of Chicago,*

Department of Administrative Hearings, 2014 IL App (1st) 140712, ¶ 15); 735 ILCS 5/3-101 to 3-113 (West 2022) (describing judicial review of a final decision of an administrative agency).

¶ 85 "The proper standard of review in cases involving administrative review depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." *Beggs*, 2016 IL 120236, ¶ 50 (citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)). An administrative agency's findings and conclusions on questions of fact are considered *prima facie* true and correct. *Id.* (citing 735 ILCS 5/3-110 (West 2012)). "As such, an agency's factual findings are not to be reweighed by a reviewing court and are to be reversed only if they are against the manifest weight of the evidence." *Id.*

¶ 86 "Questions of law are reviewed under a *de novo* standard, and mixed questions of law and fact are reviewed under the clearly erroneous standard." *Id.* A mixed question of fact and law "examines the legal effect of a given set of facts." *Id.* (citing *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001)). "Put another way, a mixed question asks whether the facts satisfy the statutory standard or whether the rule of law as applied to the established facts is or is not violated." *Id.* (citing *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 273 (2009)).

¶ 87 B. The ALJ Made the "Final" Decision and Its Fact Findings Are Owed Deference

¶ 88 This case involves two administrative decisions: the ALJ's decision and the underlying CDPH permit denial decision. The parties dispute which decision should be the focus of our review. Although they generally recognize that an agency's factual findings are entitled to "manifest weight" deference and mixed questions of law are reviewed for clear error, they disagree as to which decision is owed that deference, that of the CDPH or the subsequent decision of the ALJ from the DOAH.

¶ 89 In urging that the ALJ's findings are entitled to deference, General III points out that the Administrative Review Law contemplates review of "final" administrative decisions. 735 ILCS 5/3-104 (West 2022). It submits that the "permitting scheme at issue here is two-tiered system that gives an aggrieved party the right to appeal to an ALJ" from a decision of the Commissioner; thus, the ALJ, not the Commissioner, is the one who issues a final determination.

¶ 90 We agree that the ALJ's decision is the "final" administrative decision subject to our review. This follows our supreme court's recognition in *Beggs* that the Administrative Review Law permits judicial review of *final* administrative decisions. *Beggs*, 2016 IL 120236, ¶ 45. Section 3-104 of the Administrative Review Law states that "Jurisdiction to review final administrative decisions is vested in the Circuit Courts ***." 735 ILCS 5/3-104 (West 2022).

¶ 91 The provisions of the Code make clear that a DOAH decision reviewing permit decision is a "final" administrative decision. In this regard, it is helpful to review the role of the DOAH, which is governed by Chapter 2-14 of the Code. "The City [of Chicago] has the authority under its home rule powers to establish administrative agencies." (Internal quotation marks omitted.) *Austin Gardens*, 2018 IL App (1st) 163120, ¶ 19. "Pursuant to this power, the City created the DOAH 'to conduct administrative adjudication proceedings for departments and agencies of the city." *Id.* (quoting Chicago Municipal Code § 2-14-010 (amended Feb. 15, 2012)). The director of the DOAH is empowered to appoint administrative law officers to conduct hearings. Chicago Municipal Code § 2-14-030 (amended Feb. 15, 2012). The Code specifies that administrative law officers shall have "all powers necessary to conduct fair and impartial hearings." Chicago Municipal Code § 2-14-040 (amended Apr. 29, 1998). These include the power to hear testimony and "*issue a final order* which includes findings of fact and conclusions of law." (Emphasis added.) *Id.*

¶ 92 As previously noted, Chapter 11-4 of the Code contemplates that an ALJ will conduct a review of the Commissioner's permit determination. Chicago Municipal Code § 11-4-040(d) (amended July 29, 2015) ("Upon the conclusion of the hearing *** the administrative law officer shall have the authority to affirm or vacate the Commissioner's denial decision."). Reading these Code provisions in conjunction, it is clear that the ALJ renders the "final" decision. Thus, insofar as Administrative Review Law extends judicial review to the "final" agency decision (735 ILCS 5/3-104 (West 2024)), the ALJ decision is properly viewed as the "final" decision in this case.

¶ 93 This conclusion is also consistent with *Marathon Petroleum Co. v. Cook County Department of Revenue*, 2024 IL 129562, which similarly involved an initial agency decision subsequently reviewed by an ALJ. There, the Cook County Department of Revenue determined that a fuel distributor (Marathon) owed certain unpaid taxes, interest, and penalties. *Id.* ¶ 1. Marathon sought administrative review before an administrative law judge (ALJ) within the Cook County Department of Administrative Hearings. *Id.* The ALJ conducted a hearing and issued a decision upholding the assessments. *Id.* Upon judicial review, the circuit court reversed the ALJ decision, but the appellate court reversed. *Id.* ¶ 28.

