

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
THE COUNCIL ON ENVIRONMENTAL QUALITY  
WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**VIRTUAL PUBLIC MEETING**

**WASHINGTON, DISTRICT OF COLUMBIA**

**MAY 13, 2021**

## TABLE OF CONTENTS

AGENDA .....	3
PREFACE.....	6
MEETING SUMMARY.....	8
WELCOME, INTRODUCTIONS, AND OPENING REMARKS.....	8
WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION .....	10
WHEJAC E.O. 12898 WORKGROUP UPDATE & DISCUSSION .....	20
WHEJAC CLIMATE & ECONOMIC JUSTICE SCREENING TOOL WORKGROUP UPDATE .....	32
WHEJAC ORAL PUBLIC COMMENT PERIOD.....	42
WHEJAC BUSINESS MEETING REFLECTION & CONVERSATION .....	57
CLOSING REMARKS AND ADJOURN .....	63
APPENDIX A - MEETING ATTENDEES .....	65
APPENDIX B - SUBMITTED WRITTEN PUBLIC COMMENTS .....	84
APPENDIX C- POWERPOINT PRESENTATION.....	182



## AGENDA

THE COUNCIL ON ENVIRONMENTAL QUALITY  
WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL  
VIRTUAL PUBLIC MEETING  
May 13, 2021  
1:00 P.M. – 6:00 P.M. EDT

### AGENDA

1:00 p.m. - 1:30 p.m.	<b>WELCOME, INTRODUCTIONS &amp; OPENING REMARKS</b> <ul style="list-style-type: none"><li>○ Karen L. Martin, <i>Designated Federal Officer</i> – U.S. Environmental Protection Agency</li><li>○ Cecilia Martinez, PhD, <i>Senior Director for Environmental Justice</i> – Council on Environmental Quality</li><li>○ Richard Moore, <i>White House Environmental Justice Council Co-Chair</i> – Los Jardines Institute</li><li>○ Peggy Shepard, <i>White House Environmental Justice Council Co-Chair</i> – WE ACT for Environmental Justice</li><li>○ Catherine Coleman Flowers, <i>White House Environmental Justice Council Vice Chair</i> – Center for Rural Enterprise and Environmental Justice</li><li>○ Carletta Tilousi, <i>White House Environmental Justice Council Vice Chair</i> – Havasupai Tribal Council</li></ul>
1:30 p.m. – 2:20 p.m.	<b>WHEJAC JUSTICE40 WORKGROUP UPDATE &amp; DISCUSSION</b> <ul style="list-style-type: none"><li>○ Peggy Shepard, <i>White House Environmental Justice Council Co-Chair</i> – WE ACT for Environmental Justice</li><li>○ Dr. Beverly Wright, <i>White House Environmental Justice Council Member</i> – Deep South Center for Environmental Justice</li><li>○ Ruth Santiago, <i>White House Environmental Justice Council Member</i> – University of Michigan Comité Dialogo Ambiental and El Puente, Latino Climate Action Network</li></ul>

## AGENDA

<p>2:20 p.m. – 3:10 p.m.</p>	<p><b>WHEJAC E.O. 12898 WORKGROUP UPDATE &amp; DISCUSSION</b></p> <ul style="list-style-type: none"> <li>○ <i>Richard Moore, White House Environmental Justice Council Co-Chair – Los Jardines Institute</i></li> <li>○ <i>Carletta Tilousi, White House Environmental Justice Council Vice Chair – Havasupai Tribal Council</i></li> <li>○ <i>Dr. Kyle White, White House Environmental Justice Council Member – University of Michigan</i></li> </ul>
<p>3:10 p.m. – 3:25 p.m.</p>	<p><b>BREAK</b></p>
<p>3:25 p.m. – 3:35 p.m.</p>	<p><b>Greetings &amp; REMARKS</b></p> <ul style="list-style-type: none"> <li>○ <i>Cecilia Martinez, PhD, Senior Director for Environmental Justice – Council on Environmental Quality</i></li> <li>○ <i>Secretary Deb Haaland – U.S. Department of the Interior</i></li> <li>○</li> </ul>
<p>3:35 p.m. – 4:15 p.m.</p>	<p><b>WHEJAC CLIMATE &amp; ECONOMIC JUSTICE SCREENING TOOL WORKGROUP UPDATE &amp; DISCUSSION</b></p> <ul style="list-style-type: none"> <li>○ <i>Catherine Coleman Flowers, White House Environmental Justice Council Vice Chair – Center for Rural Enterprise and Environmental Justice</i></li> <li>○ <i>Jade Begay, White House Environmental Justice Council Member – NDN Collective</i></li> </ul>
<p>4:15 p.m. – 5:15 p.m.</p>	<p><b>PUBLIC COMMENT PERIOD</b></p> <ul style="list-style-type: none"> <li>○ <i>Members of the public will be given three (3) minutes to present comments on their issue or concern to the WHEJAC.</i></li> </ul>

## AGENDA

5:15 p.m. – 5:55 p.m.

### WHEJAC BUSINESS MEETING REFLECTION & CONVERSATION

- **Karen L. Martin, Designated Federal Officer** – U.S. Environmental Protection Agency
- **Cecilia Martinez, PhD, Senior Director for Environmental Justice** – Council on Environmental Quality
- **Richard Moore, White House Environmental Justice Council Co-Chair** – Los Jardines Institute
- **Peggy Shepard, White House Environmental Justice Council Co-Chair** – WE ACT for Environmental Justice
- **Catherine Coleman Flowers, White House Environmental Justice Council Vice Chair** – Center for Rural Enterprise and Environmental Justice
- **Carletta Tilousi, White House Environmental Justice Council Vice Chair** – Havasupai Tribal Council
  
- The WHEJAC will use this time to reflect on the meeting proceedings, public comment period, discuss and deliberate action items and finalize next steps.

5:55 p.m. – 6:00 p.m.

### CLOSING REMARKS & ADJOURN

- **Karen L. Martin, Designated Federal Officer** – U.S. Environmental Protection Agency
- **Cecilia Martinez, PhD, Senior Director for Environmental Justice** – Council on Environmental Quality
- **Richard Moore, White House Environmental Justice Council Co-Chair** – Los Jardines Institute
- **Peggy Shepard, White House Environmental Justice Council Co-Chair** – WE ACT for Environmental Justice

## PREFACE

The White House Environmental Justice Advisory Council is established by Executive Order 14008, titled “Tackling the Climate Crisis at Home and Abroad” (issued on January 27, 2021). As such, this is a non-discretionary committee and operate under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The WHEJAC will provide independent advice and recommendations to the Chair of the Council on Environmental Quality (CEQ) and to the White House Interagency Council on Environmental Justice (Interagency Council), on how to increase the Federal Government’s efforts to address current and historic environmental injustice, including recommendations for updating Executive Order 12898. The WHEJAC will provide advice and recommendations about broad cross-cutting issues related, but not limited to, issues of environmental justice and pollution reduction, energy, climate change mitigation and resiliency, environmental health and racial inequity. The WHEJAC’s efforts will include a broad range of strategic scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

The duties of the WHEJAC are to provide advice and recommendations to the Interagency Council and the Chair of CEQ on a whole-of-government approach to environmental justice, including but not limited to environmental justice in the following areas:

- a. Climate change mitigation, resilience, and disaster management.
- b. Toxics, pesticides, and pollution reduction in overburdened communities.
- c. Equitable conservation and public lands use.
- d. Tribal and Indigenous issues.
- e. Clean energy transition.
- f. Sustainable infrastructure, including clean water, transportation, and the built environment.
- g. National Environmental Policy Act (NEPA), enforcement and civil rights.
- h. Increasing the Federal Government’s efforts to address current and historic environmental injustice.

EPA’s Office of Environmental Justice (OEJ) maintains summary reports of all WHEJAC meetings, which are available on the WHEJAC website at:

<https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council>.

Copies of materials distributed during WHEJAC meetings are also available to the public upon request. Comments or questions can be directed via e-mail to [whejac@epa.gov](mailto:whejac@epa.gov).

**WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL MEMBERS IN ATTENDANCE**

RICHARD MOORE, WHEJAC CO-CHAIR	ANGELO LOGAN
PEGGY SHEPARD, WHEJAC CO-CHAIR	MARIA LÓPEZ-NÚÑEZ
CATHERINE FLOWERS, WHEJAC VICE CO-CHAIR	HAROLD MITCHELL
CARLETTA TILOUSI, WHEJAC VICE CO-CHAIR	RACHEL MORELLO-FROSCH, PhD
LATRICEA ADAMS	JUAN PARRAS
SUSANA ALMANZA	MICHELE ROBERTS
JADE BEGAY	RUTH SANTIAGO
MARIA BELEN POWER	NICKY SHEATS, PhD
ROBERT BULLARD, PhD	VIOLA WAGHIYI
TOM CORMONS	KYLE WHYTE, PhD
ANDREA DELGADO	BEVERLY WRIGHT, PhD
JEROME FOSTER II	HLI XYOOJ
KIM HAVEY	MIYA YOSHITANI

## **WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL (WHEJAC)**

### **VIRTUAL PUBLIC MEETING**

**MAY 13, 2021**

#### **MEETING SUMMARY**

The White House Environmental Justice Advisory Council (WHEJAC) convened via Zoom meeting on Thursday, May 13, 2021. This summary covers WHEJAC members' deliberations during the meeting and the discussions during the public comment period.

#### **WELCOME, INTRODUCTIONS, AND OPENING REMARKS**

**Ms. Karen Martin**, Designated Federal Officer (DFO), U.S. Environmental Protection Agency, provide remarks and opened the meeting.

**Dr. Cecilia Martinez**, Senior Director for Environmental Justice, Council on Environmental Quality, welcomed everyone, on behalf of Chair Mallory of CEQ, to the third White House Environment Justice Advisory Council public meeting. She thanked the WHEJAC members for the incredible work, dedication, and commitment that they have put forth in the last month and a half to provide recommendations. Dr. Martinez stated that the extraordinary time, experience and wisdom that the WHEJAC brings has risen to the occasion to provide the administration with important recommendations on how to move forward on President Biden's Environment Justice agenda.

Dr. Martinez stated that these are complex and complicated problems and there will be a diversity of approaches and sometimes differences of opinions. She stated that there is a solid foundation in terms of understanding and listening and creating a baseline of how to move forward. She again thanked the Council for their commitment and hard work and the incredible knowledge and wisdom that will be apparent in the recommendations today.

**Ms. Karen Martin**, DFO, thanked Dr. Martinez and turned the floor to the chairs to give

opening remarks.

**Mr. Richard Moore**, WHEJAC Co-Chair, greeted everyone and reminded everyone that it is the 30th anniversary of the first People of Color Summit. He highlighted three pieces that came out of the first People of Color Summit, stating that it is what brings the Council and the Administration together at this historical moment. He stated that one is redefining environmentalism as where we live, work, play, pray, and go to school and where we learn. He stated that the second is what grassroots organizations say consistently that the community speak for themselves. He stated that the third of many elements that came out of the first People of Color Summit was the unity that everyone left with.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, stated that it was great to be here today at the first public meeting that we will submit recommendations to the public and the Biden Administration. She thanked Karen Martin and George Ward for their incredible work and patience of the last few weeks and commended them for working to ensure recommendations are demonstrating the Council's commitment and expertise as well as representative of the needs and concerns of the EJ communities.

Ms. Shepard stated that The American Jobs Act focuses on infrastructure and noted that bridges and tunnels are part of America's infrastructure, but families and communities are also the foundational infrastructure of America. She explained that everyone is here to build those communities back better and to sustain those communities with commitment, recommendations and oversight and thanked everyone for the yeoman's job done over the last couple of weeks.

**Ms. Catherine Flowers**, WHEJAC Co-Vice Chair, stated that the enormity of this particular time is historic and possible due to many people that came before. She stated that in its recommendations, the Council tried to make sure and focus on all of America: the rural and the urban, indigenous communities, and areas that generally don't get included that are territories. Ms. Flowers stated that this is one of the few times that can be said that rural America has not been neglected as a part of this process, to include things as basic as water and sanitation. Ms. Flowers stated that baselines will continue to be set to determine how to address issues throughout the United States of America.

**Ms. Carletta Tilousi**, WHEJAC Co-Vice Chair, stated that it has been very educational learning about other communities that are facing major environmental racism and injustices. Ms. Tilousi stated that she is excited to look at the recommendations and see how everyone can move forward by all working together and proud of the leadership and the staff that have put the pieces together so quickly. She noted that it's a lot of hard work and a lot of people are continuing to be volunteers, knowing it's important, as the Native people say, to speak for the earth, the land, the animals, and the people.

**Ms. Karen Martin**, DFO, thanked everyone for their opening statements and proceeded to do a roll call. She stated that there was a quorum to and officially started the meeting.

#### **WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION**

**Ms. Peggy Shepard**, WHEJAC Co-Chair, stated that this agenda segment will be used for the three workgroups to highlight recommendations that are being submitted for final approval. She stated that the workgroups would like to hear from as many WHEJAC members as possible regarding what may be missing or need further clarification in the draft recommendations. Ms. Shepard noted that if there are requests to make changes during the discussion, we can vote to approve the final recommendations with the necessary corrections. She stated that time will be left to ask for consensus vote, and at the end of each presentation, each workgroup chair should state that they are submitting the workgroups draft recommendations to the WHEJAC for consideration and approval to be included in the WHEJAC final report. Ms. Shepard explained that there will then be a consensus vote from the WHEJAC to accept the recommendations from the workgroup. She stated that the Justice40 workgroup presenter will be presented by Dr. Beverly Wright from the Deep South Center for Environment Justice, and then Ruth Santiago, with the University of Michigan Comité Dialogo Ambiental and El Puente, Latino Climate Action Network.

**Ms. Shepard** shared the key components that require development for effective implementation of Justice40 and that it requires the WHEJAC's input. Ms. Shepard stated that the first question is, what are the key elements that are important in developing definitions of investment benefits

and are there examples of definitions from federal or state legislation that would be helpful to review? Ms. Shepard stated that there are a number of recommendations for the definition of investment benefits but noted that the first is to direct investments in geography and investments in defined frontline geographies by census tract or other designations based on environmental justice criteria, for example, Minneapolis Green Zones.

Ms. Shepard stated that second is direct investments in people, investing in benefits for Black, Indigenous, Latinx, Asian, Pacific Islander, LGBTQ, people of color, and immigrants to improve health and economic opportunities. Ms. Shepard noted that third would be indirect and direct investment in community, explaining that this would be investments which support local communities, community-based organizations, community ownership, cooperatives, small business, community job training, and local ownership tracks.

Ms. Shepard stated that another recommendation was to focus on external direct investment benefits, meaning investments that are outside Environmental Justice communities but provide essential services to environment justice communities such as water and sanitation. Ms. Shepard stated that another recommendation is that all investments must do no harm to environment justice communities, explaining that this means that 100 percent justice and it would be unreasonable to have any climate investment working against historically harmed communities. Ms. Shepard explained that it is acknowledged that Justice40 be the floor not the ceiling, and that 40 percent should not be seen as a cap but as a starting point, focusing on guiding principles program criteria to maximize federal investment benefits and avoid harm in environmental justice communities. Ms. Shepard explained that there needs to be a just recovery to support community-driven recovery and mid- to long-term rebuilding and implementation projects with improvements that further equitable mechanisms for adaptation, for recovery, and for rebuilding. She stated that for investments to be considered truly beneficial, process and implementation are critical. She stated that all investments should incorporate a community driven, community-controlled approach so that communities most directly impacted benefit in the way intended.

Ms. Shepard stated that the WHEJAC Justice40 workgroup focused on the first question with key components that require further development for the effective implementation of Justice40 and components that required WHEJAC's input to develop activities and programs that needed

the investment. She stated that existing programs for environmental justice communities have found critical and important to serving their needs and were looked at in order to understand what components of these programs are most effective, what components present challenges, and then develop ideas for potential new programs that would meet a gap in environmental justice needs. Ms. Shepard stated that when recommendations were submitted, the focus was on what agencies can implement the recommendations or have programs that are existing that can be expanded and enhanced.

Ms. Shepard stated that the institutions mentioned in the recommendations are the White House and the broader executive branch of agencies such as the Department of Energy, Department of Commerce, Housing and Urban Development, Agriculture, Health and Human Services, the Tennessee Valley Authority, the Department of Transportation, Homeland Security and FEMA, HRSA, which is the Health Resources and Services Administration, the National Institute of Environmental Health Sciences, Department of Labor, and of course Cabinet Secretaries. She also include the Appalachian Regional Commission and Economic Development Administration, the National Telecommunications and Information Administration and their Broadband Programs, U. S. Congress, the Department of Interior, the Pesticide National Synthesis Project, the Geological Survey, the Department of Education, Department of Defense, Department of Health and Human Services, the White House Initiative on HBCUs (Historically Black Colleges and Universities), and minorities serving institutions, and then lastly the U.S. Department of Commerce and the Small Business Administration.

**Dr. Beverly Wright**, WHEJAC Member, advised that she would present half of the recommendations and will be joined by Ruth Santiago to further explain the rest. She explained that there was a total of 26 U.S. government institutions that were named partners in accomplishing goals with over 250 recommendations made. Dr. Wright presented the highlights of the recommendations that were made under four topics, beginning with clean energy and energy efficiency where the recommendations included the following: grant programs for community solar projects in cities and rural communities; community resilience projects including sustainable and regenerative agriculture, clean water infrastructure, and broadband installation. Dr. Wright stated also ensuring access to affordable clean energy and prohibiting FEMA funding from going to permanent fossil fuel generation and infrastructure. Dr. Wright

also stated requiring public input and hearings for investments in disaster recovery efforts to ensure impacted communities have a voice in how funds are spent. She noted that the Tennessee Valley Authority should set an ambitious goal of transitioning to clean energy by 2030. She stated expanding Department of Energy low-income programs by enacting the Affordable Solar Energy for Our Communities Act to create new DOE low-income solar programs to ensure DOE programs are reaching the most disadvantaged communities. She stated that Federal Renewable Energy Investment Tax Credit Revisions needing to extend a 30% renewable energy tax credit for 10 years was also suggested, and to ensure that the benefits of clean energy reach disadvantaged communities and service organizations.

Dr. Wright continued that under clean transit and transportation, investments into transit hubs to catalyze economic and small business development in commercial corridors were recommended and that fleets of school buses and sanitation trucks and other public vehicles be electrified. She stated that investments in transportation hubs were recommended because the communities that are most impacted by the lack of access to transportation are low-income people of color and elderly communities. Dr Wright explained that school buses and sanitation trucks are some of the dirtiest vehicles that travel throughout the Environment Justice communities spewing diesel exhaust and fine particulates, which contribute to poor air quality.

Dr. Wright stated that under safe, affordable, and sustainable housing -- and a correction in communities should be added there, explaining that one, HUD should establish a voluntary community relocation program that provides replacement housing cost to residents whose homes were built with HUD funds on toxic sites, such as former waste dumps. Dr Wright indicated that project eligibility criteria of the Clean Water State Revolving Fund should be expanded to include homes, residences, schools and childcare facilities, and also Low-Income Home Energy Assistance Program to support cooling and heating should be expanded. Dr Wright added the recommendation to develop guidance and policy for governors, requiring them to certify that relief assistance and funds received during major declared disasters and emergencies are spent in an equitable and nondiscriminatory way by establishing a sustainable communities office for communities that have been neglected by government and impacted by racist public policy, environmental pollution and climate change. She mentioned Union Town and the Black Belt in Alabama as an example.

Dr. Wright mentioned next training and workforce development. She stated that increase funding for the National Institute of Environmental Health Sciences, Environmental Career Worker Training Program was recommended. Adding that access to basic sanitation supplies and handwashing facilities for all agricultural workers as well as increase funding for the Partnerships for Opportunity and Workforce and Economic Revitalization and Assistance to Coal Communities programs. She added that expanding funding for existing training programs as well as union apprenticeship and pre apprenticeship programs was recommend, along with reducing or eliminate matching requirements for broadband construction projects in environmental justice coal impacted communities and efforts to support workers in coal impacted communities. She stated that workers affected by coal closures need targeted workforce development and training programs in addition to investment in broader economic development strategies that spur quality job creation. She noted that expanding funding for and giving priority to training programs that pay the trainees was also recommended. Dr. Wright went on to include developing a frontline climate corps to support youth leadership development and training of underemployed workers and establishing heat illness safeguards for all outdoor workers that don't have the luxury to work in climate-controlled spaces; to require full and nationwide reporting of pesticide usage on school sites and child day care facilities and included climate justice education as an essential component of K through 12 curriculum in the district. Dr Wright then turned the presentation over to Ruth Santiago.

**Ms. Ruth Santiago**, WHEJAC Member, explained that under the category of remediation and reduction of legacy pollution, establishing a program requiring the reduction of permitted emissions of hazardous air pollution to prevent the exceedance of EPA's cancer and non-cancer risk guidelines was included. Stating, that to conduct civil rights compliance reviews under Title VI of the Civil Rights Act of states with delegated environmental authorities and establishing a policy for disaster recovery dollars to fund healthy land restoration in environmental justice communities as well as investing in educating the public about environmental justice and the impacts of environmental racism. Ms. Santiago also stated that funding the implementation of programs and policies in the bill by Sen. Booker and Rep. Haaland, The Environmental Justice Legacy Pollution Cleanup Act was imperative. She added mandating new air quality monitoring in frontline and fence line communities and supporting HUD to expand the Lead

Education and Lead Abatement Program. She stated that also continued funding for black lung benefits and decontamination of Vieques and Culebra in Puerto Rico was recommended. She stated that expanding Medicare/Medicaid for lifetime access for individuals from frontline communities directly impacted by environmental racism and injustice, i.e., the Flint Water Crisis, was also recommended. She stated that developing an air monitoring network that includes the detection of PM 2.5 in areas where a DOT funded transportation project, a fossil fired power plant, or PM 2.5 major emitting facility is located within three miles of a residential area was included.

Ms. Santiago stated that the next category of recommendations is development of critical clean water infrastructure including lead water pipe infrastructure replacement and creating a federal low-income water and sewer bill assistance program, noting that this program will assist low-income customers with paying their water and sewer bills. She stated that ensuring that Environmental Justice communities are tested for lead water pipe infrastructure and replacing pipes where necessary to protect the most vulnerable -- children, pregnant women and the elderly -- from lead exposure and lead service line replacement should be an integral part of a long term solution, including periodic benchmarks for all water systems to achieve, regardless of water testing results. She added developing a robust and public transparent national database and GIS maps to centralize and locate lead testing data for schools, cities/municipalities, and states.

Ms. Santiago stated that in the category related to climate mitigation and resiliency is investing Justice40 funds to designate the South Coast Aquifer in Puerto Rico as a sole source public water resource and decontaminate the aquifer. She noted that next is modernize temporary labor camp standards/farm labor camp standards to mitigate the risks that climate change, extreme weather events, and pandemics pose on migrant and seasonal farmworkers and their families. She stated that also to support funding for frontline/EJ communities to organize, convene, and develop climate action plans that address climate resilience, communication, and prioritize potential climate impacts was recommended.

Ms. Santiago added that intersectional recommendations was not explicitly listed but very relevant. Ms. Santiago stated that in this category, the workgroup acknowledged the alliance

that usually exist between universities, especially, strictly Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and Asian American and Pacific Islanders Serving Institutions to support communities addressing legacy pollution problems and challenges. The Administration should leverage its discretion and resources to ensure that undocumented individuals and families are not left out or ineligible to benefit from EJ40 investments. She added that improvement in health equity by mandating that NIH support community academic partnerships in all relevant research centers and in grant programs was added. Ms. Santiago noted that also carrying out the nation-to-nation consultative duties of the U.S. to federally recognized tribes in the identification, planning, and implementation of infrastructure investments and projects consistent with the January 21, 2021, *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships and Best Practices on Consultation* was added. She noted that funding for infrastructure projects, such as grants, should be multiyear and providing support for Tribes to build long-term capacity, stability, consistency, and a strong foundation was recommended. She ended including that Federal agencies must consider the self determination of non-federally recognized Indigenous peoples and grassroots organizations, community organizations, and entrepreneurship in infrastructure development.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, stated that key components that require further development for effective implementation of Justice40, and require the WHEJAC input are, what are the key elements that should be included in defining “disadvantaged communities, and are there examples of definitions from federal or state legislation that would be helpful to review? She stated that it is believed that underserved communities include majority minority communities that have a high rate of health disparities, that are non-attainment of clean air and water standards, have been formerly redlined, have high levels of food insecurity and child nutrition levels, children receiving the school lunch program, looking at income and percent of households on supplementary income benefits, that have numbers of superfund, waste, landfills, and toxic facilities, that have low education attainment and low high school graduation rates, that have high maternal and infant mortality rates, that have high asthma rates and deaths, with poorly maintained stock of housing, and those that have a lack of grocery stores and a proliferation of Dollar stores and fast food outlets. Ms. Shepard opened the floor for comments from the WHEJAC.

**Ms. Ruth Santiago**, WHEJAC Member, highlighted that in the recommendations when talking about clean energy, the reference is renewable energy, especially solar and preferably onsite, localized, and rooftop solar, especially with battery energy storage systems in the case of Puerto Rico. She stated that in the civil society proposal called, We Want Sun was proposed because there are references to clean energy that include things like methane, so-called natural gas.

**Ms. Susana Almanza**, WHEJAC Member, stated that even though there is the number of superfund sites in White Sands refill landfills, she suggested adding the amount of industrial zoning because a lot of the urban core, the industrial zoning is where all the polluting industries are. Ms. Almanza suggested looking at industrial zoning versus the other side of town in communities of people of color, because most cities are mapped as to where industrial zoning is commercial and single families

**Dr. Robert Bullard**, WHEJAC Member, stated that in the recommendation related to HUD and housing, the recommendation that was made concerning addressing HUD policy that allows assisted housing for some of the poorest households in the country, including disabled households, and low-income households with families was left out, because assisted housing that's in flood plains, and the way that the vouchers and certificates operate is that the certificates are attached to the housing units and the household itself cannot take those to other places outside of floodplains. The change would be to have HUD policy in place that would allow certificate holders to take those certificates to units outside of flood plains so that they don't have to repeatedly go back to those flooded units. He stated that in addition to that, HUD would aggressively pursue assisted housing for low-income and disabled households that would be built outside of flood plains.

**Mr. Tom Cormons**, WHEJAC Member, stated that the scale of the federal response needed to address the historic inequities is needed to address the problems that require legislation, which elevates to an entirely different order of magnitude in terms of the resources.

Mr. Cormons stated that secondly, the how is just as important as the what. He explained that how the administration and the federal government interacts with communities that benefits

from Justice40 is incredibly important to ensure transformative, uplifting interactions with communities that historically has not had the resources or capacity to take full advantage of federal programs.

**Dr. Beverly Wright**, WHEJAC Member, reiterated that the category of safe, affordable, and sustainable housing added "in communities" because that was the only place to address the issue of whole communities that are lacking in infrastructure due to racist policies and discrimination, environmental toxins, and climate change. She explained that there are some communities that need the attention and a whole government approach. She stated that the community needs to have the impact of a reprieve from what they're dealing with in a way that can be recognized.

**Ms. Catherine Flowers**, WHEJAC Member, stated that wherever HUD is mentioned discussing housing, USDA's rural housing should be included as well to address in terms of EJ communities because USDA has sent money back to Washington instead of investing in the communities that need it.

**Ms. Andrea Delgado**, WHEJAC Member, pointed out that the recommendations include very specific details on housing and calls out USDA specifically for Section 514, 515, and 521 Housing as well.

**Ms. Karen Martin**, DFO, confirmed Ms. Delgado's point and added to Dr. Bullard's point, that the reference to HUD is included in the report regarding the flood plains. She also informed Dr. Wright that the correction adding "the communities" was made.

**Ms. Michele Roberts**, WHEJAC Member, wanted to reiterate what Ms. Susana Almanza said with respect to the industrial zoning. She stated that it's very important because some industrial zones are being expanded and have been expanded under the Trump administration, and this needs to be prioritized, in addition, the people engaged in those communities should be part of a just transition that could bring a wholistic approach to the healing in their communities given many of them are legacy.

Ms. Roberts stated she appreciated that various schools such as HBCUs and others are listed out,

not all children are able to reach the HBCUs. Therefore, care should be taken to drop down to community-based schools such as that of freedom schools and others where there is access to making sure that children had adequate access to careers whether they go to college or not, to include that of the homeschooling and children who have literally been thrown out of school.

**Mr. Kim Havey**, WHEJAC Member, emphasized that one of the things that should be recommended to CEQ and the White House is that they move forward boldly with plans for specific requirements to have a hundred percent of electricity be renewable by 2030. The White House should set aggressive targets for renewable electricity and to end the subsidies and support for additional fossil fuel infrastructure by 2030, which would mean that infrastructures that'll last for 50 or a hundred years in 2045 will no longer be built.

**Ms. Maria Balen Power**, WHEJAC Member, agreed with the renewable energy, but emphasized the piece around doing no harm. She stated that this process matters. She stated that there are initiatives in the northeast like the Transportation Climate Initiative that is a matter of concern as it could have significant harm around the siting of new infrastructure. She stated that the fight continues regarding an electrical substation in East Boston that is projected to go next to eight million gallons of jet fuel and next to a playground in an Environmental Justice community. She Ms. Power explained that it's not just what's happening, but the path to get there and new initiatives cannot be implemented, especially market-based solutions, that will cause harm to low-income communities and communities of color.

**Mr. Richard Moore**, WHEJAC Co-Chair, commend the workgroups and stated that it is apparent that the emphasis of Justice40 is making sure resources go back into the hands of those that rightfully deserve resources and rural communities are crucial and should be highlighted here.

**Mr. Harold Mitchell**, WHEJAC Member, shared information from a report from a study done in South Carolina in reference to floodplains. He stated that the Interstate Cooperation, like North Carolina, is causing a manmade releasing of dams into South Carolina and flooding a lot of the rural areas, and that it is not only in South Carolina but across some other sites as well.

**Mr. Juan Parras**, WHEJAC Member, commented on the issue of zoning and how Houston being a major city in the U.S. and it still having no zoning regulations implies that industry can build anywhere, and they are going to areas with least resistance, which will be African American communities and low-income people of color. A national policy that pushes for zoning laws keeps industry out of low-income communities, and while Houston provides a lot of services to the rest of the country it is also a sacrifice zone.

**Ms. Jade Begay**, WHEJAC Member, stated when reviewing the section on intersectional recommendations on community and university partnerships, there was no mention of consent in reference to tribes and consultation or the principle of consent, specifically pre, prior, and informed consent, should be integrated and uplifted into this initiative and through all federal agencies. Ms. Begay also recommended when defining disadvantaged communities, and MMI, Missing and Murdered Indigenous people, who are impacted by industry and the violence of industry should be added.

**Ms. Viola Waghiyi**, WHEJAC Member, stated that she wanted to add that when talking about zoning to include vulnerable zones in indigenous people and other tribes and communities that hunt, fish, or gather subsistence food and medicinal plants and when talking about zoning, those vulnerable areas should be included to include military toxics in the section regarding polluters.

**Ms. Carletta Tilousi**, WHEJAC Member, stated that her understanding is that Biden's administration is pro-nuclear, which has been a big devastation in indigenous communities. She stated that they come and mine uranium and leave the toxics behind. Communities have faced this and there has been a lot of deaths due to nuclear energy.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, asked for a consensus vote for the final recommendations with the corrections or additions that were stated. The recommendations were accepted by consensus. She then closed out the discussion and turned the floor over to Richard Moore for the next agenda item.

## **WHEJAC E.O. 12898 WORKGROUP UPDATE & DISCUSSION**

**Mr. Richard Moore**, WHEJAC Co-Chair, began explaining that the primary task of the working group was on Executive Order 12898. He stated that there were several charges given to the workgroup. He spoke directly of two of the charges; one was to identify sections of Executive Order 12898 should be revised, and the other was to identify components should be added. He stated that one aspect was what is the role of an executive order, and how much power and authority does an executive order have. He noted that this was very crucial to the initial discussions. He explained that the other aspect was to orient the members as a workgroup. He noted that although some of the workgroup members have worked together throughout the years, some members have not. He stated that the workgroup was reminded in terms of the WHEJAC Council, that they are not necessarily representing the organizations or institutions that they come from but looking at environmental and economic justice from a broader standpoint. The floor was turned over to Dr. Kyle Whyte to present the recommendations.

**Dr. Kyle Whyte**, WHEJAC Member stated that the executive order needed to be upgraded. He explained that at a minimum, the tackling climate change executive order had already made changes. He stated that there is no longer an interagency workgroup on environmental justice, and that there is a White House Environmental Justice Interagency Council. He explained, therefore, that there are changes that have to be made immediately to the Environmental Justice Executive Order.

Dr. Whyte explained that the presentation would cover key points of the recommendations provided to the Council

Dr. Whyte stated that a lot of attention was paid to updating the definitions, including having a large section on definitions and focusing on inclusivity. He stated that environmental justice, in the recommendations, is not about fairness but about just treatment. He explained that just treatment means full protection from disproportionate health and environmental hazards. He stated that environmental Justice community, in the definition for the recommendations, emphasizes the geographic location where people experience risk of higher or more adverse human health or environmental outcomes. He stated that this is important because it empowers the screening tools to identify those risks of experiencing those health and

environmental effects and issues.

Dr. Whyte explained that another aspect of recommendations throughout the document is the representation of culture. Environmental injustice, risks to culture and negative effects on culture is among the major concerns. , He explained that in the understanding in which people have articulated about environmental justice having to do with places where we live, work, and play, addition terms were added to reflect the total activities that people are engaged in in places that matter to them and added, "practice their cultures" to that. He also shared a slide that talked about ensuring "healthy, culturally vibrant, sustainable, and resilient environments." He stated that in addition to the focus on disproportionate injustice, there is a focus on what it means to be a healthy, culturally vibrant, sustainable and resilient community in the environment where you live, learn, work, worship, recreate, and practice your culture.

Dr. Whyte added that there is a section that originally was focused on subsistence consumption. He stated that that was too narrow, and so it was opened up to protections not only to subsistence consumption, but to cultural practices associated with biota, more broadly right, including medicinal plants or animals, that you subsist from that are part of your sustenance. He stated that this was another area where there was articulation of culture.

Dr. Whyte also explained that a lot of effort was spent articulating an accountable conception of "meaningful participation" with a lot of focus on the idea that it has to mean influence and decision making. He stated that it has to be about technical assistance and cultural linguistic considerations. He noted that access is a huge issue and it has to be accessible, and there has to be a capacity-building component to meaningful participation.

Dr. Whyte explained that the thinking was about what recommendations would look like. He stated that reference was made throughout the document subsequent to the definition of meaningful participation. He explained that the term "meaningful participation" invokes all of those things. He stated that every time meaningful participation is referenced, it goes back to all of those aspects, including tribal consultation. He encouraged the group to really hone in on how "meaningful participation" is defined and then the significance of that definition every single time it is used throughout.

Dr. Whyte stated that an important facet of the work done is that environmental issues are handled by federal agencies and has to be explicit that environmental issues are handled as civil rights issues relevant to Title VI of the Civil Rights Act. He stated that it was emphasized throughout the recommendations, including the responsibilities of agencies, the strategic plans of agencies as well as other areas that need accountability. He stated that Title VI should be adopted explicitly. He explained that it should be seen as part of their duties addressing systematic racism as it affects health and the environment. He stated that across agencies, environmental justice is about civil rights enforcement.

Dr. Whyte explained that clearly articulated systematically throughout the recommendations was the importance of the enforcement of the National Environmental Policy Act of NEPA. He stated that given the comparison between the previous executive order from 1994, and the recommendations that we're making for an upgrade to an environmental justice executive order, these points had to be made explicit.

Dr. Whyte explained that a lot of time was spent trying to create different layers of accountability, both to all federal agencies but also to the White House Environmental Justice Interagency Council. He stated that something similar to an example he would share is occurring in different parts of the report, addressing different layers of the overall environmental justice program. He stated that each agency has to have a strategic plan. He noted that the strategic plan has to have timetables. He explained that the workgroup was very specific. He noted that there has to be reports. He stated that the agency should not only have a certain time period for creating the strategic plan, but it should also have meaningful participation. He explained that they also should need to report, a year after they begin, on their progress and the implementation. He stated that the interagency council also then would have to report on the overall program. He explained that there are multiple layers of reporting that was built in, which is accredited to the advice and guidance of the workgroup and the larger WHEJAC Council. He noted that the development of the strategic plan has “meaningful participation” in all the major aspects of it.

Dr. Whyte stated that strategic plans were included and reducing, preventing, eliminating

pollution, legacy pollution, and cumulative impacts are included in other parts of the recommendations. He stated that many people shared challenges having to do with states or counties or other units of government. He stated that while it is understood that an executive order operates within the federal government, it needs to be a major issue for federal officials that they understand the role of these other units of government in exacerbating environmental injustice. He shared an example of where the WHEJAC attempted to address this issue within the powers of an executive order.