¶ 94 At the outset of its analysis, our supreme court stated "we must first determine the appropriate degree of deference to be afforded the ALJ's opinion, which directs our appropriate standard of review." *Id.* ¶ 32. Our supreme court held that the ALJ's "factual findings will be reviewed under the manifest weight of the evidence standard, while the ALJ's ultimate conclusion will only be reversed if clearly erroneous." *Id.* ¶ 35.

¶ 95 The instant situation is procedurally analogous. Here, the CDPH first rendered a decision denying the permit, but then an ALJ of the DOAH conducted an evidentiary hearing and issued findings of fact and conclusions of law. As in *Marathon*, the ALJ's findings of fact are owed

deference. *Id.*; see *Sam's West, Inc. v. County of Cook*, 2025 IL App (1st) 240229, ¶ 34 (where ALJ upheld assessment of Cook County Department of Revenue for unpaid taxes, the factual findings of the ALJ were "*prima facie* correct" and subject to deference).

¶ 96 In short, since the ALJ rendered the final administrative decision after a hearing, it is the ALJ's findings of fact that are entitled to "manifest weight of the evidence" deference.

¶ 97 C. CDPH Is Owed Deference on Interpretation of Code

¶ 98 Notwithstanding the above discussion regarding findings of fact, we reiterate that questions of law in an administrative review case are subject to *de novo* review. *Cinkus*, 228 Ill. 2d at 210 ("[A]n agency's decision on a question of law is not binding on a reviewing court."). Further, we emphasize our supreme court's instruction that "an agency's interpretation of its regulations and enabling statute are 'entitled to substantial weight and deference,' given that 'agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent.' " *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16 (quoting *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 387 n.9 (2010)). In this regard, it is undoubtedly the CDPH (not the DOAH) that makes informed judgments on matters of public health, based upon its experience and expertise. Thus, we determine that CDPH (not the DOAH) is owed deference in interpreting the relevant provisions of the Code, including those setting forth the mission of the CDPH and the various powers of the Commissioner.

¶ 99 D. CDPH Was Authorized to Use the HIA

¶ 100 We turn to address General III's primary contention: that the Commissioner lacked authority to conduct or use the HIA in course of deciding whether to grant the LRF permit. General III urges that "nothing in the Code or any related rules or ordinances expressly authorizes" use of

an HIA, pointing out that the Code does not explicitly refer to an HIA or discuss how it should be conducted or used in a permitting decision.

¶ 101 In response, CDPH acknowledges that the Code provisions do not specifically refer to an HIA. However, it argues that use of an HIA "plainly fits within [the] framework" of the Code provisions describing the Commissioner's role and powers. CDPH points out that the Code grants Commissioner authority over "All matters pertaining to *** the proper protection and promotion of public health ***." Chicago Municipal Code § 2-112-030 (amended Feb. 24, 2021). It also points out that the Code expressly gave the Commissioner authority to issue permits; to conduct studies, investigation, and research; and to cooperate with other governmental agencies. CDPH otherwise argues that use of the HIA fell within the Commissioner's implied authority.

¶ 102 Whether CDPH was authorized to employ an HIA involves interpretation of Code provisions, which presents a legal question reviewed *de novo*. See *Sam's West*, 2025 IL App (1st) 240229, ¶ 32.

¶ 103 Administrative agencies have purely statutory powers and possess no inherent or common-law powers. *Mohorn-Mintah v. Board of Education of Chicago*, 2020 IL App (1st) 182011, ¶ 19. "Any power or authority of an agency must come from the statutory provisions under which the agency was created or 'by fair implication and intendment from those express provisions, as an incident to achieving the objectives for which the agency was created." *Id.* (quoting *Albazzaz v. Department of Professional Regulation*, 314 Ill. App. 3d 97, 104 (2000)).

¶ 104 Our supreme court has held that "an express grant of power or duty to an administrative officer carries with it the grant of power to do all that is reasonably necessary to execute that power or duty." *Lake County Board of Review v. Property Tax Appeal Board of the State of Illinois*, 119 Ill. 2d 419, 427 (1988); see *Mohorn-Mintah*, 2020 IL App (1st) 182011, ¶ 19. Our supreme court

elaborated that "[T]he word 'necessary' is a word of great flexibility and may mean 'absolutely necessary,' 'indispensable," or, less restrictively, 'expedient' or 'reasonably convenient.' " *Lake County*, 119 Ill. 2d at 427-28. "Further, wide latitude must be given to administrative agencies in fulfilling their duties." *Id.* at 428. As already noted, our supreme court has also held that an agency's interpretation of its regulations and enabling statute are "entitled to substantial weight and deference," given their experience and expertise. (Internal quotation marks omitted.) *Hartney Fuel Oil Co.*, 2013 IL 115130, ¶ 16.

¶ 105 In light of the foregoing principles, we conclude that use of the HIA fell within the scope of the CDPH's authority. We recognize that none of the relevant ordinances in the Code specifically uses the term "health impact assessment" and that term does not appear in the Rules promulgated by CDPH. Yet, we find (as did the circuit court) that the HIA falls within the broad scope of the CDPH's enumerated powers and overall mission, as described in the Code. That is, we think the use of an HIA falls within the scope of acts the Commissioner may find "reasonably necessary" to effectuate the powers given under the relevant ordinances.