Dr. Whyte explained that for those strategic plans, they need to convene an environmental justice advisory committee whether pursuant to the Federal Advisory Committee Act or an equivalent body to provide ongoing expertise, input, and review of agency strategic plans. He explained that the interagency council, 14 months from this Order, then needs to provide a comprehensive report on all of the actions of the agency. He noted that there's agency responsibilities and agency strategic plans, and then there's the role of the interagency council, multiple levels of reporting, different timetables that the agencies are held accountable, and then the important role that the interagency council plays.

Dr. Whyte stated that the final point is that the WHEJAC decided for the executive order that it should begin with a signing statement and a policy statement. He explained that a signing statement is something that's going to come from the president, and a policy statement is something that is drafted here. He stated that the policy statement reflects a lot of the purpose recommendations and of an environmental justice oriented executive order. He stated that it sets a stage and lays out really important matters. He shared an example of a sentence from the policy statement, "This Order now adds that affirmatively advancing equity, civil rights, racial justice, equal opportunity, and environmental justice is the responsibility of the whole of our government." He explained that the signing statement is something that the president would develop and would become a part of the public record of the executive order. He explained that it would create an important expression of the spirit of the executive order. He noted that in the recommendations is that there be that signing statement.

**Mr. Richard Moore**, WHEJAC Co-Chair, opened up the floor for comments, discussion, and suggestions.

**Mr. Juan Parras**, WHEJAC Member, Noted that updating the executive order is really crucial and important because, as time goes, things always change. He stated that there are many things impacting the EJ communities, and updates are needed to actually give the communities a strong arm to have something to fight for. He noted that in the past, the executive order, while it had good intentions, it lacked a lot of muscle to really encourage communities to use their power to have a community without air toxins and industrial pollutants. He stated that the impact of this executive order is going to increase a following on environmental justice issues. He stated that his hopes is that this will allow the communities the ammunition to fight for justice.

**Mr. Angelo Logan**, WHEJAC Member highlighted two things he felt important in the conversation. He state that first is that the plans that will be developed by the agencies result in reduction, prevention, and elimination of pollution and the cumulative impact. He stated that he looks forward to the conversations and the work that will be accomplished. He stated that the other is identifying potential legislative barriers that would be overcame by potential legislative approaches in the plan. He stated that he wanted to make sure this is highlighted. He also noted that as stated in previous presentations, the administration in and of itself cannot do all of the work, and that the legislative body is needed to weigh in on the plans to identify where those potential legislative fixes are.

**Ms. Susana Almanza**, WHEJAC Member, stated that one thing that was heard from members of WHEJAC and other community members was how definitions needed to be brought up to date, such as just treatment. She noted also looking at the whole issue of environmental justice and being more inclusive and looking at what was meaningful participation. He noted that adding to the geographic location was also important. She noted the importance of hearing from the public and including all of those recommendations from the public, not just the Council. She stated that this has really changed the executive order from 1994 to its present stage, and hopefully this is only one step. She stated that hopefully this will help move forward with other working groups within environmental Justice<sup>40</sup> and climate justice.

**Dr. Beverly Wright**, WHEJAC Member, expressed her appreciation for the deep dive into the meaning of environmental justice and defining EJ communities. She expressed a note of caution

that sometimes when expanding a definition, it opens up the flood gates for groups who are able to take advantage based on one small part of a definition. She requested that the committee go back and review the expansion of definitions to ensure that there are no unintentional consequences that could allocate benefits away from the EJ communities.

**Ms. Viola Waghiyi**, WHEJAC Member, stated when talking about accountability in 304, meaningful participation, there needs to be accountability, maybe a scorecard of agencies that are charged to carry out the recommendations and EJ communities that are given opportunities to determine if they were meaningful and involved in meaningful participation. Also, regarding tribal consultation, that tribes help define what tribal consultation is, not just state or federal agencies because a lot of times, it's not up to par by what we want the tribal consultation to be.

**Ms. Michele Roberts**, WHEJAC Member, stated that from the committee's perspective from the Environmental Justice Health Alliance, communities have come against challenges that bleed over into other federal family members who felt they did not have to ascribe to the executive order. She stated that it is good to see the push being made to ensure that the entire federal family signs on equally on a score card. She stated that it would be good to know what kind of accountability tracking mechanism is necessary and/or needed. She posed the question of how can that be tied together between the executive order branch and that of the legislative pieces that is seen coming in as well through that of the McEachin, Booker, and other bills? She asked how can the WHEJAC make sure that the entire federal family understands, participates, and is held accountable in making sure environmental justice is upheld from their particular purview? She noted that this may be something that can be explored.

**Dr. Kyle Whyte**, WHEJAC Member, stated that the WHEJAC will review based on Ms. Roberts concerns. He stated that it is clear in the report on what federal agency means so that certain groups cannot slip through the cracks. He stated that it is an executive department, a government corporation, government-controlled corporation, or other establishment in the executive branch or any independent regulatory agency. He noted that in terms of the possibility of a scorecard or an accountability mechanism, although scorecard may not have been use, there are 15 different criteria to score their efforts. He explained that they federal agencies would have to score their efforts in terms of reduction, prevention, and elimination to meaningful

participation to how they address lack of infrastructure, to whether their doing scientifically formed scenario planning.

Dr. Whyte stated that the WHEJAC spent a couple of pages laying out criteria and they presented it as a reviewer reporting mechanism, that goes to the top of those agencies, that gets reported to the interagency council. He explained that the interagency council then has to report as an accountability measure to the White House. He stated that this should be reviewed carefully in terms of exactly what was shared. He also noted that in response to the mention of the legislation issue, the committee recommended it be part of the responsibility of agency officials to identify legislative gaps.

**Ms. Catherine Flowers**, WHEJAC Member, noted that when talking about respecting culture, the part of a lot of cultures is honoring the dead. She shared an example of visiting Louisiana's St. James Parish and the company that bought the property required the community to ask for permission to go and honor the dead. She posed the question of how can the WHEJAC help to restore these communities the type of cultural recognition that they need for something as simple as honoring their dead?

**Ms. Viola Waghiyi**, WHEJAC Member, stated regarding the scorecard that she would like to see where the EJ communities score the efforts put out by those charged to carry out these recommendations, or another third party.

**Ms. Carletta Tilousi**, WHEJAC Member, stated that the document focused on collaboration with the different multi-agencies and that more coordination would state in tribal and local government, including stakeholders like community organizations and nonprofits and also communities that are located in big cities that are considered a community. She stated that a lot of time was spent talking about that and emphasizing in different parts of this executive order that there are participatory requirements that this EO would take moving forward. She noted that sometimes this is overlooked, and organizations and communities are left behind, so it's important to note this as the document is being edited. She stated that the other pieces that the committee tried to make sure of is that tribes were added because of the unique trust relationship, historically, with the federal government.

**Mr. Richard Moore**, WHEJAC Co-Chair, stated that it was time to move towards the end of this discussion for a consensus from the Council. He stated first, however, he wanted to just say one thing in terms of the increased and intentional outreach. He stated that this has been discussed previously with the agencies when talking about assisting and developing strategic plans. He stated that another point brought up in terms of sacred sites, a piece of that, around sacred sites, as where we live, work, play, pray, and where we go to school and where we learn. He stated that this is very, very crucial as it came out of the original documents of the first People of Color Summit. He also stated that the wording needs to be correct as this also includes cemeteries and historical buildings, et cetera. He stated that the other was the use of the word "culture." He noted that this was a strong section that was not in the original documentation of the executive order.

Mr. Moore moved the Council to a consensus vote on the recommendations along with the inclusion and strengthening of areas based on the discussion or points from Council members. The vote was to move forward with the recommendations by a show of hands. He turned to Ms. Carletta Tilousi for her closing remarks.

**Ms. Carletta Tilousi**, WHEJAC Co-Chair, thanked everyone for working hard in putting the pieces together. She stated that there is still a long way to go and this will be a challenging road ahead and the importance to stay focused on the protection of the communities.

**Ms. Karen Martin**, DFO, welcomed everyone back. She turned the floor to Dr. Cecilia Martinez to introduce the guest speaker, Secretary Deb Haaland.

**Dr. Cecilia Martinez**, CEQ, stated that it was an honor and privilege to present Secretary Deb Haaland, the Secretary for the Department of the Interior. She stated that Secretary Haaland is from Laguna Pueblo in New Mexico and comes from a military family - her father served and actually received a Silver Star for saving the lives of many people and her mother was a Navy veteran. She stated that while this is an incredible feat of her family, it is not uncommon among Native people.

Dr. Martinez stated that Native people serve the military in very high rates. She explained that the reason, obviously, is because as an indigenous culture people want to keep our country safe, keep our people safe and make sure that we continue to build a strong and vibrant community with human rights. She noted that in addition to that, Secretary Haaland has served in the House of Representatives in Congress. She stated that she met Secretary Haaland when they were both serving on then Candidate Biden's Climate Engagement Advisory Committee and noted that Secretary Haaland is the first Native woman to occupy her position.

Dr. Martinez stated that having served alongside Secretary Haaland on the Engagement Committee, she is aware that she brings certain principles to her job. One being that not only do we need to advance the protection of human rights and the protection of all communities, we need to enhance the protection of the planet and all the Earth's life systems, and no one should bear the disproportionate cost. She also stated that she believes that we should not shift burdens from one community to the other, thus serving all communities in her position, and she has dedicated her life to that kind of principle and to that kind of action. She turned the floor over to Secretary Deb Haaland.

**Secretary Deb Haaland**, U.S. Department of Interior: *“Thank you so much, Dr. Martinez. Cecilia, my dear friend. And it's nice to see so many friends on this call. I'm really happy to be here. Good afternoon, everyone. I'm so pleased to welcome you all back from your break and kick off the afternoon session of the White House Environmental Justice Advisory Council public*

*meeting. I'm coming to you from the ancestral homelands of the Anacostan and Piscataway people and honor them as the first stewards of this region. A person's ZIP Code, income, or background shouldn't determine if they have access to clean water, breathable air, reliable electricity, or natural outdoor spaces. But right now, communities of color and poor families face threats to their health, welfare, and traditional knowledge, a legacy of pollution, an act now/think later approach to development and extraction is accelerating climate change, destroying habitats, contaminating air and water, and increasing hazardous waste and air pollution.*

*Environmental injustice is personal to me. My own community, the Pueblo of Laguna, is home to the Jackpile Mine, once the largest open pit uranium mine in the world. The Jackpile Mine not only produced radioactive waste that contaminated our environment and continues to do it today, but also disrupted our Pueblos culture and exploited our working people who were unknowingly exposed to cancer-causing radiation. And not only that but threats to their health and safety in other ways too. My cousin lost the hearing in one of his ears, and that happened all over the place. Unfortunately, these conditions are mirrored across communities of color nationwide. Climate change is making it hard to access safe and nutritious foods, endangering health and culture practices and keeping many families from their American dream.*

*Today's meeting is a historic milestone. We're coming together to say enough is enough, and we're ready to forge a new path that is not only addressing climate change but also ensures that we tackle longstanding injustice. The Biden-Harris administration hit the ground running to address the interlocking crises that our country faces: the global pandemic, economic uncertainty, racial injustice, and the climate crisis. As part of the President's "all of government" approach, the Department of the Interior will tackle environmental challenges through the lens of equity to secure climate justice and equitable economic opportunities in disadvantaged communities. For generations we put off the transition to clean energy, and now we're facing a climate crisis. It's a crisis that doesn't discriminate.*

*Every community is facing more extreme weather and the cost associated with that. But as you all know, communities who have borne the burden of environmental injustice are also those that have been denied the resources to address the health and economic impacts of those injustices.*

*That act now think later approach to managing our public lands and waters hasn't worked well, not for the communities who live with the legacies of pollution, not for the coal and oil workers whose jobs and benefits are being cut, not for the local, state, and tribal governments who struggle to pay teachers and firefighters when the market drops, and not for the tribal nations who are consulted too little and too late on projects that have lasting impacts, and certainly not for the sustainability of our country and our planet.*

*As the first Native American Cabinet Secretary, I bring with me a new perspective to addressing these issues. I believe we can meet this moment with solutions that uplift communities everywhere with the power of indigenous resilience, language, and knowledge. It's why the White House Council of Native American Affairs is bringing an all of government approach to live up to our trust and treaty responsibilities and conduct robust and frequent tribal consultation. That is one of the President's priorities. Ingrained in indigenous culture and traditions is the belief that we have an obligation to the next seven generations to care for each other. And of course, I'm here because that what my ancestors did.*

*I learned this in my mother's Pueblo household, on my grandparents' corn field on the Pueblo Laguna and meeting with indigenous people from across the globe. It is indigenous resilience and worldview that every country and community can learn from so that we care for our lands, waters, and resources not just across budget years but across generations. With this world view, we can usher in a new era to meet this moment and move our planet towards a more sustainable future. It's a vision that's built into the America the Beautiful initiative, an historic call to action from the President to conserve and restore 30 percent of America's lands and waters for the benefit of all people by 2030.*

*America the Beautiful offers some of the most cost-effective ways to address the climate crisis, stem the steep loss of nature and wildlife that we are witnessing right now, and address inequitable access to the outdoors for communities of color across the country. This National Environmental Justice Advisory Council will be a critical piece to making the President's vision for a more equitable future a reality. With all of you in this room collaborating, sharing, and working toward a common goal, we can meet the urgent demands of the climate crisis. Your work will not only help communities who carry the burden of climate injustice but also empower*

*American workers and businesses to lead on a clean energy economy.*

*The Interior Department is in a unique position to be a leader and a partner to the Council. By putting our country on a path to achieve net zero emissions, by transitioning in clean energy production on public lands and waters, by creating good paying union jobs in clean energy and conservation, by living up to our trust and treaty responsibilities to tribes by expanding access to natural spaces so every person in this country, no matter where they live, their background or income can reap the positive health and economic benefits of the outdoors. I know that it will take hard work and perseverance to untangle this longstanding web of environmental injustice in our country, but I know that with your leadership and your guidance we will be able to create a more just country for all those generations to come.*

*Thank you so much for the good work that you do. I am very grateful for that, and I am honored to be in your presence today. And now, I'll turn the floor over to Catherine Coleman Flowers, Vice Chair of the WHEJAC. Thank you."*

## **WHEJAC CLIMATE & ECONOMIC JUSTICE SCREENING TOOL WORKGROUP UPDATE**

**Ms. Catherine Flowers**, WHEJAC Co-Vice Chair, thanked Secretary Haaland. She stated that shifting the paradigm moving forward away from act now, think later, is what the WHEJAC is seeking because that's the only way the principle of do no more harm to the communities will get done. She explained that she is the Chair of the WHEJAC Climate and Economic Justice Screening Tool work group and will be providing the update and discussion. She stated that the workgroup's charge was to create a climate and economic justice screening tool that has to be established by July of 2021. She thanked all of her colleagues that worked closely on the recommendations. She then turned the floor over to Dr. Nicky Sheats and Jade Begay to make the presentation.

**Ms. Jade Begay**, WHEJAC Member, presented an overview of the Executive Order 14008, stating that it requires the creation of a climate and economic justice screening tool to be established by July 2021. She presented questions that the workgroup addressed. She stated that

first and foremost, what should be the goal and purpose of the climate and economic justice screening tool? She presented an outline of the goal and purpose of the climate and economic justice screening tool. She stated that some supplemental questions were what is the target user for the tool and for what purpose would EJ communities and other target users need or use the tool? She stated that finally, are there other existing tools other than the CalEnviroScreen used by state (California) and local governments or other entities that are effective and should be reviewed for consideration and development of this climate and economic justice screening tool?

Ms. Begay displayed an outline of some highlighted responses to the questions. She stated that holding institutions, agencies, governments and people accountable as well as identifying areas of need for specific communities and directing resources or programming accordingly. She noted, for example, directing resources and benefits under Justice40, preventing further damage in disadvantaged or overburdened communities, prioritizing resources, informing policy changes, evaluating the effects of regulatory and policy interventions, tracking progress towards EJ goals, helping communities advocate for themselves -- similar to holding people accountable but broader than that -- and data on the permitting process that will allow communities to meaningfully participate, data on permits -- what is being allowed, what kind of emissions -- and data on emissions, pollution and emission indicators, healthy and equity indicators, process indicators, economic indicators performance metrics, funding, and accountability for process.

Ms. Begay also added on the question that asks what is the target user for the tool? She stated that the target users would be the federal government and various agencies to use as they develop initiatives such as Justice40. She explained that additional target users would be policy makers and environmental justice organizers and frontline communities. She turned the floor over to Dr. Sheats to share more about the indicators.

**Dr. Nicky Sheats**, WHEJAC Member, started by introducing the second question. He stated that the second question is, what indicators or data should, if possible, be included in the climate and economic justice screening tool in the July 2021 release? He noted that it should say, “and beyond.” He also noted the two sub-questions: are there indicators in the current EPA EJ screening that are useful and should be included, and are there indicators in the current EJ screening that are not useful? He stated that he would focus on the answer to the overall

question on how to approach this.

Dr. Sheats stated that first, the committee came up with broad categories of indicators, indicator buckets, needed in order to identify various disadvantaged communities. He stated that then the committee came up with the indicators to fit into the buckets that would give more detailed information needed to identify disadvantaged communities. He listed the buckets, exposures to burdens, proximity to hazards, sensitive populations that might be in the census block group, demographic factors, SGS factors, energy issues, energy matters, economic development and investment, kind of vulnerability indicators and infrastructure indicators. He stated that there were a lot of indicators, but these are the broad buckets of indicators that was needed to identify disadvantaged communities.

Dr. Sheats, channeling Professor Rachel Morello-Frosch, stated that the screening tool needs to be flexible and adaptable, and it needs to evolve as things move along to continue to identify various types of disadvantaged communities, maybe for more specific purposes like identifying service gaps in these communities. He stated that the tool will need to evolve, possibly including some indicators for some purposes and subtracting indicators for other purposes. He stated that there will inevitably be areas that are missed that will need to be added in. He noted that the tool needs to be nimble so there needs to be the right indicators and buckets to make the tool nimble.

Dr. Sheats stressed the importance of continuing to update the tool to reflect the local knowledge of residents in the disadvantaged communities. He stated that this is an area that traditionally had not been handled well, government and policy makers. He stated that the residents of these communities have the most knowledge about them and the most knowledge about their needs and it's important to incorporate local knowledge.

Dr. Sheats stated that one last thing to mention is that the tool is not set up to identify tribal or indigenous land. He stated that Dr. Whyte shared a series of questions that we be incorporated into the tool to identify lands that are important for indigenous and tribal communities for EJ and other reasons. He then opened the floor for questions.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, posed a question. She stated that she noticed that exposure burdens are present for an overlay, but no current health status. She stated that the current health status of a community is a major indicator that should be met. She stated that if you have a community with high levels of infant mortality, maternal mortality, chronic heart disease, et cetera, that is an important indicator of environmental injustice and important indicator that perhaps there should not be further facilities permitted in those communities. She stated that she was wondering why health status is not included.

**Dr. Nicky Sheats**, WHEJAC Member, stated that under sensitive populations, there is the low birth rates, maternal death rates, rate of cardiovascular disease, rates of asthma and COPD, cancer, diabetes, obesity, lung disease. He agreed with Ms. Shepard that these are key things.

**Mr. Richard Moore**, WHEJAC Co-Chair, reiterated the caution for unintentional consequences and stated that this should be something that the Council keeps an eye on.

**Dr. Rachel Morello-Frosch**, WHEJAC Member, emphasized the principle of wanting to create a great tool that can capture the picture of what's going on nationally. She stated that the same time, however, the administrative datasets can miss a lot of things that are local on the ground. She stated that there needs to be assurance that local knowledge and local data sources will be integrated and supplement results from the national screening tool and hopefully address data gaps that are not captured by the national datasets.

Dr. Morello-Frosch stated that the other thing big challenge for developing an outstanding tool going forward is having to cultivate a culture of collaboration across agencies and data sharing to feed into the USDS in order to make this viable. She stated that looking at the list of metrics develop, much like the Justice40 initiative, it touches several different agencies. She stated that the development of the tool is going to require collaboration from agencies and data sharing in ways that are unprecedented. She stated that there were a lot of great metrics for which right now does not have identified data sources. She stated that some of that will require some conversations about the need to develop that data and to make it available to address these important issues.

**Ms. Ruth Santiago**, WHEJAC Member, stated that she is very interested in knowing whether there will be a robust narrative accompanying the data. For example, the EPA ECHO website has lots of information, but often you need an expert to interpret the information. Having a narrative in plain and accessible language to the impacted community is very important in making this data available.

Ms. Santiago stated that another concern of hers was about jurisdictions, places that lack adequate data collection like Puerto Rico. She stated for example, air quality monitoring results are disastrous in the U.S. because many air monitors are not collecting 75 percent of the readings that they should. Then there is automatically a classification of attainment when it's probably false. She posed the question, what do you do when you don't have data, and how do you avoid underestimating the burden that certain communities have because of the lack of data?

**Ms. Catherine Flowers**, WHEJAC Co-Vice Chair, stated that there was a robust discussion about that because there is no uniform way of knowing who in the U.S. does or do not have access to wastewater infrastructure or wastewater failed infrastructure. She stated that there is no national database, and there is no uniform way of collecting that and some states do a good job, and others don't. She noted that Vi raised examples of the type of issues that Alaska is facing where the same thing is true, where there's no good data. She explained that this is one of the reasons to also explore ways to incorporate local data that is collected by people on the ground.

**Dr. Nicky Sheats**, WHEJAC Member, stated that you can try using indicators that are universally available and identify the bucket and what indicators to choose to get to that bucket. He stated that you may also have to test out the tool and make sure that somewhere like Puerto Rico or New Jersey is getting reasonable results. He stated that you may need to do some customizing for particular areas if when you test out the tool you are seeing that it is not serving the purposes of that particular area. There might have to be some more indicators identified that can serve as proxy for the things you are trying to get at.

**Dr. Rachel Morello-Frosch**, WHEJAC Member, stated that another principle that is going to be important for this tool is to acknowledge data uncertainties and to also be really clear that no

data doesn't mean no problem and that this cannot be the default assumption. She also explained that when ground truthing results and poor data or no data is available, other resources should be explored where research groups have tried to fill data gaps. There has been a lot of work, for example, on air quality to account for the fact that air monitoring is very uneven and, in some cases, not located in places where air quality is really poor. There are ways in which other data resources can be sought, but the overarching principle is that no data does not necessarily mean no problem.

**Mr. Angelo Logan**, WHEJAC Member, wanted to touch on goals and purpose and wanted to see if the work group had discussion around the idea of prioritizing resources and investment to achieve improvements, not rather than but on top of the protections, going beyond the protections to the investments of constant improvement. He stated that communities should thrive – not just survive. He emphasized real investments in communities above and beyond the protection part and making sure that this is in the document.

Mr. Logan added that it complicates things in the sense that when you invest in communities that are already beautiful and making them even more beautiful by eliminate the dangers and the toxins and the environmental degradation, can spur gentrification - both in urban areas as well as in natural environments. He inquired as to whether the work group had conversations about potentially putting protections in place to prevent gentrification as well.

**Ms. Michele Roberts**, WHEJAC Member, stated that there were discussions about that particular process. She stated that the work group looked across the board from that of those initial communities and thought deeply about issues such as displacement versus relocation. The topic was explored from that spirit and equally thought about the deep, grave, egregious injustices that have been placed on communities and even more so the displacement piece.

**Ms. LaTricea Adams**, WHEJAC Member, questioned if there had been preliminary thoughts around making recommendations for business rules and being very specific about how metrics are collected and defining variables. She explained that things can be translated from a data perspective in a myriad of ways and can potentially allow for manipulation of data which will or will not support getting to the core of the issue.

Ms. Adams also shared a thought about quality review. She asked the question, what does that entail, who is involved in that process, does it involve neutral parties, and how can we get to a place of accountability for the accuracy of the tool and data? She also mentioned thinking about the expectations for agencies with the scorecard. What are the consequences and recommendations for plans of action for agencies or entities not meeting the threshold? What is the goal established for each respective organization?

**Ms. Catherine Flowers**, WHEJAC Co-Vice Chair, stated that in working on this process there is a longer timeframe. She stated that tasks were divided up to come up with indicators and try to see what data was out there. She stated that there was still time to develop a tool. She stated that at some point the workgroup would be able to incorporate a lot of the input since this is just the beginning.

**Dr. Nicky Sheats**, WHEJAC Member, stated that a lot of the issues raised by Ms. Adams relate to all work groups. He stated that there are a lot of issues on the tool that still need to be discussed. He stated that there needs to be more discussion about some individual indicators that may have challenges around them and methodology on how you add up indicators. He did not know if this would be WHEJAC's purview, but how do you ensure that the communities that have the most challenges get more of the benefits?

**Ms. Jade Begay**, WHEJAC Member, mentioned sustainable business practices. She stated that under the economic indicators, supplemental indicators were added to track number of minority owned businesses, employment by demographic and workforce participation. She noted that if the committee has anything additional to add in that set of indicators, that would be helpful.

**Ms. Viola Waghiyi**, WHEJAC Member, spoke regarding data and lack of data. She stated that there were lengthy discussions because sometimes in communities the only data available is from the polluter, and that basically lets the polluter off the hook. She stated that the funding needs to go directly to communities who come up with their own question. She explained that in the research they want to find out about their environment, their people, their homes. She stated that communities are their own experts, so there needs to be funding going directly to

communities and/or organizations that work with communities directly because the data does inform policy to strengthen broken and outdated chemical and environmental laws.

Ms. Waghiyi stated that a lot of times the EJ communities are never at the table, and research data should be useful not only to inform community right to know issues but also ways that communities may take action to reduce their exposures and address health disparities. She stated that when we talk about environmental justice, we also need to bring in the health piece to address the health disparities. It is important that communities are involved when it comes to data and research and that they are involved from the beginning. Funding needs to be set aside directly to help with community based participatory research projects.

**Dr. Robert Bullard**, WHEJAC Member, stated that the government will not ask the right questions to address many of the challenges and concerns of communities that are on the frontline and the most impacted. He noted that this means that when developing a tool, you have to really think outside of what the government has defined as the boundary. He stated that the tool is only as good as how you develop it, and the assumptions that you use to drive it, and the implementation strategies that you use to make the change. Having facts, having data or having documentation -- sometimes irrefutable -- is never enough to achieve successful outcomes. Even when tools are developed, for instance, that generate excellent maps and data, oftentimes the maps and the data and the findings stop short of application for decision making for funding of something that has been historically neglected.

Dr. Bullard stated that this is not new, and those who worked on this early on, 30 years ago, those were the concerns then and those are the concerns now. He stated that his hopes are that when we think about pushing recommendations forward, that we acknowledge that and to try to come up with strong recommendations that would move in the direction of mandates or something that the communities most at risk would get the greatest priority in resolution. He stated it should not stop with metrics development. It stops there, this will just be a great identifier and nothing that follows can really go to the heart of solving the problem.

**Mr. Richard Moore**, WHEJAC Co-Chair, stated that one of the things appreciated within all of the reports is the deep dive of what is needed. He stated that part of that deep dive is systemic

racism. He stated that the connection between the systemic racism some cases classist by design. He stated that this is very very crucial to understand.

Mr. Moore stated that another piece of work is around military toxics and many communities that live around and, in some cases, next to military sites. The research has been taking place for many, many years and this is a crucial matter to address.

Mr. Moore also added a point of discussion regarding the inclusion both from urban and indigenous and rural communities. He stated that level of voice is consistently flagged in these meeting and because of the WHEJAC's integrity, those voices continue to stay at the table with represented members and public comment and other forms of communications and recommendations.

**Ms. Carletta Tilousi**, WHEJAC Co-Vice Chair, stated that some communities are going to need training on how the technology works and how data is being collected. She stated that there should be a suggestion of funding being put aside for that. She stated that the WHEJAC should not be burdened with training people and carrying the expenses of training.

Ms. Tilousi also stated noted that companies always claim that they're not responsible for health issues. She stated that there mapping the contamination should be added. Communities are being approached for further data collection and further research and those communities and their health needs should be protected. She explained the importance of confidentiality -how data is being collected, protected, stored and use.

**Ms. Andrea Delgado**, WHEJAC Member, stated that on the underlying thread of the need for additional data, an issue that was discussed and is relevant to the health of farmworkers and communities in agricultural and rural areas is pesticide exposure. She stated that there was discussion on the need for integration of such data into EJ screen. She stated that in the past the Environmental Protection Agency recognized that such pesticide exposure is one of many environmental issues and that was not included in the previous EJ Screen. She noted that at the time, EPA claimed that it was due to insufficient data - which is connected to several of the

comments that WHEJAC members have made.

Ms. Delgado stated that the WHEJAC needs to make sure that this is no longer a pretext as far as that is concerned. The recommendations, relevant to both Justice40 as well as EJ screen, is to ensure that there is going to be investments in the research and data collection around pesticide usage, as well as incidents of illness and injury. In some pieces on that issue area, that it is going to mean new research. In other instances, it will mean investing in updating existing datasets that are currently sitting within the Department of Interior, USDS specifically, as well as CDC and the National Institute for Occupational Safety and Health.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, made a recommendation to explore the tech companies that have already developed mapping tools. She stated that some of these companies are very sophisticated and very cutting edge. She stated that she wonders whether the federal government can really develop the kind of tool needed within the timeframe. She reminded the Council of when Obamacare went online, and the website crashed and they had to bring in tech companies. She stated that it would be beneficial to also look at what is already in existence that is developed and in use.

**Ms. Catherine Flowers**, Co-Vice Chair, advised the Council that the discussion validated a lot of the discussions that took place within the workgroup. She stated that everyone has been working diligently on each of their areas but stated that it is very important to go back and read the recommendations because some of the recommendations that were made are included. She stated that if it is found that there are additional recommendations that need to be made, please raise those. She then called for a consensus to accept what was put forth along with whatever changes need to be made and everyone was in favor of accepting the recommendations.

**Ms. Karen Martin**, DFO, stated that the recommendations for the Council have been officially submitted and they are the WHEJAC recommendations. She stated that those recommendations would be combined into a full report with the cover letter and corrections from the chairs, and the report will be forwarded to CEQ. She asked that the workgroup submit the corrections in the evening. She moved into the next agenda item, Public Comment Period.

## WHEJAC ORAL PUBLIC COMMENT PERIOD

**Ms. Karen Martin**, DFO, stated that several people registered for public comment and as many as possible will be given a chance to speak. She stated that all of the commenters on the line today to speak met the deadline to pre-register. Anyone who did not get a chance to register, and would still like to make a public comment, can go to the WHEJAC webpage and submit comments through the comment form until May 27, 2021.

**Mr. Michael Goldstein**, Public Commenter: Good afternoon, all. I would again like to start by thanking the White House Environmental Justice Advisory Council for this opportunity to present comments. My name is Michael Goldstein, and I bring several roles and perspective to these comments, along with 25 years of work in support of environmental justice communities, specifically as the managing partner of the Goldstein Environmental Law Firm representing affordable housing developers building in EJ communities; as president of the Goldstein Brownfields Foundation, funding EJ programming in Florida and the Southeast U.S.; and as chair of the National Brownfield Coalition's Public Policy, Redevelopment Incentives, and Regulatory Partnerships Committee, advocating for more, better, smarter tools for environmental use. My comments today expand upon the comments previously delivered to this community on April 28th upon my first recommendation that day, which was general in nature and a broad suggestion that WHEJAC should explore options for dramatically increasing the funding available for affordable housing.

Today, I speak with more specificity as to how WHEJAC can and should encourage the Executive Branch and the U.S. Congress to further invest in addressing the crisis in affordable housing in this country in EJ communities. This unique opportunity has acute and overriding policy, legislative, educational, and social intersections with environmental cleanup, public health, equitable redevelopment, and economic empowerment and self-determination. In the interest of time, I offer the following four recommendations. One, WHEJAC should closely study and thereafter recommend that Congress increase the 4 percent and 9 percent low-income housing tax credit under Section 42 of the IRS code to 6 percent and 12 percent for affordable housing built on brownfield sites requiring actual remediation.

Two, WHEJAC should closely study and thereafter recommend that Congress increase the stepped-up basis under Section 42 of the IRS code from 130 percent to 150 percent for affordable housing built on brownfield sites in difficult development areas and geographic areas of opportunity and provide for 130 percent stepped up basis for affordable housing built on brownfield sites outside of DDA NJO zones requiring actual remediation. Three, WHEJAC should closely study and thereafter recommend that Congress pass a new one-time low-income housing tax credit in the amount of 80 percent of the cost of land acquisition to develop affordable housing built on brownfield sites requiring remediation.

And four, WHEJAC should closely study and thereafter recommend that Congress pass an enhanced tax incentive, for example, a further stepped basis, the current cap with short hold times, or up to 20 or 25 percent with the same hold time, for redevelopment of brownfield sites for affordable housing in opportunity zones located in EJ communities. Thank you and bless you all for your important, transformative work on these matters.

**Ms. Naomi Yoder, Public Commenter:** Hello, my name is Naomi Yoder. I can hear you, so I think you can hear me. Great. Thank you. I'm a staff scientist at non-profit Healthy Gulf. We work in the five Gulf states, and my role is working on environmental justice and the impacts of petrochemical plants and facilities in the Gulf Coast communities. I wanted to comment on several things today for the climate and economic justice screening tool. I would like to comment on a few specifics, and before that, I'd like to advocate for having a larger system of protecting people and our ecosystems in general. So, behind all of this instead of fighting one facility at a time, like Formosa Plastics in St. James Parish, we need to be able to protect people from pollution and from the impact of industry in our communities. That is not available to us. So as a part of the recommendations, we would ask the WHEJAC to include some greater sense of protecting people and our ecosystems.

In particular for the climate and economic justice screening tool, we would like to advocate -- I would like to advocate for using all air pollutants and air toxics and water pollutants, so expanding the number of those that are included and making further restrictions on those pollutants instead of having these broad categories that polluters can get by with. We also feel strongly that the companies -- the point south companies that are emitting all of these toxins

should pay for the monitoring that we desperately need as so many of the panelists have already said. We don't have the date of who's going to pay for that. That should be part of the cost of doing business if you're a large polluting facility or any polluting facility. We need to be measuring, reporting, and having meaningful consequences for violations and problems with polluters. There is a lack of data as Member Ruth Santiago mentioned, and this should be remedied. I think that's the end of my time. Thank you.

**Ms. Mary Cromer, Public Commenter:** All right. Hi, my name is Mary Cromer. I am Deputy Director of Appalachian Citizens' Law Center in eastern Kentucky. Thank you for this opportunity. I've led ACLC's environmental justice program for the past 12 years, and most of that work has dealt with the many environmental justice effects of coal mining on families and communities in central Appalachia. We've submitted written comments, but I wanted to talk here about a couple of issues that we hope your recommendations will take into account regarding environmental justice in central Appalachia.

First, with regard to what communities are considered to be disadvantaged, we ask that proximity to coal mining, whether active or former mine sites, be considered. There are many authorities out there that demonstrate the ways in which proximity to mining affects health outcomes and correlates with numerous environmental risks, including lack of access to safe drinking water and contaminated surface waters. In addition, in Appalachia coal mining primarily occurs in real close proximity to communities, which creates many direct hazards from landslides and water and air pollution. In recent years, mountain top removal has left flattened mountains topped with piles of rubble directly above many of our towns and communities. And as storm intensities increase due to climate change there is a risk of devastating landslides.

Second, when considering how to implement this group's recommendations, please consider the Office of Surface Mining Reclamation and Enforcement. I noticed that DOI was on your list, and of course we heard from Secretary Haaland. But I want to encourage you to focus on OSMRE specifically. It's a small agency. It's often ignored, but it's critical to environmental justice issues in central Appalachia. Only through OSMRE can we ensure that the reclamation of our mine sites, both those pre-law mine sites is now abandoning through bankruptcy. And third, our region's long dependency on coal mining has also entailed a long history of

disinvestment, and one of the primary effects of that is that many in our region lack access to safe and affordable drinking water and wastewater services.

I represent citizens in Martin County who are fighting for safe and reliable and affordable water. It's one of the poorest counties in the country, but those citizens already pay some of the highest water rates in the state of Kentucky. Despite this, the water system is so dilapidated that it cannot provide reliable, safe water to its residents, and 88 percent of those residents use water for drinking and cooking. Infrastructure funding to rebuild our failing water infrastructure and build wastewater systems is desperately needed, but in doing so we urge the administration to focus on using those funds not only to invest in infrastructure but also in our people. Too often assistance to coal communities funding is used to support workers in training for jobs that aren't found in Appalachia, that are elsewhere.

We need infrastructure funding that will invest in our people in Appalachia by training them to do the work that is necessary to build, rebuild, and maintain basic infrastructure in our region. Thank you for this opportunity.

**Ms. Nina McCoy**, Public Commenter: Yes, I am Nina McCoy from Martin County Concerned Citizens. I am working with Mary Cromer on clean, reliable, and affordable drinking water for our community. In 1964, President Johnson started the war on poverty in Martin County. Between 1980 and 2000, 25 percent of our county has been bombed and blasted to get the coal out. A lot of people lost their wells that they had had for years and years, and now we have extended a system of water that was built in 1968 for about 500 families out to 3,500 throughout the whole county. And it has gotten so bad that we're losing 76 percent of the water because it is so poorly done. And this year, in 2019, our community was considered one of the 25 worst in the nation.