¶ 106 Significantly, the Code gave the Commissioner power to "encourage and conduct *studies, investigations and research*" that "the Commissioner may deem advisable and necessary." (Emphasis added.) Chicago Municipal Code § 2-112-110(b)(12) (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025).[2] There can be little doubt that the HIA comprised study, investigation, and research regarding the potential effects of the new facility on the surrounding community. Moreover, the Code authorized the CDPH to "advise, consult and cooperate with other

[2]The current Code similarly states: "The Commissioner shall encourage and conduct such studies, investigations and research as in his judgment will promote and improve public health." Chicago Municipal Code § 2-112-100(c) (amended Nov. 15, 2023).

agencies of the state and federal governments, and other governmental agencies to advance environmental protection." *Id.* § 2-12-110(b)(13). Thus, insofar as the HIA resulted from influence and cooperation from the U.S. EPA, such collaboration is contemplated by the Code.

¶ 107 We note that the ALJ decision did not refer to either of these explicit powers. The ALJ essentially reasoned that, insofar as the Code did not explicitly refer to a "health impact assessment," it was beyond the authority of the Commissioner to use one. Yet, as noted, an express grant of power to an administrative officer brings with it the power "to do all that is reasonably necessary," and agencies have "wide latitude" in fulfilling their duties. *Lake County*, 119 Ill. 2d at 427-28. Moreover, as the circuit court pointed out, the Code gives the Commissioner authority to "do any and all other acts which may be necessary for the implementation of other powers conferred on the Commissioner" under the Code. Chicago Municipal Code § 2-112-110 (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025).

¶ 108 We believe that the enumerated powers given to the Commissioner in the Code are broad enough to encompass use of an HIA. We agree with the circuit court's well-reasoned analysis on this point and its conclusion that the HIA "falls within the Commissioner's broad duty to safeguard public health under the environmental ordinances of the City." That is, we reject the ALJ's legal conclusion that the HIA findings must be "disregarded" as beyond the Commissioner's authority.

¶ 109 E. The Zoning Board Determination Does Not Preclude the HIA

¶ 110 We briefly note that we reject General III's claim that use of the HIA cannot be condoned because it conflicts with the authority of the Zoning Board. General III suggests that CDPH's use of the HIA usurped the Zoning Board's authority, insofar as the Zoning Board previously concluded that the site was appropriate.

¶ 111 We acknowledge that the Zoning Board approved use of the site. Yet, obviously, the roles of the respective agencies are different. As argued in CDPH's appellee brief, the role of the Zoning Board is to evaluate whether a proposed facility is compatible with the character of the surrounding area, whereas the CDPH is concerned with "health risks, not compatibility." We agree with CDPH that a zoning determination "is not a public health one, and, thus, has no bearing on the Commissioner's authority to determine that a facility will pose a health risk to neighboring communities."

¶ 112 F. General III's Unconstitutional Delegation Argument Is Without Merit

¶ 113 General III alternatively argues that the Code cannot be construed as authorizing the Commissioner's use of a "standardless" HIA in the permitting process, without violating the "unconstitutional delegation" doctrine.

¶ 114 Our supreme court has held that "intelligible legislative standards" are needed "to guide administrative rule making." *Stofer*, 68 Ill. 2d at 371. The legislature, in delegating its authority, must "provide sufficient identification of the following: (1) The persons and activities potentially subject to regulation; (2) the harm sought to be prevented; and (3) the general means intended to be available to the administrator to prevent the identified harm." (Emphases omitted.) *Id.* at 372. In formulating this test, the supreme court recognized that "the term 'sufficient identification' itself is not free from ambiguity and will have to receive additional content from its application to particular facts and circumstances." *Id.*

¶ 115 In the course of reversing the ALJ, the circuit court specifically applied the *Stofer* analysis and rejected General III's suggestion of an unconstitutional delegation. We agree with the circuit court and similarly conclude that the Code meets each of the three requirements under *Stofer*.

¶ 116 First, with respect to the persons and activities subject to regulation, the Code identifies and defines recycling facilities that are subject to permitting requirements. See Chicago Municipal Code § 11-4-120 (amended Oct. 27, 2021) (subsequently amended Dec. 20, 2025) (defining "recycling facility"); Chicago Municipal Code § 11-4-2510 (amended Oct. 27, 2021) (subsequently amended Dec. 20, 2025) (defining "recyclable material"); Chicago Municipal Code § 11-4-2540 (amended Oct. 16, 2013) (specifying five classes of "Permits for recycling facilities").