And what we have found is in the past 20 years we've had predatory engineers and contractors from outside that have used grants that have done it so poorly that it's become a liability. Our water system is poorly done. Our sewer system, only 25 percent of the people are on it, and it's so poorly done that it is a danger to the community -- the sewer system itself. And the rates have increased for water and sewer by 91 percent. And they have these grinder pumps that if

someone's grinder pump fails, then they have to pay \$1,500. And we have so many people at or below the poverty level. So, my recommendation is I would like for y'all to help poor communities hold contractors and engineers accountable.

I would like for you to make sure that water and sewer infrastructure is a priority and that training people within the community to do that type of work -- those people within the community will make sure that what is done is the best for the community. So I hope that training for this type of work will be a priority for the White House and for environmental justice. This is such an important aspect of being a green economy is to fix things. You can't just build a bridge. You can't just lay the pipe. You've got to be able to fix it when it needs fixing and to keep it up. Thank you.

**Ms. Cheryl Johnson, Public Commenter:** Hi, everyone. My name is Cheryl Johnson, and I'm executive director of People for Community Recovery. But I'm also a resident of public housing in the city of Chicago, Altgeld Gardens. And I've been doing this work for nearly 36 years, and it's very interesting. And I love what Dr. Bullard just stated and everyone else stated, but I want to just be real about it because I live it every day in my community. It depends on what region in this country you live in when it comes to these environmental policies and programs being implemented in your area. To say I've been doing this worth for 36 years this coming August and to say that our organization has been around since we've been talking about EJ issues for a long time, my organization was founded by my mother, Hazel Johnson.

And in my neighborhood, in the city of Chicago in the state of Illinois, the concerted effort to ban EJ issues has been going on for decades. The only way that we get services for our communities is through a federal complaint or lawsuit to enforce the city or the industries in our community to clean up their act when historically our city and our state know that they have put our communities in contaminated areas, particularly where I live, where Altgeld Gardens sit. But I'm saying this to say that to this day all these programs that come down -- when they trickle down to the local level, and particularly communities like mine -- my community had never had a sustainable environmental program because we never could get funded because our organization felt that we'd always been blackballed if we talk about EJ issues because EJ was not part of the funding mechanism.

And to be even told -- I hate to say it, but I would never mention a person's name -- to go out to Burger King with this person, and they told me that, "Your Region 5 is going to never grant you another grant after our opportunity, so you should never apply again." So saying all those things and seeing that my community is a desert in every area that you talk about, the environmental quality that we are experiencing to date in my community is still the same that we were fighting 30 years ago. And it shouldn't be like that.

And to say that now that the new administrator came and told the city not to give a permit is that they create an EJ assessment tool and do a community impact, our city's going to do whatever it can to not make sure that happens. So, what's the enforcement from a federal level to a local level when they don't have to comply, or do we just go to continue to file lawsuits? Thank you.

**Ms. Nayyirah Shariff, Public Commenter:** Hi, peace, y'all. My name is Nayyirah Shariff, and I live in Flint, Michigan. I am the director of an organization called Flint Rising, which formed in the aftermath of the Flint Water Crisis, and prior to serving in that position, I was part of the community group who fought for information about what was in our water and helped design the testing process where we went out and recruited residents to have their water tested. And I wanted to -- with the seven years now that it's been since the switch, I have a couple of comments that I would like to add around I believe it was the Justice40 initiative, around the remediation and reduction of legacy pollution.

One of the things that we advocated from the very beginning as part of our reparations process was Medicare for life. We did not advocate for -- what we received actually was Medicaid expansion, and that is really disrespectful for directly impacted communities because Medicaid is very limited in a lot of different aspects. For one thing, you cannot move outside of the state, so you're basically trapped in a system that colluded to poison you. In Flint's instance, we had the government who was an active participant in poisoning us, but in many instances, they are complicit along with large corporations. And with Medicare, you can relocate to wherever you want, and then also Medicaid, the system is pretty limited as well because Medicaid as a whole is just trash, especially when you need specialists.

And for me in the seven years since the switch, I have seen myself personally having to use specialists, and fortunately I have health insurance where I don't have a lot of barriers for that. But I know for Medicaid, if you are on Medicaid, there are a lot of barriers for you to get the level of healthcare that you need. And then, the other thing I would like to add is to make sure that as far as funding for water infrastructure that there's new avenues like grants and not WIFIA and state revolving funds because those are structurally racist for a lot of Black and brown communities. Thank you very much for your time.

**Ms. Sylvia Dove, Public Commenter:** I'm Sylvia Dove. I'm from Consumers for Dental Choice based in Washington, D.C., and we really urge the Council to recommend an increase in federal government efforts to address the environmental injustice of mercury pollution, especially that resulting from dental amalgam use. Dental amalgam, sometimes called silver fillings, it's a filling material that is 50 percent mercury, which is, of course, toxic. And many people are disproportionately exposed to a double dose of this mercury, first when it's implanted in their teeth and a second time when it contaminates their environment and the fish that they eat.

To solve this problem, we ask the Council to recommend an increase in efforts to eliminate the use of dental amalgam, starting with the federal government programs that seem to use it the most. While private dentists are switching to mercury free alternatives for more affluent patients, we're seeing that the federal government is still purchasing large quantities of mercury for use in dentistry for military personnel, American Indian children, people incarcerated in federal prisons and others on Medicaid who are receiving dental care through different federally funded programs. We really think it's time for federal agencies to start purchasing only mercury free materials in use to protect our environment and the lower income communities and communities of color that are most affected by dental mercury pollution.

And I sent more detailed comments and documentation in writing as well, including resolutions supporting this approach from the National Medical Association and the National Congress for American Indians. So thank you for all y'all's work.

**Mr. Raymond Kemble, Public Commenter:** Good evening. I'm Raymond Kemble from

Dimock, Pennsylvania, the poorest county, Susquehanna County, in the state of Pennsylvania. Due to gas drilling and fracking, our aquifer has been polluted. We haven't had water in our house for 10 years, and there's numerous people in our county the same way. We have Eureka Resource that is now trying to put a waste facility for fracked fluids, and they're going to discharge it into our creek bed, Burdick Creek (phonetic) which runs into the Marshalls Creek (phonetic), into the Susquehanna River. This should not be allowed. I'm getting feedback.

All right. Okay. So Kendra Two (phonetics) wants to put injection wells into the county, 15 injection wells they're trying to put in. We don't need injection wells to be put into our county, and we don't need injection wells anywhere in the country. There's got to be better ways to get rid of their disaster fluids coming up from the drilling process. I'm an ex-water truck driver. I drove these sites. I know what happens. Illegal dumping into the creeks, illegal dumping on farm fields. They want to use the water of the roads for dust control. I mean, this is ridiculous. This needs to stop.

Our government really needs to do something here and stop these industries from polluting everything in our country with their frack fluids. It's just off the wall. Everything here in this county, in the Massawa Shale (phonetic) is radioactive, and they want to dump this in injection wells or dump it in our creek beds and to our waterways where people will downstream get water in the Susquehanna River. There are thousands and thousands of people that will draw water from that river, and here we are dumping all this frack fluid into the streams up here. This has to stop, and I beg the government to do something about this.

Again, Pennsylvania, we have in our constitution we have the right to clean water, clean air, and clean soil for now and future generations to come, but we don't have water. And right now, there's a new megapack not a mile from my house, and 15 houses down there have now lost the water. And the aquifer is polluted. And this industry will turn and tell you, "Oh, we're doing it better." No, you're not. You're just figuring out how to lie about it better, and the self-regulation stuff where they had to do the self-regulating has to stop. DEP, EPA, they need to do their jobs. EPA was here years ago and tested the water in Dimock and found out that the water is not drinkable due to the fracking fluids. So that's my comment. Thank you.

**Ms. Tea Tanka, Public Commenter:** I'm very pleased to be in this meeting and honored to be with you. Listening to all the comments from today, it's very disheartening to hear about all the hurt that is being felt by communities throughout the nation and the environmental pollution that is going on. I am here representing APO in Lake County, Illinois. We are a group of citizens who have come together trying to raise awareness for ethylene oxide emissions from two facilities in Lake County. Ethylene oxide is the number one carcinogen.

It's much more dangerous than dioxane. It's more dangerous than asbestos, and it's being polluted freely by two companies in Illinois. Both of them are three miles apart. Hundreds of thousands of people live within those communities. Many, many children live within these boundaries, and the ethylene oxide emissions you cannot smell it. You cannot see it. It's an invisible carcinogen, and our communities have a disproportionate number of cancer cases. What is happening is that the polluters self-report. They're allowed by the EPA to self-report their emissions and from the Intercept article that came out last month, right after our community found out about it and we started to make noise, the companies went in and scrubbed their data in the CRI database of the EPA. And by doing so, 64,000 pounds of ethylene oxide emissions were cleaned up from the books.

So these companies are learning how to lie better, just like the previous commenter was saying. But they're not being held accountable, and any regulations that go out nationally needs to make sure that each region -- so region 5, for instance, handles Illinois -- each region is actually held accountable that they're implementing whatever new regulations was put in place because it doesn't matter. If the Illinois EPA doesn't -- if they don't want to use U.S. EPA validated testing and if they want to use something else or let the polluters self-report their own numbers, then it doesn't help the communities. Basically, the communities are left to hang dry. Frontline monitoring must be a requirement from the U.S. EPA or something that different regions and different states cannot play with.

Basically, we need to step away from reliance on self-monitoring -- I'm sorry, on self-reporting from the polluters. They're never going to be telling us the truth, just like we have found that they have been lying to us for decades. Thank you very much for all the work that you all are doing. I am blessed to be in the company of people like you, so thank you everyone. Bye-bye.

**Ms. Charlotte King**, Public Commenter: My name is Charlotte King, and I am basically a private citizen. I have a master's degree in sustainable energy and environmental management, and I have two concerns. One is that people of color who have advanced degrees, we're being systemically marginalized in the area of sustainability, and we represent less than 4 percent in these decision-making roles, public and private. Secondly, many people on this call have talked about the need for measurement by communities on their own relative to environmental justice. The measurement that they are talking about that they need is leveraging the social cost of carbon metrics, which are used for federal funding. And yet, no one is trained on how to do it, and those of us who know how to do it, we're not being tapped to provide technical assistance.

The question that I registered is how will the environmental justice forum speak to the United Nations Sustainable Development Goal, which is sustainable communities? What measures can be strengthened to prioritize sustainability in affordable housing that can better inform strategies to achieve measurable outcomes, including significant increase in mortgage financing tied to sustainability for affordable housing, connect more comprehensive sustainability policies for zoning, community planning, and enforcement of planning system controls? And finally, require sustainability disclosures for block grants, urban planning, and housing policy. I so appreciate you letting me present my question, and I will provide it in writing with supporting documentation.

**Ms. Belinda Joyner**, Public Commenter: My name is Belinda Joyner. I live in North Hampton County, which is in Garysburg, North Carolina, tier one county, very poor county, home to about five Title V facilities that's been permitted by DEQ. North Hampton County, like I said, is a Tier One county, 52 percent African American. Invitae, like I say, is the wood pellet plant that's right in our backdoor. Last year -- well, 2019, we had a public hearing. They wanted to expand, which DEQ gave them permission to do that. I was in a meeting with Secretary Regan last year, and my question to them was with all the opposition that they had, why was the permit granted? And I was told that as long as they were in compliance with what the state said that they should be that they had to give them that permit. My question then was then what's the use of a public hearing? And they said to make the permitting process stronger.

So my question then was, well, when are you all going to do it? We're impacted, and what we need for you all to do -- because I've heard some awesome stuff here today -- DEQ in the state of North Carolina, we are a dumping ground. We have about five facilities of wood pellets. We have chicken farms. We have hog farms, biomass, and it's killing us. They talk about COVID and us being affected by COVID. This is the reason why because of all the stuff that's dumped in our communities. Dr. Bullard, I'm so glad to see you today. I've been in a lot of meetings with you at the EJ summit down at the Bricks and Whitakers. And we're still fighting.

We need to you all to talk to DEQ so that they will take into considerations the comments of those people like myself and others that's being impacted by all these polluters, and it's killing us every day. And it seems to me it's like profit over people. So, if the general assembly, they need to evaluate. We have other states, such as New Jersey, California, that has taken citizens that are being impacted in these communities -- they have taken their comments in their process of permitting whether or not the permit is granted. And we appreciate that. I appreciate everything that I've heard here today.

It's really been awesome, and I just need you all to speak for us that really don't have a voice because they're not listening to us. But they're killing us every day. Like I said, DEQ, everything comes to North Carolina because of the lack of communicating with the citizens. They just don't care. They just dump it, and being Black and being poor, they feel like they can just give us anything and we're supposed to take it. And it's time out -- they say that environmental justice is supposed to be equally, but that's just like saying, "I pledge allegiance to the flag with liberty and justice for all." And we know that that don't mean anything, so we need your help here in North Carolina. Thank you.

**Ms. Heather Croshaw, Public Commenter:** Thank you, WHEJAC, for the opportunity to speak to you today on behalf of my organization, the St. Croix Environmental Association. It's truly an honor to address you today. Known locally as SCEA, my organization is based on St. Croix, U.S. Virgin Islands, a U.S. territory and also an environmental justice community. I am here today to tell you about the notorious Limetree Bay refinery, its continuous toxic pollution, and environmental injustice that faces our community. We ask you for your help for empowering us to hold Limetree Bay accountable for poisoning our home.

For the past month, the community of St. Croix has been subjected to daily poisoning by noxious fumes originating from Limetree Bay refinery. In the recent week, the smell has become even worse. Residents downwind from the refinery have to breathe in this toxic air pollution on a near daily basis. These fumes are causing headaches, nausea, vomiting, dizziness, coughing, and respiratory irritation. People have even woken up in the middle of the night with extreme headaches. We've heard countless accounts of children projectile vomiting. Schools have been shut down.

On several occasions community vaccination clinics had to be closed. Public services like the Bureau of Motor Vehicles have had to close as well, along with many small businesses, all because of fumes overwhelming people and making them sick. Then, yesterday, actually as I was drafting our comment for today, one of the Limetree Bay refinery coper units had a major fire that spewed an orange toxic cloud into the sky across the western half of the island. We've had reports that it's rained oil again on homes and infield green. People rely on their cisterns for water, homegrown food for survival. Now, they are contaminated.

We are waiting for EPA to get the situation under control, but we need action now because people are in harm's way. We are afraid that the refinery will explode if it is allowed to continue operating. Our local environmental protection arm of our government does not have any of its own air monitoring equipment, so we must rely on self-reporting from the refinery. And like others have suggested, it doesn't work. To make matters worse, the refinery just received a notice of violation for EPA for not operating its sulfur dioxide monitors. So, I'm here to ask for you to help us please. Empower the citizens of St. Croix to monitor this refinery.

Help us hold Limetree Bay accountable. We need monitoring equipment now, like a UV hound, and also training to help citizens operate these types of monitoring equipment. We have the capacity and the resilience to be strong, and we can do this. But we need your help. Thank you, all, for your work on environmental justice, and I'll be submitting more written comments as well.

**Mr. Tim Guinee, Public Commenter:** Thank you very much. My name's Tim Guinee. I'm a

member of the Climate Reality Project, and I first want to express my gratitude to the Council for the extraordinary work that you're all doing and also to all the amazing people who are doing public comment today. I return again this week to give you an update on the Byhalia Pipeline situation in Memphis, Tennessee and the need for federal action to stop the environmental injustice occurring there.

There is an enormous regulatory gap which is endangering the people of southwest Memphis and which I believe the members of this committee could help alleviate. Last week, the Memphis city council met to discuss an ordinance to protect its water supply. A representative of Plains All American, one of the companies behind the Byhalia project, threatened litigation if the city moved forward and stated that federal action supersedes local action. The city, in my opinion, fearing the financial resources of the oil company -- they postponed any action to protect their people until July. But there's a problem with the federal permitting of this pipeline, the very federal action that Byhalia is upholding as superseding local authority.

The fast-tracked application on nationwide permit 12 ignored both the threat to the city's aquifer, which a million people drink from, and the fact that the pipeline is being shunted through a resilient lower wealth Black community, which already carries the burden of 17 toxic release inventory facilities and cancer risks four times the national average. If you want proof that this area has long been a sacrifice zone, you need look no further than the EPA's own 2017 snapshot, which showed that two-fifths of all of the national priority list superfund sites in the entire state of Tennessee are in Shelby County.

Now, I recognize that the data that I'm pulling from is a couple of years old. It's the most recent that I've been able to find, but it makes a couple of things clear. Number one, that historically a disproportionate burden has been placed on this community. And number two, the fact is the federal government has also known about this situation. You have the opportunity now to stem this tide of injustice. Please advise the White House to rescind the permit advanced by the Army Corp of Engineers under nationwide permit 12 on the basis that it wholly ignores the issues of environmental justice and the possible endangerment of the people's water supply in Memphis. The use of the permit should also be reevaluated for other pipeline projects to make sure that full deliberation has been carried out to protect the people and the environment of the United States.

I thank you very much for my time.

**Ms. Zulene Mayfield**, Public Commenter: Okay. Good afternoon. I'm here. Thank you so much. Thank you, thank you, thank you. I am Zulene Mayfield. I am the chairperson of Chester Residents Concerned for Quality Living. We're an organization here in Chester, Pennsylvania, and during the course of our 29-year-old battle against waste polluting and polluting facilities, we've had some successes. But we are still burdened by the largest incinerator in the country, a mass burn about 3,600 tons of trash every day, polluting our community. Many people on the call, Ms. Shepard, Dr. Bullard, Dr. Beverly Wright, I met years ago unfortunately, and unfortunately, we are still on the battlefield. I think that one of the recommendations that I have -- and I will submit written comments. We have tried to fight these battles, and we've held our own as communities.

But our federal government has to acknowledge that there are some communities that require extra protection, and there are markers that would indicate where there's in access to poor healthcare, where there's poor health. Right now, currently in the city of Chester, 38.5 percent of our children have asthma, the fifth highest than the national average and third highest than those that live in the fourth richest county in Pennsylvania. The city of Chester is a poor community. I believe that these communities and communities like Chester and across this nation -- that there should be an Endangered Communities Act, and that declaration would mean that before a polluting facility is sited there that they have to prove that there will be no net increase in pollution.