¶ 117 Regarding the second part of the *Stofer* test, we also find the Code adequately identifies the harm to be prevented. The Code clearly states that the Commissioner is in charge of "[a]ll matters pertaining to *** the proper protection and promotion of public health" (Chicago Municipal Code § 2-112-030 (amended Feb. 24, 2021)) and is empowered to enforce state laws and Code provisions "in relation to matters pertaining to the public health and sanitary conditions of the City." Chicago Municipal Code § 2-112-110 (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025). Although this language is broad, our supreme court in *Stofer* recognized that with respect to "identifying the harm sought to be prevented, the legislature may use somewhat broader, more generic language"; "[i]t is sufficient if, from the language of the statute, it is apparent what types of evil the statute is intended to prevent." *Stofer,* 68 Ill. 2d at 373. Here, it is apparent that the Code gives the Commissioner a broad mission to protect public health.

¶ 118 As to the third requirement under *Stofer*, we find the Code sufficiently identifies the "general means intended to be available to the administrator to prevent the identified harm." (Emphasis omitted.) *Id.* at 372. The Code outlines the means to address harms to public health by granting Commissioner powers, including the power to issue rules "necessary or proper for the administration or enforcement of health ordinances" (Chicago Municipal Code § 2-112-070 (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025)); to enforce all state laws and

Code provisions in relation to public health (Chicago Municipal Code § 2-112-110 (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025)); to "encourage and conduct studies, investigations and research" (*id.* § 2-112-110(b)(12)); and to "advise, consult and cooperate with" other government agencies to advance environmental protection. *Id.* § 2-112-110(b)(13) (since renumbered). Further, section 11-4-2530 affords the Commissioner discretion with respect to the manner in which applications for recycling facility permits may be made, including the power to require "[a]ny other information" in conjunction with a permit application. Chicago Municipal Code § 11-4-2530 (amended July 29, 2015) (subsequently amended Nov. 15, 2023). Under the *Stofer* test, we find these provisions were sufficiently specific in delegating to CDPH broad authority to decide how to protect public health, which encompassed the use of an HIA in a permitting decision.

¶ 119 We thus reject General III's reliance on the concept of an unconstitutional delegation. We agree with the circuit court that "under the *Stofer* analysis, the Commissioner had the discretion to incorporate an HIA in the LFR permit evaluation process, even if such an assessment is not explicitly mandated by the municipal code."

¶ 120 G. The ALJ Did Not Make Factual Findings Undermining the HIA

¶ 121 General III alternatively argues that, even assuming use of the HIA was authorized and constitutional, the Commissioner's reliance on it was "arbitrary and capricious." In doing so, General III maintains that the ALJ made *factual findings* undermining the HIA. General III contends: "As the ALJ's findings show, the Commissioner's arbitrary and capricious actions in relying on the HIA to deny the permit abused whatever discretion she may have had." General III claims that the "ALJ's findings of fact on the HIA are supported by the manifest weight of the

evidence." General III thus urges that the ALJ's decision is entitled to deference with respect to its discussion of the HIA.

¶ 122 The problem with these assertions is that they mischaracterize the nature of ALJ's discussion of the HIA. A close reading of the ALJ decision shows that, contrary to General III's position, the ALJ did not make factual findings about the contents of the HIA. Rather, the ALJ found *as a matter of law* that the Commissioner lacked legal authority to use the HIA. As the circuit court decision correctly noted, "the ALJ did not comprehensively discuss[ ] or examine[ ] the HIA when deciding that the Commissioner lacked the authority to conduct the HIA." The circuit court properly recognized that because "the ALJ's findings regarding the HIA are legal in nature," *de novo* review applies to those conclusions, without deference to the ALJ.

¶ 123 In any event, even if we needed to assess it as a factual matter, we would find the 62-page HIA is thorough and well-supported. The HIA contains ample evidence and analysis to support its conclusion that the proposed facility would present unacceptable environmental risks, especially considering the burden that the neighboring community already shouldered from the pre-existing operations. In short, we reject all of General III's arguments seeking to undermine use of the HIA.

¶ 124 H. CDPH Permissibly Relied on Compliance History Pursuant to Rule 4.0

¶ 125 Separate from its challenges to the HIA, General III attacks the denial of the permit, insofar as it was premised on the compliance histories of related entities, pursuant to Rule 4.0. As already noted, Rule 4.0 states that, upon an application for a permit for a recycling facility, the Commissioner "will conduct an evaluation of the applicant's prior experience in recycling or junk facility operations or other waste handling operations." Under Rule 4.0, the Commissioner may deny a permit based on an applicant's prior violations of law, regulations, standards, permit condition, or ordinances, or if conditions at a previously permitted facility "pose a material threat

to continued compliance" with any such laws, regulations, standards, permit conditions, or ordinances.

¶ 126 General III makes a number of arguments attempting to undermine the CDPH's reliance on the compliance history of related entities, in the course of denying its permit application. First, as a question of law, General III asserts that Rule 4.0 was incompatible with section 11-4-2525 of the Code because that section set forth the *only* circumstances in which a permit could be denied. We find this argument unpersuasive.

¶ 127 Section 11-4-2525 states that no permit shall be issued to:

> "(a) any person whose permit issued under this article has been revoked for cause within the past three years;
>
> (b) any corporation, general partnership, limited partnership or limited liability company, if any partner, if a general partnership: any general partner, if a limited partnership; any principal officer, if a corporation; any managing member, if a limited liability company; any owner of 25% or more of the applicant; or any other individual required to be identified in the permit application would not be eligible to receive a permit under subsection (a); or
>
> (c) any corporation, general partnership, limited partnership or limited liability company, if any partner, if a general partnership; any general partner, if a limited partnership; any principal officer, if a corporation; any managing member, if a limited liability company; any owner of 25% or more of the applicant; or any other individual required to be identified in the permit application was a principal

> officer, partner, general partner, managing member or owner of 25% or more of any entity whose permit issued under this article has been revoked for cause withing the past three years." Chicago Municipal Code § 11-4-2525 (added Apr. 9, 2008).

¶ 128 To interpret this provision, General III refers us to the statutory construction principle *expressio unius est exclusion alterius*, the notion that "the enumeration of one thing in a statute implies the exclusion of all others." See *Baker v. Miller*, 159 Ill. 2d 249, 260 (1994) (recognizing this is "not a rule of law, but a rule of statutory construction which may be overcome by a strong indication of contrary legislative intent"). General III suggests that we must read section 11-4-2525 as stating the only grounds in which compliance history may bar a permit. In turn, General III claims that Rule 4.0 "is *ultra vires* because CDPH lacked the authority to change the statutory standards" for denying a permit.

¶ 129 We disagree. General III's reading is overly narrow, especially given (1) the broad authority the Code otherwise grants to the CDPH and (2) deference to the CDPH's interpretation of its governing regulations. Certainly, it is true that section 11-4-2525 specifies that a permit application must be denied in the specific circumstance that an applicant (or related party) has a had a permit revoked for cause in the past three years. But nothing in section 11-4-2525 says that it enumerates the *only* ways in which the Commissioner may consider compliance history in deciding whether to grant or renew a permit for a recycling facility. That is, section 11-4-2525 does not purport to narrow the grounds upon which the Commissioner *may* deny a permit. Indeed, such a reading would conflict with the other Code provisions affording considerable discretion to the Commissioner.

¶ 130 We read Code provisions together and seek to avoid conflict. See *Hartney Fuel Oil*, 2013 IL 115130, ¶ 25 ("Statutory provisions should be read in concert and harmonized."). The Code authorizes the Commissioner to request "[a]ny other information" in connection with a permit application. Chicago Municipal Code § 11-4-2530 (amended July 29, 2015) (subsequently amended Nov. 15, 2023). This authority gives the Commissioner discretion to determine what information bears on a permit decision, consistent with CDPH's expertise in public health. The Code also authorizes the Commissioner to issue rules (such as Rule 4.0) deemed "necessary [and] proper." Chicago Municipal Code § 2-112-070 (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025). And section 2-112-110 authorizes the Commissioner to "do any and all other acts which may be necessary for the implementation of other powers conferred on the Commissioner under this Code." Chicago Municipal Code § 2-112-110 (amended Feb. 24, 2021) (subsequently amended Dec. 20, 2025). Read together, these provisions grant the Commissioner broad discretion to determine what information matters in deciding whether to grant a permit. CDPH exercised that discretion in adopting Rule 4.0, requiring a compliance history review. We reject the argument that section 11-4-2525 provides the exclusive grounds for denying a permit and precludes consideration of Rule 4.0.

¶ 131 For the same reasons, we reject the General III's suggestion that Rule 4.0 conflicted with section 11-4-2525, insofar as Rule 4.0 allows consideration of the past acts of any person "having control" of the applicant, whereas section 11-4-2525 refers to individuals or entities that "own 25% or more of the applicant." General III suggests that section 11-4-2525 sets the threshold for "control" at 25% ownership, and so "Rule 4.0 is *ultra vires* for the additional reason that it allows the Commissioner to impute to the applicant violations by parties who own less than 25% of that

entity." On this basis, General III claims that CDPH could not take into consideration compliance violations by related entities that would not meet the 25% ownership threshold.

¶ 132 This argument fails because section 11-4-2525 does not limit the reasons for which a permit may be denied. Other Code provisions authorize CDPH to adopt rules and determine relevant permitting criteria. Rule 4.0 does not conflict with section 11-4-2525, which addresses one specific basis for which a permit can be denied: a prior permit revoked for cause. For that basis, the Code sets 25% ownership as the threshold. That threshold does not limit what the Commissioner may consider under other Code provisions or rules. Nor does it define or limit "control" under Rule 4.0. CDPH's interpretation of its own rules also receives deference. *Cook County Sheriff Department of Corrections v. Illinois Human Rights Comm'n*, 2022 IL App (1st) 210174, ¶ 27 ("[A]n agency's interpretation of its own rules and regulations [is] entitled to substantial deference, where the agency is presumably making informed decisions based upon its expertise and experience.").