It also should be enhanced scrutiny and enhance regulations, added resources to that community such as technical help. There's a huge disparity in education sometimes, and it should be incumbent upon the federal government and/or the polluter to educate the community as to what they are doing. But there has to be enhanced regulation because these communities, communities like Chester, are being polluted to death, and that's what I'm advocating for. I will send in written comments. Thank you.

**Ms. Sue Halpern**, Public Commenter: Thank you so much for this opportunity. I want to say your discussion today has all been right on and much appreciated. I am the vice president of the

South End Neighborhood Association in Stamford, Connecticut. Now, Stamford, Connecticut is 30 miles outside of New York City. The south end of Stamford is 177-acre peninsula surrounded by two tributaries that flow into Long Island Sound. It consists of a national registered historic neighborhood under the Department of Interior. There are over 200 mostly multifamily homes, families of many ethnic and socio-economic backgrounds.

There are now over 10 high-rise apartment buildings on what was a highly contaminated industrial and manufacturing site. Some 20,000 people are expected to live and work on this small section of Stamford. The south end is the former site of many industries, including a coal gasification plant, heavy boat manufacturing, transformer production, tool and die and postal equipment manufacturing. We currently live with an asphalt plant, a salvage yard, a sewage treatment facility, and a cement and stone plant at our periphery. At the far end of the peninsula is one of our city parks, which was once a toxic landfill, a dumping site for tires and plastic bottles. It is now being used by hundreds of people daily, and we also have an old boatyard being used for rock crushing and stockpiling of fugitive soils.

All these activities produce toxic chemical mixes of potential serious soil, air, and water contamination. There are almost daily foul odors and air quality levels carrying PCBs, TPHs, arsenic, lead, and mercury, all by-products of these industrial sites. There are serious concerns of community health, safety, and welfare due to poor communications with city and state departments. We are concerned about the exposure over time of uncovered, untested, and undetected possible carcinogenic substances affecting the public's health.

We are asking for air, soil, and water testing and open communication to the thousands of residents who now reside in our community. This is a very serious health and environmental issue for Stamford and the surrounding towns. Listening to others in this country with similar issues is astonishing for me and I'm sure for you, and I appreciate the difficult task you all have taken on, on behalf of the country. Thank you.

**Ms. Karen Martin**, DFO, thanked the public commenters that were able to join and stated that the deadline for written public comments is May 27, 2021. She stated that all public comments will be shared with the WHEJAC. She then turned the meeting over to Ms. Peggy Shepard and

Mr. Richard Moore to start the business meeting discussion.

## **WHEJAC BUSINESS MEETING REFLECTION & CONVERSATION**

**Mr. Richard Moore**, WHEJAC Co-Chair, thanked everyone, again, who made public comment. He stated that unfortunately, in many cases, this is not the first time these comments are heard. He stated that it could be his own neighborhood or many of the others that are on the Council's neighborhood, but issues that have been heard before, legacy communities, legacy issues, and legacy chemicals. Mr. Moore open it up to the Council members for comment regarding the public comments.

**Ms. Viola Waghiyi**, WHEJAC Member, stated that coming from an EJ community whose health has been harmed by polluters, including military and multinational corporations and industries, she hears their voices. She stated that from all of those that testified, there's reoccurring themes from holding regulators accountable. She stated that all efforts have been exhausted with state and federal regulations and they need to be held accountable. She pointed out that there were pleas from communities whose health and children have been harmed by industries and polluters taking data off the EPA site so they can continue to pollute. She noted that this has been going on for 19 years and there has never been proper oversight. She stated that polluters need to be held accountable by regulatory agencies, including EPA, our state department, Alaska Department of Environmental Conservation. She reiterated some specific commenters concerns and noted her 19 years of doing this work. She stated that everyone comes from communities trying to make ends meet, put food on the table, and keep heat in their homes and everyone is being heard.

**Ms. Susana Almanza**, WHEJAC Member, thanked all the communities that testified and those that are sending in their comments. She stated that what was heard over and over again about for over 30 years how the environmental quality has not changed for many communities, especially communities of color. She also noted concern about the lack of enforcement that is needed. She also noted people's concern about the need for Medicare for life versus Medicaid and how the Medicaid benefits are limited and how you just can't move around with those

limited Medicaid benefits. She also noted a lot of talk about the polluters doing self-reporting and that seems to be a big issue and a concern that people have and how EPA regions need to be held accountable.

Ms. Almanza also stated that the pollution that is going into the aquifers and also that deep well injections in several states need to be eliminated. She stated that concern was raised about the testimony that people give as the EPA and public hearing processes, and that they feel like it's just part of "check the box" instead of really being listened to and adhering to and making changes for those permits.

Ms. Almanza went on to discuss how people were talking about the need to require or have expert protection for those communities who already have health issues and how maybe coming together with an Endangered Community Act that will put more criteria in regulations on facilities. She noted that the water contamination seems to continue to be a big concern for everyone when it comes to the polluters and the Byhalia Pipeline continues. She stated that heard at the last public hearing was all the concerns that come with that, but also, they talked about the federal gap and the permitting and the fast tracking. She stated that fracking and the need to have full deliberations to review the impact on water and humanity has always been a problem.

Ms. Almanza stated that she continues to hear that some communities require extra protection. She stated that there is a lot of work that is needed to make sure to protect the communities. She stated that the WHEJAC will work hard along with a lot of the other people that are working on different issues under the Biden administration to hopefully bring some changes and relief for the communities. She reassured the listeners that the WHEJAC will put the recommendations and suggestions forward and do whatever it is their power to help protect humanity and the environment.

**Mr. Tom Cormons**, WHEJAC Member, stated that the points made with regard to water infrastructure, especially in areas highly impacted by mountaintop removal mining, have broad applicability to a lot of discussions. He noted mention of the most foundational infrastructure being communities and the need for investments in needed infrastructure. He stated that

investments should be made in what communities need and not hijacked by profiteers, but by people who are accountable to the community and providing needed economic stimulus, jobs for people in the community and have a stake in the community. He closed stating that he really appreciated the reference to the importance of the Office of Surface Mining, which currently does not have a federal director, something that we certainly need to prioritize.

**Ms. Michele Roberts**, WHEJAC Member, stated that it is exceptionally important to listen to the public comments and it goes to show that a full interagency governmental approach is needed and that all of the federal family members must be engaged in the process equally. She stated that it reaffirms and confirms the depth that was sought trying to make a strong tool, understanding that it is not the only piece, but from the Justice40 through the executive order and the climate tool piece is all exceptionally important. She noted that there are legacy challenges that are still caught in gaps as not all agencies are being held accountable to that of EJ. She stated that it is incredibly important that WHEJAC really take a deep look at these legacy community issues and make sure that they are captured in the climate tool assessments and the executive order and Justice40 language.

**Dr. Beverly Wright**, WHEJAC Member, stated that listening to the reports given by communities who are suffering in 2021 is sad because these were the same reports heard 30 years ago and it seems to be getting worse. She stated that that's mainly because the root of the problem is not being dealt with. She stated that the root of the problem is the permitting system and the fact that permits are given based on industrial standards and not health standards. She stated that as good as the work that is being done is, this will continue until the root of the problem is addressed.

Dr. Wright stated that the Endangered Communities Act really spoke to her. She stated that this might be a way of making progress with communities that are being hit in all directions that have been overlooked. She stated that these communities are an endangered species in that sense and there needs to be a wholistic approach to dealing with these communities that have all kinds of things coming at them.

**Mr. Juan Parras**, WHEJAC Member, recommended that there be follow up with all the

individuals that made comments and find out what region they are in, what they need, and follow up with whomever would be responsible. She stated that there are a lot of common issues that were brought up so there could be a report card for all of the regions to find out who is servicing or who is not servicing. She stated that it would be creating a center for making sure that people are getting help in other regions and also finding out who is doing a good job and who is not.

**Mr. Richard Moore**, WHEJAC Co-Chair, updated the Council regarding the next step in terms of protocol and process. He stated that the reports, along with a signed cover letter from the co-chairs, will be submitted to CEQ after the meeting. He stated that a version of the final recommendations will be posted online after the meeting, and the website will be updated and replaced with the report in the final format by the first week of June. He then turned the floor over to Ms. Shepard to continue with the remaining business items.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, stated that it would be very appropriate and relevant as a Council to send a letter to CEQ with recommendations for how the public comment period should be addressed. She stated that it every relevant federal agency that is subject to the executive order should have its own environmental justice public comment period so that the employees and staff there are hearing directly from the public and can address the comments directly.

Ms. Shepard noted that regarding steps forward, the climate and economic screening tool work group is going to continue to work and provide input on the screening tool through July. She stated that a new workgroup will be established for the scorecard, and that workgroup will be developing recommendations on what types of indicators or data would be useful in an agency scorecard, and basically evaluating the agency's work. She explained that there cannot be more than 13 WHEJAC members on the work group. She stated that when the times comes, if members want to participate in this work group, to please send Karen Martin an email.

Ms. Shepard stated that WHEJAC members will need to decide if the executive order and the Justice40 workgroups should be maintained to provide recommendations on the implementation over the next several months. She stated that the Justice40 workgroup decided that they did

want to maintain their workgroup. She stated that the executive order work group would need to decide if they will maintain the group and how those meetings will occur. She also stated that if other WHEJAC members are interested in joining any of the work groups to let Karen know. She asked the Council to weigh in on any other work groups that members think should be established.

**Ms. LaTricea Adams**, WHEJAC Member, stated that based on the frequency of some of the comments or recommendations around health, that there could potentially be a specific group dedicated that to specifically emphasizing issue surrounding body burden as well as maternal health and around children's health as well.

**Mr. Tom Cormons**, WHEJAC Member, stated that he was interested in the conversation about additional work groups and wants to have that conversation in the context of the decision to carry forward the Justice40 workgroup because real change and progress requires follow through and sustained commitment. He stated that a metaphor he would use for the recommendations that the WHEJAC put together, and the Justice40 workgroup specifically, is tossing a paper airplane off the top of a tall building. He stated that the hope is that it will land well if that's the end of the engagement, but really needing stay onboard the plane and stay in constant contact with the cockpit to ensure that things land the way needed. He stated that he would really like to lean into and look forward to thinking about schedule for Justice40 as they take on additional things.

**Mr. Harold Mitchell**, WHEJAC Member, stated that assessing the last two public commenting periods, if looking at additional type work groups, it seems like that running theme would be enforcement. She also stated that look at the assessment and see what is a greater need that is heard from communities that has been a revolving theme for the last 30 years, that hadn't been addressed and create a particular group around that. He noted that he was not sure if it would be strictly enforcement and accountability because it seems that everything is the impacted burdens on communities. He stated that instead of just the kneejerk reaction of creating something, get specific to put something together to address those recurring comments that keeps popping up.

**Ms. Ruth Santiago**, WHEJAC Member, stated that workgroups or sub-workgroups could be

created within the Justice40 group. She stated that there could be an energy group as a lot of the comments had to do with energy issues and that would be in line with the Executive Order 14008 that lists energy.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, stated that perhaps the members who have made recommendations could do a couple of sentences being more specific as to the work group they recommend. She stated for instance, energy is a huge topic, so drilling down on what the objectives and outcomes would be would seem important.

**Dr. Beverly Wright**, WHEJAC Member, stated that one of our biggest concerns was on implementation and finding ways to make certain that when recommendations are made and then funds are appropriated that there is a process that is put in place so that the intention of that recommendation and the people it is supposed to help are helped. She stated that she was unsure of what the committee would be called but would be interested in participating in that committee. She asked Ms. Shepard for a suggestion in which she suggested Justice40 Implementation.

**Mr. Juan Parras**, WHEJAC Member, stated that what was heard that was never heard in the past was concerns about fracking, the new way to drill for oil. He stated that it creates earthquakes in communities that have a lot of fracking and it contaminates the water. He stated that there should be a program or a committee that starts addressing all the fracking that is going to start taking place in the entire nation. He stated that it was a common theme and something that focus is needed on before it gets completely out of control.

**Mr. Kim Havey**, WHEJAC Member, stated to build off of what Juan said, putting forward a recommendation that there is a policy subcommittee to address some of the broader policy issues like fracking, energy, public health, sanitation, access to water, et cetera. He stated that a policy statements could be developed to help guide the work.

**Ms. Peggy Shepard**, WHEJAC Co-Chair, stated that she would be interested in a work group on developing a frontline climate corp. She stated that she was very concerned that there's a climate corps idea that's being raised by a lot of the conservation groups. She stated that Biden

did talk about that in his earlier platform, so it would be nice to think about a frontlines climate corps that operates in our communities with youth from the community.

Ms. Shepard opened the floor for a consensus vote on continuing Justice40, beginning on the scorecard, and was decided that the screening tool will be continuing until July. She stated that if there is a consensus vote on continuing Justice40 and the scorecard with the provision that determinations will be made on the other workgroups, that would be about six recommendations. She called for a consensus vote and everyone was in agreement. She stated that the scorecard working group will be started and Justice40 will continue. She asked that the members who have asked to start new work groups to put together a paragraph about specifically what the workgroup would focus on.

Ms. Shepard then took a consensus vote on maintaining the executive order workgroup and everyone was in agreement. She stated that the executive order workgroup will be maintained as well. She stated that schedules will be set up over the next few weeks for the continuing workgroups. She stated that there was also an important discussion in the workgroups that WHEJAC would like to meet with the Interagency Council on a regular schedule. She stated that request was included in the transmittal letter that goes with the recommendations and will be followed up more specifically in a letter the Interagency Council. She then turned the floor over to Dr. Cecilia Martinez for closing remarks and any additional comments.

## **CLOSING REMARKS AND ADJOURN**

**Dr. Cecilia Martinez**, CEQ, thank the chairs and extended a thank you to the Council for the amazing work. She stated that they have been taking copious notes, making sure that we're capturing the gist. She stated that all the documents will be reviewed thoroughly and moving forward on seeing how the recommendations can be integrated. She stated that Chair Mallory, if she were there, would be deeply gratified with the recommendations and work of the Council. She stated that she looks forward to the next meeting and thinks it is going to be an incredible journey.

**Ms. Karen Martin**, DFO, stated that she has a meeting scheduled to figure out the schedule for

the next meeting in advance of the next set of deadlines the government is working against. She stated that she would keep the Council posted on any new dates and will also post it on the website and on the EJ listserv and publish it in the federal registry.

**Mr. Richard Moore**, WHEJAC Co-Chair, thanked the Council for the incredible work as well as the working staff and the public commenters. With that, he adjourned the meeting.

## APPENDIX A - MEETING ATTENDEES

FIRST NAME	LAST NAME	ORGANIZATION
Ibrahim	Absa	Environment Quality Authority
Ricky	Ackerman	Eastside Community Network
Gerardo	Acosta	Office of Communities, Tribes and Environmental Assessment
Astrika	Adams	Office of Advocacy
Susana	Addo Ntim	US FDA
Ann	Agler	Legacy Land Conservancy
Mary	Aguilera	Buckeye Environmental Network
Carina	Ahlqvist	N/A
Iqra	Ahmed	Environmental Defense Fund
Mary	Aiken	CBO
Christina	Akly	NEE
Nicki	Alexander	U.S. EPA - Region 2
Lylianna	Allala	City of Seattle
Tessa	Allen	EPA
Camila	Alvarez	N/A
Susan	Alzner	Shift7
Lillian	Andrews	NASEM
Jan-Michael	Archer	University of Maryland School of Public Health
Deyadira	Arellano	People's Collective for Environmental Justice
Maria	Arevalo Gonzalez	EPA
Chauncey	Arnold	Alliance for Appalachia
Elizabeth	Arnold	DOE
Patrick	Arnold	10 Billion Strong
Jessica	Arriens	National Wildlife Federation
Kristi	Ashley	Federal Aviation Administration
Ross	Astoria	University of Wisconsin at Parkside
Ellen	Atkinson	Citizen
Anita	Au	Southern California Association of Governments
Ted	Auch	FracTracker Alliance
Laura	August	CalEPA
Andrew	Baca	Environmental Protection Agency
Alan	Bacock	USEPA R9
Jay	Baker	Western States Air Resources Council
Shalanda	Baker	Department of Energy-Energy Justice
Kim	Balassiano	USEPA
Rich	Baldauf	US EPA
Teresa	Ball	Sierra Club
Paul	Balserak	American Iron and Steel Institute

FIRST NAME	LAST NAME	ORGANIZATION
Cara	Bandera	Self
Komal	Bangia	Office of Environmental Health Hazard Assessment, CalEPA
Lucienne	Banning	Ecology
Erik	Baptist	Wiley Rein LLP
Betty	Barnes	EPA
Xavier	Barraza	Friends of Valle de Oro
Catharine	Bartone	VTDEC
Samantha	Basile	U.S. Global Change Research Program
Nikki	Bass	USEPA
Jay	Bassett	USEPA Region 4
Erica	Bates	WA Department of Ecology
Nizanna	Bathersfield	US EPA
John	Beard	Port Arthur Community Action Network
Karen	Bearden	350 Triangle
Allyson	Beasley	Western Environmental Law Center
Regine	Beauboeuf	HNTB
Patrick	Beckley	US EPA
Mary	Bell	EPA/OECA
Jeremy	Bendik-Keymer	University of Chicago
Felipe	Benitez	Corazon Latino
Agatha	Benjamin	US EPA
Kent	Benjamin	US EPA
Arielle	Benjamin	US EPA
Kristopher	Benke	University of Illinois Urbana-Champaign
Karen	Bennett	LBBS
Stephanie	Bergeron Perdue	Baker Botts
Susan	Bernard	Wiley LLP
Genie	Bey	DC Department of Energy & Environment
Prerna	Bhat	Council on Environmental Quality
Brittany	Bianco	FDOT
Jessica	Bielecki	NRC
Mathia	Biggs	USGCRP
Cassie	Bittorf	Stericycle Inc.
Lynda	Black	CREEJ
Michael	Blair	Innovate Inc
Uni	Blake	American Petroleum Institute
Julie	Bledsoe	Appalachian Voices and Kingston Coal Ash Workers wife
John	Blevins	USEPA, Region 4
Gretchan	Blum	ERM
Coline	Bodenreider	UC Berkeley
Julie	Boetger	Ohio Poor People's Campaign