¶ 133 I. Rule 4.0 Does Not Limit Consideration to Adjudicated Violations

¶ 134 General III next argues that, even if Rule 4.0 is valid, it limits consideration to an adjudicated "violation" but does not allow denial of a permit based on "mere allegations." General III points out that the CDPH denial letter cited a number of "unadjudicated allegations" of violations, as well as a minor ticket related to dust in 2019. General III contends that "[b]ecause Rule 4.0 limits the Commissioner to considering only adjudicated violations," the only violation that could be considered was the "single dust ticket." In turn, General III argues it would be irrational to deny the permit based on such a minor violation.

¶ 135 This contention is flawed, insofar as it assumes that the violations referred to in Rule 4.0 must be final, adjudicated violations. As CDPH points out, Rule 4.0 does not refer to "adjudicated" violations or include other limiting terms. To the contrary, the rule allows the Commissioner to

consider whether the applicant "has, within the past three years, violated any federal, state, or local laws, regulations, standards, permit conditions, or ordinances." Rule 4.0 also states that "violations committed by an entity may be attributed to any person having ownership or control of the entity or any of its operations." And insofar as the term can be deemed ambiguous, CDPH's interpretation of what constitutes a "violation" for purposes of Rule 4.0 is entitled to substantial deference. See *id.* Applying such deference here, we decline General III's suggestion that the term "violation" must be limited to adjudicated violations. It was within CDPH's authority to construe the term to encompass the other violations identified in its denial letter.

¶ 136 J. ALJ Did Not Make Factual Findings Disputing the Cited Compliance Issues

¶ 137 We proceed to reject General III's assertion that the ALJ "found as a matter of fact that, even if Rule 4.0 applied here, the alleged compliance issues did not justify the permit denial." General III suggests that the ALJ made factual findings that undermined the validity of the compliance issues discussed in the denial letter. General III relies on two pages of the ALJ decision—*after* stating its legal conclusion that Rule 4.0 was invalid—which pointed out that the City made statements in 2020 praising the recycling operations at the Burley site as environmentally safe. The ALJ found that such statements "appear to directly contradict" the assertions in the CDPH denial letter that the recycling facilities operated by RMG and affiliates "posed a risk to the community" and thereby supported denial of the permit. In the same portion of the decision, the ALJ noted that despite many inspections, "CDPH had never raised any concerns" until the denial letter and that CDPH never suspended or revoked a permit for operations at the Burley site.

¶ 138 General III asserts that these statements by the ALJ were findings of fact, subject to deference, that "support a finding that CDPH acted arbitrar[ily] and capricious[ly], and abused its

discretion" in denying the permit. That is, General III suggests that the ALJ found as a factual matter that the compliance issues identified by CDPH could not support denial. According to General III, "the most reasonable inference to be drawn" from this portion of the ALJ decision is a finding that, due to "political pressure, CDPH abruptly switched its position" and used "made-up alleged compliance issues as a basis to deny" the permit.

¶ 139 We find this line of argument unconvincing for multiple reasons. First, we do not agree with General III's characterization of this portion of the ALJ decision. We do not agree that, in these observations, ALJ actually made any factual findings undermining the truth of the compliance issues identified in the denial letter. We note that the cited statements by the ALJ immediately followed its legal conclusion that "the Commissioner's denial of the LRF permit for lesser violations *** was beyond her authority and should be disregarded." That is, the ALJ had already concluded that CDPH lacked authority to consider any violations pursuant to Rule 4.0. In turn, the cited comments on the "inconsistent statements" appear to be dicta, rather than factual findings entitled to deference.

¶ 140 Moreover, although the ALJ pointed out the lack of prior disciplinary action against the entities operating at the site, the ALJ did not make any specific finding disputing the validity of the compliance issues cited in the denial letter. In other words, ALJ did not find that any of the compliance issues cited by CPDH were "made-up" or otherwise unsupported. We also note that, insofar as the CDPH's denial letter indicated that certain past violations were only discovered based on information submitted in conjunction with General III's permit application, the lack of prior regulatory action is not surprising and does not undermine the veracity of the violations.

¶ 141 More fundamentally, we emphasize that CDPH's denial was based primarily on the HIA, in conjunction with the prior compliance issues. As discussed, the ALJ concluded as a matter of

law that the CDPH lacked authority to rely on the HIA as a valid basis for the permit denial. We have now decided that the HIA was, in fact, legally permissible. Thus, even assuming *arguendo* that the compliance history issues were not sufficient to deny the permit, that would not detract from the primary basis for the denial: the conclusions of the HIA.

¶ 142 K. General III's Vested Rights Argument is Without Merit

¶ 143 We turn to General III's alternative contention that, under the doctrine of vested rights, this court should direct CDPH to issue the permit. General III argues that, before the permit denial at issue, it spent "more than $80 million to build the facility in good faith reliance" on decisions and permits by the Zoning Board, Illinois EPA, CDPH, and the City Department of Buildings. Thus, General III suggests it would be inequitable to deny the permit.

¶ 144 The vested rights doctrine is derived from cases concerning zoning classifications. "[T]he general rule is that property owners have no vested right in the continuation of zoning classifications on their land." *Cribbin v. City of Chicago*, 384 Ill. App. 3d 878, 886 (2008). However, in *Pioneer Trust & Savings Bank v. County of Cook*, 71 Ill. 2d 510 (1978) (*Pioneer Trust*), our supreme court recognized the following exception:

> " 'Where there has been a substantial change of position, expenditures or incurrence of obligations made in good faith by an innocent party under a building permit or in reliance upon the probability of its issuance, such party has a vested property right and he may complete the construction and use the premises for the purposes originally authorized, irrespective of subsequent zoning or a change in zoning classifications.' " *Id.* at 522-23 (quoting

People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. 2d 183, 191 (1959)).

¶ 145 The purpose of the vested rights exception "is to mitigate the unfairness caused to property owners who have made a substantial change in position in good-faith reliance on the probability of obtaining a building permit, only to have their efforts thwarted by a change in the zoning classification of their land." *Cribbin*, 384 Ill. App. 3d 887 (citing *1350 Lake Shore Associates v. Healey*, 223 Ill. 2d 607, 626 (2006)).

¶ 146 General III contends that the instant situation is analogous to that in *Pioneer Trust*, 71 Ill. 2d 510, where a plaintiff developer successfully sought a writ of mandamus to compel Cook County to issue a zoning certificate and building permit for a large retirement housing development. We review the pertinent facts in *Pioneer Trust*, which are somewhat lengthy.

¶ 147 The subject property in *Pioneer Trust* was zoned for single-family residences before plaintiff applied for rezoning to "R-5 (general residence)" to permit its use as a nursing home. *Id.* at 514. At a Cook County zoning board hearing in November 1965, Arlington Heights and Mount Prospect objected to the change unless plaintiff executed a 25-year restrictive covenant limiting use of the property to a nursing or retirement home. *Id.* Plaintiff executed that covenant, and in December 1965, the zoning board recommended the zoning change, which was adopted by Cook County Board of Commissioners *Id.* at 514-15. In 1971, the county building department issued a permit for construction of a four-unit prototype retirement building on the property. *Id.* at 515. In spring 1974, the building department failed to respond after plaintiff's architect contacted the zoning administrator about plans for a retirement housing complex. In September 1974, when the architect told the zoning administrator that plaintiff was "ready to apply for a permit," the administrator responded that plaintiff "would have to file a *mandamus* action or receive an opinion

from the State's Attorney" that the project was allowed "under the present zoning." *Id.* In January 1975, the state's attorney opined that the proposed construction appeared not to violate the terms of the restrictive covenant, but that the county's building department would need to make the determination. *Id.* at 515-16. In July 1975, plaintiff applied for a permit, but it was "refused because no application for a permit from the Metropolitan Sanitary District was on file." *Id.* at 516. In December 1975, the permit was refused "because of an anticipated change in the comprehensive zoning plan." *Id.* In January 1976, the county board adopted a zoning amendment, by which plaintiff's property would be zoned "R-6," which would not permit a retirement complex. *Id.*

¶ 148 Plaintiff filed a *mandamus* action, arguing that the "R-5 classification of his property, in effect from 1966 until January 19, 1976, is the correct classification because he substantially changed his position *** in reliance upon the R-5 classification." *Id.* at 517. The circuit court found in plaintiff's favor, but the appellate court reversed. *Id.* at 514 (citing *Pioneer Trust & Savings Bank v. County of Cook*, 49 Ill. App. 3d 630 (1977)).

¶ 149 Our supreme court subsequently considered whether plaintiff had a "vested right in the R-5 zoning." *Id.* at 518. The decision recognized that a " 'substantial change in position, expenditures or incurrence of obligations made in good faith by an innocent party under a building permit or in reliance upon the probability of its issuance' " gives rise to a vested right. *Id.* at 522-23 (quoting *Skokie Town House Builders, Inc.*, 16 Ill. 2d at 191).

¶ 150 In finding that the plaintiff had a vested property right, our supreme court explained that "[b]eginning in 1965, with the positive and commendatory findings and recommendations of the zoning board and in 1966 with the county board's approval of rezoning his property to R-5 with the restrictive covenant *** plaintiff was encouraged in his consideration of further development of [the retirement complex]." *Id.* at 523. The court noted that the county's issuance of a building

permit for prototype retirement units in 1971 was "encouragement for further development of a nursing-retirement complex" and that plaintiff subsequently spent large sums of money on the prototypes, architectural and engineering services, and other expenses. *Id.* The supreme court also noted that in 1975, "the zoning administrator informed plaintiff that in the state's attorney's opinion the project was a permitted use under the R-5 zoning with restrictive covenant" and encouraged plaintiff to again apply for a building permit. *Id.* at 523-24. The *Pioneer Trust* court found: "In sum, the actions of the defendants, Cook County and the building department *** encouraged plaintiff, who relied on the probability of the building permit issuing and substantially changed his position." *Id.* at 524.