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>ORGANIZATION</b>
Ian	Bosmeijer	Sunflower Electric Power Corp.
Terry	Bowers	DOD
Christina	Bowman	University of Maryland
Cynthia	Bowser	Westside Residents
Jennifer	Boyle	ODEQ
Karen	Bradbury	U.S. Senator Sheldon Whitehouse
Maricel	Braga	Harvard University
Caitlin	Briere	US Environmental Protection Agency
Shannon	Broome	Self
Erin	Broussard	Arizona Electric Power Cooperative
Caroline	Brown	Citizens CA GND organization
Erica	Brown	AMWA
Charles	Brown	World Alliance for Mercury-Free Dentistry
Charmaine	Brown	Mortgage Bankers Association
Nicole	Brown	AECOM
Lucas	Brown	EOP
Robin	Brown	CCOAL-Concerned Citizens Organized Against Lead
Michael	Brown	Sustaining Way
Sarah	Buchhorn	CMAP
Anna	Bunting	EGLE
Simon	Bunyan	White House Council on Environmental Quality
Scott	Burgess	OMB
Jeff	Burkett	Liberty Utilities
Omari	Burrell	EPA Region 6
Peter	Butkovich	Dykema Gossett
Stan	Buzzelle	US EPA
Jennifer	Calkins	Western Environmental Law Center
Stacey	Callaway	Ecology
Morgan	Capilla	US EPA
Lydia	Cardona	GreenLatinos
Katherine	Cassese	Laurel School`
Lupe	Castillo	XicanaIndia Gardens
CRYSTAL	CAVALIER	7 Directions of Service
Brian	Chalfant	Pennsylvania Department of Environmental Protection
Eliodora	Chamberlain	US EPA Region 7
Jim	Chapman	Urban Design 4 Health, Inc.
Donna	Chavis	Friends of the Earth
Lisa	Chiffolo	Toyota
Elaine	Christian	City of West Palm Beach
Rachel	Cleetus	Union of Concerned Scientists
Kara	Coats	DOD Regional Environmental Coordinator Program

FIRST NAME	LAST NAME	ORGANIZATION
Christopher	Coes	Department of Transportation
Deborah	Cohen	USEPA
Debby	Cohen	None
Melissa	Collier	MDEQ
Nikkita	Collins	Self-Employed
Tokeshia	Collins-Wright	Louisiana Chemical Association
Colin	Colverson	Tennessee Valley Authority
Sarah	Conley-Ballew	Rural Action
Chelsea	Conover	Appalachian Voices
Jasmin	Contreras	EPA
Emily L.	Cooper	Mars Hill United Methodist Church, Mars Hill, NC
James	Cordes	Court Reporter
Christine	Covington	Deloitte
K	Craig	State Government
Ayana	Craig	N/A
Bria	Crawford	EPA
Brandi	Crawford-Johnson	EJ Advocate
David	Cremer	FHWA-Office of Tribal Transportation
Mary	Cromer	Appalachian Citizens' Law Center, Inc.
Heather	Croshaw	St. Croix Environmental Association
Kelley	Cureton	Green Spaces Chattanooga
Martha	Curran	U.S. Dept. of Housing & Urban Development
Mary	Curry	WNC Climate Action Coalition and Climate Reality
Fran	Dalton	Garfield Park Neighborhoods Association
Lew	Daly	Roosevelt Institute
Corbin	Darling	EPA Region 8
Owen	Davies	N/A
Michelle	Davis	HHS
Jarod	Davis	Dow
Maria	De Jesus	Ironbound Community Corporation
Viktoriiia	De Las Casas	Troutman Pepper
Robert	Dean	Center for Neighborhood Technology (CNT)
Jesse	Deer In Water	Citizens Resistance At Fermi Two (CRAFT)
Natasha	DeJarnett	University of Louisville
Catherine	Denenberg	Anderson County TN Commissioner
Marney	DeVroom	FJ Management Inc.
Christine	Diaz	Clean Water for NC
Shantray	Dickens	FAA Civil Rights
Catherine	Diggs	Detroiters Working for Environmental Justice
Cat	Dillard	Rethinking Plastic

FIRST NAME	LAST NAME	ORGANIZATION
Chris	Dodge	Save the Bay
Jenna	Dodson	West Virginia University
John	Doherty	IUPAT
Lilian	Dorka	EPA, OGC External Civil Rights Compliance Office
Dr MK	Dorsey	IberSun Solar
Barbara	Doten	California Global Education Project at CSU Long Beach
Sylvia	Dove	Consumers for Dental Choice
Melinda	Downing	Department of Energy
Kathy	Doyle	Relief EHS, LLC
Tim	Duda	Terra Advocati
Kim	Duncan	None
Amanda	Dweley	ILLUME Advising
Amanda	Dwyer	Lynker
Pamela	Eaton	Green West Strategies
Jeannie	Economos	Farmworker Association of Florida
Murry	Edwards	Contract Design & Development, LLC (CDD)
Katherine	Egland	EEECHO
Fleming	EL-AMIN	FHWA
Denise	Elliott	Greenbrier River Watershed Association
Mike	Elster	US EPA
Marianne	Engelman-Lado	EPA
Lena	Epps-Price	US EPA
Ann	Erhardt	PSC
Mark	Erickson	Appvion Operations, Inc.
Neeraja	Erraguntla	ACC
Michael	Esealuka	Healthy Gulf
Diandra	Esparza	Intersectional Environmentalist
Monica	Espinosa	EPA Region 7
Christopher	Espinosa	N/A
Sydney	Evans	Environmental Working Group
Mike	Ewall	Energy Justice Network
Carole	Excell	WRI
Ericka	Farrell	EPA
Sloan	Farrell	Dept. of the Interior, Office of Diversity, Inclusion & Civil Rights
John	Faust	OEHHA/CalEPA
Stacey	Feindt	Fredericksburg Area Metropolitan Planning Organization
Gabby	Fekete	US EPA OIG
Cynthia	Ferguson	DOJ/ENRD
Kay	Ferguson	ARTivism Virginia
Nicolette	Fertakis	EPA

FIRST NAME	LAST NAME	ORGANIZATION
Timothy	Fields	MDB, Inc.
Leslie	Fields	Sierra Club
Catharine	Fitzsimmons	Iowa Department of Natural Resources
Jane	Flegal	CEQ
Briana	Flin	Nexus Media News
Alex	Foley	Deloitte
Taryn	Fordes	Cause-Related Consulting
Dominique	Fortune	Golf Course Superintendent Association of America
Teresa	Foster	ATSDR
Tasha	Frazier	US EPA
Kailea	Fredrerick	NDN Collective
Tamara	Freeman	EPA R7
Denise	Freeman	U.S. Dept. of Energy
Molly	Fritz	Booz Allen Hamilton
Jan Marie	Fritz	U. of Cincinnati/U. of Johannesburg/NEJAC
Kerry	Fugett	Daily Acts Organization
Kari	Fulton	Climate Justice Alliance
William H.	Funk	williamhfunk.com
Hannah	Gallagher	Edelman
Emily	Gallo	HNTB
Pratima	Gangopadhyay	Toyota Motor North America
Antonio	Garcia	EPA Region 5
Lisa	Garcia	Grist
Antonio	Garcia	EPA Region 5
Curt	Gardner	BASF Corporation
Lola	Gardner Moore	Private Citizen
DEMI	GARY	Oak Ridge Institute
Harrison	Garrett	FDOT
Johnathan	Garza	1324 Longworth House Office Building
Megan	Gavin	U.S. EPA
Laurie	Gelman	Department of Justice, Civil Rights Division
Panos	Georgopoulos	Rutgers University
Franelle	Gerard	Crucian Heritage and Nature Tourism, Inc.
Tina	Gerhardt	independent
Laurie	Gharis	TCEQ
Bob	Giannelli	U.S. EPA
Edward	Gibbs	Retired
James	Giedeman	Self
Ora	Giles	Transcription, Etc., LLC
Linda	Giles	Transcription, Etc. LLC
Lauren	Godshall	Tulane University

FIRST NAME	LAST NAME	ORGANIZATION
Leo	Goldsmith	USGCRP
Michael	Goldstein	The Goldstein Brownfields Foundation
Nick	Goldstein	ARTBA
Amelia	Gomez	State Water Resources Control Board
Victoria	Gonzalez	SCF
Sheryl	Good	EPA
Amelia	Gooding	IERG
Shannon	Goodman	Lifecycle Building Center
Sarah	Goodspeed	Climate Generation: A Will Steger Legacy
Margaret	Gordon	West Oakland Environmental Indications Project
Eric	Graber-Lopez	BlueWave Solar
Eve	Granatosky	Lewis-Burke Associates LLC
Stacey	Grant	N/A
Miranda	Green	The Guardian
Matthew	Greene	U.S. Fish and Wildlife Service
Celeste	Greene	University of Virginia
Patrick	Griffin	Deloitte Consulting
Tyneshia	Griffin	New Virginia Majority
Carrie	Griffith	EPA
Christina	Gruenhagen	Iowa Farm Bureau
Tim	Guinee	Climate Reality Project
Christina	Guthrie	US EPA
Anitra	Hadley	N/A
Lawrence	Hager	Northern Virginians for Peace and Justice
Erica	Hall	Florida Food Policy Council
Sue	Halpern	South End Neighborhood Revitalization zone
Christine	Haman	Consultant
Stina	Hamlin	State of Mind Media
Stephanie	Hammonds	WVDEP-DAQ
Rachel	Hanes	USB
Kuki	Hansen	Association of Public Health Laboratories
Robin	Happel	Yale Center for Environmental Law & Policy
Jewell	Harper	Eco Action Community Organization
Garry	Harris	Center for Sustainable Communities
Garry	Harris	Managing Director
Emily	Harris	FCCAG
Jill	Harrison	University of Colorado Boulder
Krystal	Harwick	HDR
Jennifer	Hass	DHS
Ryan	Hathaway	Department of the Interior
Amanda	Hauff	US EPA

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>ORGANIZATION</b>
Paul	Hausman	Self
Christy	Haven	HNTB
Dr. Monica	Hawkins	US Environmental Protection Agency
Jill	Heaps	Earthjustice
Jenny	Heeter	NREL
Kurt	Hellauer	HMMH
Erich	Hellmer	Institute of Sociology, Academia Sinica
Marilyn	Hemingway	Gullah Geechee Chamber of Commerce
Carey	Hengstenberg	Vermont Department of Environmental Conservation
Jenji	Henson	EcoRise
Courtney	Herbolsheimer	Environmental Protection Agency
Juliet	Herndon	NJ TRANSIT
Stephanie	Herron	EJHA
Rebecca	Hersher	National Public Radio
Rachel	Heydemann	Alameda County
Nalleli	Hidalgo	TEJAS
Kimberly	Higgins	Volpe Center
Jamie	Higgins	US Army Corps of Engineers
Andy	Hill	MountainTrue/Watauga Riverkeeper
John	Hocevar	Greenpeace USA
Matt	Holmes	Little Manila Rising
John	Holmes	Guidehouse
Dominic	Holt	Wisconsin Department of Natural Resources
Brian	Holtzclaw	US EPA
Emily	Horton	Washington State Department of Health
Emily	Horton	Washington State Department of Health
Marion	Hoyer	US EPA Office of Transportation and Air Quality
Renee	Hoyos	Virginia DEQ
Renee	Hoyos	VDEQ
Wayne	Hubbard	Urban American Outdoors
Bryan	Hubbell	USEPA/Office of Research & Development
María Gabriela	Huertas Díaz	San Juan Bay Estuary Program
Rebecca	Huff	EPA
Marjorie	Hughes	DOT
Joseph	Hughes	OSHA-DOL
Rebecca	Hull	Georgia Tech - SLS
Holmes	Hummel	Clean Energy Works
Brandon	Hunter	Center for Rural Enterprise & Environmental Justice; Columbia University
Lynne	Huskinson	PRBRC
Matt	Iwicki	The Boeing Company

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>ORGANIZATION</b>
Tom	Jacobs	Mid-America Regional Council
Robin	Jacobs	EPA
Isabel	Jamerson	WA Department of Ecology
Tyler	Jenkins	Senate EPW
Lisa	Jenkins	Morning Consult
Jasmine	Jennings	Earthjustice
Hannah	Jewess	USEPA
Yeou-Rong	Jih	Greenlink Analytics
Hannah	Johns	Youth4Nature
Bonita	Johnson	US EPA
Doris	Johnson	Deep EJ Program
Cheryl	Johnson	People for Community Recovery
Sabrina	Johnson	US EPA
Nancy	Johnson	None
Marian	Johnson-Thompson	University of the District of Columbia
Sharon	Jones	None
Elizabeth	Jones	Pittsylvania County NAACP Environmental Justice Committee
Cyndi	Jones	RAISE
Kim	Jones	EPA
Simone	Jones	Sidley Austin
Dominique	Joseph	EPA
Towana	Joseph	USEPA - Region 2
Belinda	Joyner	Concern Citizens of Northampton County
Emily	Joynt	North Dakota Department of Environmental Quality
Elizabeth	Kafka	Preserving Grayson
Sally	Kaiser	Big West Oil Refinery
Casey	Kalman	Union of Concerned Scientists
Jordan	Katz	USDOT Volpe Center
Glen	Kedzie	American Trucking Associations
Raymond	Kemble	N/A
Judith	Kendall	EPA
Erin	Kendle	MARAD
Maddie	Kennedy	National Sea Grant
Kameron	Kerger	USDS
Gwendolyn	Keyes Fleming	Van Ness Feldman, LLP
Rabi	Kieber	USEPA Region 2
Marva	King	EPA Retiree
Charlotte	King	United Nations RCE
John	Kinsman	Edison Electric Institute

FIRST NAME	LAST NAME	ORGANIZATION
William	Kinsman	Blue Star Strategies
David	Kluesner	U.S. EPA - Region 2
Mary	Knight	Private
Brianna	Knisley	App Voices
Sarah	Koeppel	DHS
Deidre	Kohlrus	Energy Workforce
Bill	Kornrich	CareNET, Conservation committee of Sierra Club
Colin	Korst	FTA Region 5
Renee	Kramer	NC DEQ
Katie	Kruse	EGLE
Colette	Kubichan	Seeking
Lindsay	Kuczera	Virginia Tech
Megan	Kung	Los Angeles Regional Water Quality Control Board
Yeana	Kwagh	EPA
Amy D	Kyle	N/A
Osprey	Lake	Women's Earth and Climate Action Network
Yukyan	Lam	NRDC
Kim	Lambert	U.S. Fish and Wildlife Service
Shahra	Lambert	Florida Department of Agriculture
Gena	Larson	WI DNR
Megan	Latshaw	Johns Hopkins
Diane	Lauricella	NAACP
Avery	Lavoie	ORISE
Todd	Lawrence	Urban Green Lab
Erma	Leaphart	Sierra Club Great Lakes Program
Maddie	Lee	Center for Climate & Energy Solutions - Arlington, VA
Tina	Lee	NOAA Office for Coastal Management
Michael	Lee	Seminole Electric Cooperative, Inc.
Charles	Lee	US Environmental Protection Agency
Matthew	Lee	U.S. EPA
Pam Tau	Lee	Retired
Julian	Leichty	OEHHA
Janelle	Lemen	NRECA
Dion	Lerman	Pennsylvania Integrated Pest Management Program/Penn State
Kevin	Letterly	Association of State Drinking Water Administrators
Natalie	Levine	National Parks Conservation Association
Amber	Levofsky	Permitting Council
Sheila	Lewis	USEPA/Office of Environmental Justice
Caroline	Lewis	The CLEO Institute
Sharon	Lewis	Connecticut Coalition for Environmental Justice

FIRST NAME	LAST NAME	ORGANIZATION
Jason	Lichtstein	Akerman LLP
Paige	Lieberman	EPA
Jane	Lien	USDS
Christopher	Lindsay	IAPMO
Anna	Lising	Washington State Governor's Office
Van Ness	LLP	Van Ness Feldman, LLP
Stacey	Lobatos	EPA
Michelle (Shell)	Lohmann	Oak Ridge Site Specific Advisory Board - Dept of Energy
Dillon	Long	EPD
David	Lonnberg	Shift7
Kathryn	Loster	U.S. DOT
Craig	Lott	VA DEQ
Christina	Lovingood	USEPA - OIG
Victoria	Ludwig	US EPA
Jayla	Lundstrom	ANTHC
Tai	Lung	US EPA
Michelle	Lusk	CKRC
Allyza	Lustig	USGCRP
Kowetha	Mack	Self
Charles	Maguire	EPA Region 6
Risa	Mandell	OSH
Win Win	Mar	Environmental Conservation Department, Ministry of Natural Resources and Environmental Conservation
Cristina	Marcillo	USEPA
Mariya	Marinova	CUNY
Larissa	Mark	VDOT
Moira	Marquis	Individual
Carolyn	Marsh	Save Whiting And Neighbors
Marilynn	Marsh-Robinson	EDF
Brett	Marston	Wiley Rein
Akilah	Martin	USACE
Karen	Martin	N/A
Carlos	Martín	Urban Institute
Ezekiel	Martin, PhD	MACOMA Environmental Technologies
Sofia	Martinez	Los Jardines Institute
Albert	Martos	Caterpillar Inc.
Brendan	Mascarenhas	American Chemistry Council
Nakul	Mate	Independent Consultant
Tokollo	Matsabu	Environmental Defense Fund
Kimi	Matsumoto	US EPA
Ahmina	Maxey	Michigan Environmental Justice Coalition

FIRST NAME	LAST NAME	ORGANIZATION
Zulene	Mayfield	Chester Residents Concerned for Quality Living
Betsy	McCabe	ICPJ
Robert	McCaslin	Grand River Ottawa Member of LRBOI
Nina	McCoy	Martin County Concerned Citizen
James	McDonald	U.S. EPA
Alicia	McGill	GA EPD
M. Patrick	McGuire	Edison Electric Institute
Caitlin	McHale	National Mining Association
Shannon	McNeeley	Pacific Institute
Fiona	McRaith	Bezos Earth Fund
Ameesha	Mehta-Sampath	US EPA Region 2
Diana	Mendes	HNTB Corporation
Jerilyn López	Mendoza	The Climate Center
Arianna	Menzelos	Recent Graduate/Columbia University
Cassandra	Meyer	Minnesota Pollution Control Agency
Kathy	Milenkovski	AEP
Kenyatta	Miles	Shell
Ruth	Miller	Native Movement
Igalious	Mills	Texas AgriForestry Small Farmers and Ranchers
Pierre Kent	Minault	Sierra Club
ML	Minter	Community
Amelia	Min-Venditti	WA State Department of Ecology
Katherine	Mlika	U.S. Digital Service
Paula	Mohan	UW-Madison
Carol	Monell	EPA
Chris	Moore	Eastman Chemical
Kristi	Moore	ERM
Camille	Moore	PDG
Olivia	Morgan	LSU
Nina	Morgan	GASP
Katie	Morgan	Chesapeake Bay Foundation
Louis	Morse	Chester Concerned for Quality Living
Elizabeth	Moses	World Resources Institute
Terrence	Mosley	DOE
Elica	Moss	Alabama A&M University
Eli	Motycka	None
Melissa	Muroff	Delaware County District Attorney's Office
Laura	Murphy	Ohio River Guardians
Ayako	Nagano	NEJAC
Olga	Naidenko	Environmental Working Group
Earthea	Nance	Texas Southern University