¶ 151 General III argues that, like the developer in *Pioneer Trust*, it "substantially relied on" prior approvals and spent over $80 million to construct a facility. It thus argues it had a vested right to operate it, before CDPH "abruptly and materially changed the requirements for an LFR permit" by requiring an HIA that it used to deny the permit. Under the record before us, we decline to find that General III had a vested right in obtaining a permit.

¶ 152 First, the case law setting forth the vested rights doctrine is explicitly limited to the specific context of zoning issues. Indeed, our supreme court described it as an exception to the general rule that a "landowner has no right to the continuation of an existing zoning classification." *1350 Lake Shore Associates,* 223 Ill. 2d at 615. There is no disputed zoning classification here, and General III does not cite any precedent extending this doctrine's application to other sorts of permits.

¶ 153 This situation otherwise differs from *Pioneer Trust*, in that the record in this case does not reveal such a long history of active "encouragement" by local authorities. In *Pioneer Trust*, for nearly a decade, county authorities encouraged the plaintiff developer that he would be permitted to operate the planned facility under R-5 zoning. *Pioneer Trust*, 71 Ill. 2d at 514-16. That decision

noted a number of communications by county authorities that signaled plaintiff would be able to operate the facility, including an opinion by the state's attorney. There is no such pattern of encouragement in this case.

¶ 154 Although General III emphasizes that it obtained permits from the Zoning Board and other agencies related to the facility, we do not find this supports General III's right to have the permit granted by CDPH. This is because the CDPH is uniquely tasked with matters of public health, including the power to issue permits for recycling facilities and to make related rules. See Chicago Municipal Code § 11-4-2660 (amended May 6, 2015). The determinations of other agencies did not bind the determinations of the CDPH as to whether a permit should be granted to allow a large recycling facility.

¶ 155 We recognize the 2019 term sheet in which the City agreed to reasonably cooperate with General Iron to wind down the Lincoln Park operation. However, that agreement preceded General III's application for the permit at issue, which was not submitted until November 2020. And there was certainly no "encouragement" after that point. To the contrary, CDPH responded the following month by stating that the application was "incomplete and substantially deficient." And after General III resubmitted the application in January 2021, CDPH responded in March 2021 that "further consideration" was warranted, given the potential cumulative impact of a new recycling facility with existing operations at the Burley site. Two months later, in May 2021, General III was informed that review of the permit was suspended until completion of the HIA recommended by the U.S. EPA. By that point, General III certainly had reason to doubt that the permit would be granted.

¶ 156 We recognize that General III spent large sums of money, apparently in expectation that it would be permitted to operate the planned large recycling facility. Yet, we decline to accept that

the mere expenditure of sums *before a permit is granted* somehow creates a property right, at least without any positive assurances that the permit would be granted. Even assuming the vested rights doctrine could be extended from zoning classifications to recycling permits, the record does not show the same pattern of encouragement that our supreme court relied on in *Pioneer Trust*. Thus, we reject the suggestion that General III had a vested right to have its permit granted.

¶ 157 III. CONCLUSION

¶ 158 For the foregoing reasons, we agree with the circuit court that the ALJ erred in concluding that the HIA was not authorized. We find that use of the HIA was legally permitted by the Code provisions outlining the powers of the CDPH. We also conclude that, pursuant to Rule 4.0, CDPH was authorized to consider the compliance history issues of affiliated entities, which also served as a basis for its denial of the permit.

¶ 159 Thus, we affirm the decision of the circuit court, which reversed the ALJ decision that vacated the CDPH's denial of the permit. Accordingly, the CDPH's February 2022 decision to deny the permit is reinstated.

¶ 160 Affirmed.

***City of Chicago Department of Public Health v. City of Chicago Department of Administrative Hearings*, 2026 IL App (1st) 241683**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 23-CH-6165; the Hon. Allen P. Walker, Judge, presiding.
Attorneys for Appellant:	Jeffrey A. Rossman, Terrence J. Sheahan, and Ann M. Zwick, of Smith, Gambrell & Russell, LLP, of Chicago, for appellant.
Attorneys for Appellee:	Mary B. Richardson-Lowry, Corporation Counsel, of Chicago (Myriam Zreczny Kasper, Suzanne M. Loose, and Elizabeth Mary Tisher, Assistant Corporation Counsel, of counsel), for appellee.
Amicus curiae:	Matthew C. Wolfe, of Shook, Hardy & Bacon L.L.P., of Chicago, for *amici curiae* Illinois Chamber of Commerce *et al.* Robert A. Weinstock, of Bluhm Legal Clinic, and Keith Harley, of Greater Chicago Legal Clinic, Inc., both of Chicago, for *amici curiae* Southeast Environmental Task Force *et al.*