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>ORGANIZATION</b>
Jeannine	Natterman	CDPHE
Matthew	Naud	Resource Recycling Systems
Daria	Neal	U.S. Dept. of Justice
Kenya	Nicholas	USDA
Thomas	Nieland	UUFHC
Nicole	Noelliste	Sidley Austin LLP
Robin	Nolting	Heart of Illinois Sierra Club
Leanne	Nurse	US EPA
Angela	Oberg	Rutgers University
Lotanna	Obodozie	Center for American Progress (CAP)
Shawn	O'Brien	Troutman Pepper
Monique	Ogunsusi	EPA
Makeda	Okolo	NOAA
Melis	Okter	NNOAA OCM
Amity	Oliver	Big West Oil, LLC (North Salt Lake, UT)
Grace	Olscamp	The Healthy Environment Alliance of Utah
Allie	Omens	Metro Nashville Public Works
Desmond	Ondatje	Citizen
Danielle	O'Neil	US EPA
JUSTIN	ONWENU	Sierra Club
Jeremy	Orr	NRDC
Cintia	Ortiz	LULAC
Paul	Oruoch	Bayer Cropscience
Patricia	Padilla	Global OHSE Consulting
Jarryd	Page	ELI
Camille	Pannu	UC Irvine School of Law
Demetra	Panos	USFWS
Melissa	Papasavvas	USEPA
Jennifer	Park	EPA
Shivani	Patel	NJDOT
Regan	Patterson	Congressional Black Caucus Foundation
Allison	Patton	Health Effects Institute
Jane	Patton	Center for International Environmental Law
Ben	Pauli	Kettering University
Drue	Pearce	Holland & Hart LLP
Rebecca	Perrin	US EPA
Leonard	Peters	The County of Kauai Transportation Agency
Cynthia	Peurifoy	N/A
Millie	Piazza	Dept. of Ecology
Richard	Pinkham	Booz Allen Hamilton
Emily	Piontek	Appalachian Voices

FIRST NAME	LAST NAME	ORGANIZATION
Erika	Pirotte	Navajo Nation Department of Justice
Jonna	Polk	Environmental Protection Agency
Emily	Pontecorvo	Grist
Natalie	Popovich	Berkeley National Lab
Lisa	Porter	Appalachian Voices
Joe	Posey	First United Methodist Church
Leanne	Poussard	NOAA NCCOS
Jasmine	Prat	NOAA
Krystal	Pree Hepburn	Sustainable Workplace Alliance
Candice	Price	Urban American Outdoors
Araceli	Pruett	Clark County DES
Francesca	R.	StopEtO
Kesha	Ragin	Chevron - Regulatory and Legislative
Cyndhia	Ramatchandirane	Earthjustice
Reine	Rambert	Midwest Energy Efficiency Alliance
Sameer	Ranade	NYSERDA
Kelsey	Ranjbar	OEHHA
Elise	Rasmussen	WA state dept of health
Shantha	Ready Alonso	U.S. Dept of the Interior
Veda	Reed	EPA
Dawn	Reeves	Inisde EPA
Amani	Reid	PA IPL
Sean	Reilly	E&E News
Amber	Reimondo	Grand Canyon Trust
Lindsey	Reitinger	Booz Allen Hamilton
Emily	Rhodes	Just Transition Fund
Sarah	Rice	NCDEQ
Virginia	Richard	private citizen
Charissee	Ridgeway	CEQ
Jerry	Riggs	ENERCON
Russell	Riggs	NAR
Kathy	Robb	Blue Access LLC
Aimee	Roberson	American Bird Conservancy
LaKeshia	Robertson	EPA
Jennifer	Robins	DOJ
Donovan	Robinson	OMB
De'Marcus	Robinson	BehindTheSTEAHM
Juan Carlos	Rodriguez	Law360
John	Rogers	ToxStrategies Inc.
Patrick	Rogers	Private Citizen
Theresa	Romanosky	Association of American Railroads

FIRST NAME	LAST NAME	ORGANIZATION
Anna	Romanovsky	EPA
Anna-Marie	Romero	66061
Lynn	Roper	ADEM
Ian	Rosenblum	DHS S&T
Joi	Ross	APEX Direct Inc
Tamara	Rountree	Dept of Justice
Sherry	Rout	Habitat for Humanity of Greater Memphis
Nicole	Rucker	USGCRP
Sheila	Ruffin	22315
Galaxy	S20 Ultra 5G	US Army Garrison - Tobyhanna
Simone	Sagovac	Southwest Detroit Community Benefits Coalition
Eri	Saikawa	Emory University
Sandra	Saint-Surin	FHWA
Rian	Sallee	Department of Ecology
Alicia	Salvatore	Institute for Research on Equity and Community Health (iREACH), ChristianaCare
Georgette	Samaras	The University of Tennessee Me
Ibraheem	Samirah	Virginia House of Delegates
Leotis	Sanders	NJ TRANSIT
Benjamin	Sarver	US EPA
Sharon	Saucier	GMD/EPA
Charles	Scaife	Department of Energy
Austin	Scheetz	U.S. Global Change Research Program
Alison	Schlick	Zero Waste San Diego, Save the Albatross Coalition, California Resource and Recovery Association
Corey	Schoellkopf	New York Lawyers for the Public Interest
Rio	Schondelmeyer	Office of Management and Budget
Dean	Scott	Bloomberg BLAW
Neil	Seldman	Institute for Local Self-Reliance
Shayna	Sellars	US EPA
Caroline	Sgaglione	Booz Allen Hamilton
Monisha	Shah	NREL
Julie	Shannon	USEPA
Nayyirah	Shariff	Flint Rising
Karrie	Shell	US EPA
Desiree	Shelley	Mothers Out Front
Rebecca	Shelton	Appalachian Citizens' Law Center (ACLC)
Channing	Shepherd	US EPA
Tracy	Sheppard	US EPA
Donald	Sherman	WHO
Richard	Shingles	Sierra Club, Virginia Chapter; EJ Outreach Group Leader

FIRST NAME	LAST NAME	ORGANIZATION
Max	Shipman	Just Transition Fund
Gina	Shirey	Alaska Department of Environmental Conservation
Jacqueline	Shirley	RCAC
Gyami	Shrestha	U.S. Carbon Cycle Science Program
Charles	Shull	Shell Oil Company
Heather	Sibbison	Dentons US LLP
Bridgett	Simmons	National Housing Law Project
Lena	Simmons	Cumberland County SWCD
Matthew	Simon	N/A
Daniela	Simunovic	Better World Group
Emily	Singer	Berkshire Hathaway Energy
Katherine	Sinitiere	Louisiana Department of Transportation and Development
Pinar	Sinopoulos-Lloyd	Queer Nature
Marie	Skaf	Deloitte
Robert	Skoglund	Covestro LLC
William	Slade	Con Edison of NY
Bill	Slade	Consolidated Edison Co. of NY, Inc.
Andrew	Slocombe	OEHHA
Allison	Smith	Louisville Metro Government
Robert	Smith	PPPO
Megan	Smith	shift7
Sara	Smith	College of Menominee Nation
Terry	Smith	Deloitte
Andrew	Smith	Drexel University
John	Smith	EPA Region 7
Marilyn	Snell	Urban Renewable
Jennifer	Sokolove	Water Foundation
Gevon	Solomon	EPA
James	Southerland	Retired
Tawana	Spencer	City of Laurel Environmental Affairs Committee
Patricia A.	Spitzley	RACER Trust
Ramsey	Sprague	Mobile Environmental Justice Action Coalition
Karen	Sprayberry	SC DHEC
Duane	St.Amour	Croda Inc.
Gianna	St.Julien	Tulane Environmental Law Clinic
Beau	stander	Big West Oil LLC
Lucy	Stanfield	US EPA
Erin	Stanforth	Mecklenburg County
Joyce	Stanley	US Department of the Interior
Andrea	Stein	Roger Williams Park Zoo
Dimitris	Stavis	Colorado State University

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>ORGANIZATION</b>
Jordan	Stone	Association of American Railroads
Christine	Stoneman	DOJ
David	Storms	U.S. Department of HUD
Megan	Striegel	RISE
Gregory	Suber	US NRC
Katy	Super	EJHA
Katie	Surma	Inside Climate News
Steve	Surtees	CPWR
Elyse	Sutkus	US EPA
Robina	Suwol	California Safe Schools
Anastasia	Swearingen	American Chemistry Council
Aaron	Szabo	CGCN Group
Sandra	Talley	NRC
Tea	Tanaka	Self
Tea	Tanaka	Private citizen
Chandra	Taylor	SELC
Delores	Taylor	USDA/FAS
Larry	Taylor	Kentucky Department for Environmental Protection
Patricia	Taylor	Environment and Human Health, Inc. (EHHI)
Kurt	Temple	US EPA
Tami	Thomas-Burton	EPA
Savasia	Thompson	REACT (Rubbertown Emergency ACTION)
Eden	Thorkildsen	Department of Ecology
Joyce	Thurman	EPA
Joyce	Thurman	EPA
Jeanette	Timm	Bureau of Reclamation
Betty	Tisel	CMEJ - community members for environmental justice, Minneapolis
Mike	Tongour	TCH Group
Allen	Townsend	University of Virginia
Geoffrey	Toy	Emory University School of Law
Jenn	Tribble	TDEC
Michael	Troyer	U.S. EPA
Steve	Tryon	U.S. Department of the Interior
Theodora	Tsongas	Self
Kim	Tucker-Billingslea	GM
Uloma	Uche	Environmental Working Group
Monica	Unsel	Until Justice Data Partners
Carmen	ValDez	HEAL Utah
Amy	Vance	DHS Office for Civil Rights and Civil Liberties
Gloria	Vaughn	EPA

FIRST NAME	LAST NAME	ORGANIZATION
Esmeralda	Vaughn	HNTB Corporation
Lindsey	Veas	Booz Allen Hamilton
Rebeca	Villegas	National Wildlife Federation
Lisa	Voyce	HDR
Travis	Voyles	Senate EPW
Carla	Walker	City of Cincinnati
Claudette	Walker	GMD
Wendy	Wallace	Deloitte
Amelia Bland	Waller	Preserving Grayson
Margaret	Walls	Resources for the Future
Meghan	Walsh	USDA
Michael	Walton	Green   Spaces
Charlene	Wang	FHWA
Julianne	Warren	Fairbanks community
Michael	Warren	NJ Advance Media
Audrie	Washington	EPA Region 5
Brady	Watson	SACE
Jennifer	Webber	The Humane Society of Hobart
Maya	Weber	S&P Global Platts
Kimi	Wei	The Wei LLC
Larry	Welsh	Private citizen
Eric	Werwa	Department of the Interior
Chasity	White	Rise Saint James
Chad	Whiteman	U.S. Chamber of Commerce
Kristin	Whitman	Shell
Walker	Wieland	Cal EPA
Keisha	Williams	State of Michigan
Jane	Williams	California Communities Against Toxics
Drew	Williams-Clark	Center for Neighborhood Technology
Dana	Williamson	EPA
Holly	Wilson	EPA
Daphne	Wilson	EPA Region 4
Sam	Wilson	Washington Department of Ecology
Adriana	Windham	FHWA
Jahi	Wise	WHO
Claire	Woods	Greenfield Environmental Trust Group
D	Wu	NYS OAG - EPB
Jennifer	Wyatt	Chevron Canada Limited
Scott	Yager	NCBA
Maggie	Yancey	DOE
Carolyn	Yee	California Environmental Protection Agency, Department

FIRST NAME	LAST NAME	ORGANIZATION
		of Toxic Substances Control
Naomi	Yoder	Healthy Gulf
Hilary	Zarin	DOI
Yu	Zhuang	Wisconsin DNR

## APPENDIX B - SUBMITTED WRITTEN PUBLIC COMMENTS

I hope this email finds you well. Congratulations on your nomination to the White House Environmental Justice Advisory Council. Your leadership on environmental justice is longstanding, and President Biden and members of his administration are lucky to have someone with your experience and leadership as an advisor. I am writing to you in your new role as EJ Advisory Council member, on behalf of the Stop Formosa Plastics coalition. As you know, plastic production fuels the climate crisis, harming local communities with toxic air and water pollution. Residents of Cancer Alley, the corridor between Baton Rouge and New Orleans, face regular exposure and health concerns from the overburden of industrial pollution, particularly in working class, Black communities. The proposed Formosa Plastics petrochemical complex would be built in a predominantly Black district of St. James Parish, already being overrun by petrochemical development. If constructed, the Formosa complex would double toxic air emissions in the St. James community, and it would desecrate the graves of people who were enslaved on the plantations that used to operate there. As well, this petrochemical complex would destroy storm protecting wetlands, harm local fish populations and our seafood economy, and emit 13.6 million tons of greenhouse gases per year to accelerate the climate crisis. Members of the Stop Formosa Plastics coalition, including Sharon Lavigne, founder and director of faith and grassroots organization RISE St. James, would like to schedule a virtual meeting with the members of the newly formed Environmental Justice Interagency and Advisory Councils to discuss the proposed Formosa Plastics project. Robust legal opposition and grassroots power prompted the US Army Corps of Engineers to suspend its federal permit decision for the Formosa Plastics plant complex, pausing the plant's construction. Now, reevaluation of the federal permit is underway. The members of our growing coalition appreciate the opportunity to meet with you or another appropriate contact from the White House Environmental Justice Advisory Council about this proposed project, the threats it poses, and the need to revoke its federal permits. Please advise how to schedule a meeting. Most sincerely, Delia Ridge Creamer (she/her/hers), Oceans Campaigner | Center for Biological Diversity

---

Good afternoon –Please find attached written comments that my organization, the Center for Neighborhood Technology (CNT), would like to make to WHEJAC prior to the group's May 13 meeting. We will also submit a summary of these comments in the online comment form. Our comments pertain to Justice40, an initiative that we strongly support. If you have any questions or follow-ups, you can contact me directly. Thank you for the consideration and for your work on this important topic – Bob Dean, CEO, Center for Neighborhood Technology, Chicago IL 60602

---

I scanned my comments to WHEJAC last week discussing our environmental and health concerns in the South End of Stamford, Ct. as well as a letter dated March 2004 regarding a neighborhood park called Kosciuszko Park. The park was a landfill that is now used by hundreds of people daily. There is erosion at site with exposure of capping material. I sent it from library scanned from my email address. Thank you, Sue Halpern, Stamford Ct

---

Dear WHEJAC council members: Good afternoon! Thank you for the opportunity to share my input on how the federal government could address environmental injustices under the Justice40 initiative or other programs. My name is Emily Piontek, and I work in Central Appalachia as a grassroots organizer on a range of energy justice issues. I have attached a written comment that I hope you will consider as you make recommendations to the Biden Administration and to Congress. In short, I call attention to the environmental injustice of unaffordable energy bills throughout the Appalachian region. This problem results from the toxic combination of rural and urban poverty with high percentages of aging housing

stock, including pre-1970s manufactured homes and mobile units. Its severity has been exacerbated by the pandemic. I believe that energy services are a human right, and that their affordability must be addressed as we respond to the climate crisis itself. Take good care and thank you for your work. Emily Piontek (Blacksburg, Virginia)

---

**Full Name (First and Last):** Wayne Hubbard

**Name of Organization or Community:** Urban American Outdoors

**City and State:** Kansas City KS

**Type of Comment:** Written Comment Only

**Brief description about the concern:** Hello and thank you for this time. I am Wayne Hubbard, Co-Founder of Urban American Outdoors. We created the 1st diverse outdoor TV show in 1998 to connect all communities to nature. We also created Urban Kids Fish in 2015, a national program to get diverse families outdoors in safe spaces. Furthermore, we have worked with USDA Forest Service, USFWS and NPS on outreach, engagement, career opportunities and consulting. Black, brown and Native American children collectively comprise at least 26% of the US population but only 10% are involved in STEM fields. Only 78% of this collective group graduate from High School. What innovations are planned to: Incorporate more STEM--not just in elementary schools--but to expose children in community, nonprofit and religious based programs to expose them and their families to the endless opportunities in STEM which is the beginning of understanding of Environmental Justice and possible solutions. Also, what are your plans to get the conservation and environmental cores to participate in Environmental Justice projects in urban areas and communities.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

We have consulted and worked extensively to remove barriers and roadblocks in creating opportunities for urban communities, youth and young adults interested in entering the Environmental and Conservation fields. We would like to see the Council advise the administration on creating and funding youth corps year-round and summer environmental programs. Also create a real pipeline for graduates to be directly hired in the federal government and environmental partnerships. We would like them to work with organizations like Urban American Outdoors for over the past 20 years has been boots on the ground to create real connection with communities nationally that have been overlooked in these spaces.

---

**Full Name (First and Last):** Raymond Kemble

**Name of Organization or Community:** no

**City and State:** Montrose

**Type of Comment:** Present Comment at Meeting

**Brief description about the concern:** no

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

No

---

**Full Name (First and Last):** Deni Elliott

**Name of Organization or Community:** Greenbrier River Watershed Association

**City and State:** Lewisburg, WV

**Type of Comment:** Present Comment at Meeting

**Brief description about the concern:** abuse of eminent domain by FERC aggression against demonstrators and environmental damage to areas of low social/economic status (a full written comment will be sent via email)

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

Please ask President Biden to investigate the Federal Energy Regulatory Commission's abuse of eminent domain, to keep the treaties with our indigenous peoples, to listen to the whole population, and to uphold the common good.

---

**Full Name (First and Last):** Mary Jane Curry

**Name of Organization or Community:** Western North Carolina Climate Action Coalition; the Climate Reality Project

**City and State:** Waynesville, North Carolina

**Type of Comment:** Written Comment Only

**Brief description about the concern:** 1. Tribal and Indigenous issues: Indigenous tribes and nations are still being brutalized and arrested for peacefully protesting fossil fuel corporations' illegal assaults on their sacred lands, their water supply, the air they breathe, and their homes and communities. Even when these depredations are halted, tribal lands and land bordering them remain contaminated. 2. Private citizens having to do the EPA's job by lobbying, commenting, and otherwise fighting weakened rules governing industrial pollution such as that from the nearby Canton, NC, Evergreen Packaging. What they dump into the Pigeon River still warms it, damaging the ecosystem. Western North Carolina depends on tourism and our citizens deserve clean, healthful water.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?** 1. Stop all fossil fuel drilling, gas extraction, tar sands, pipelines, encampments, and any other construction or action by fossil-related corporations or businesses associated with them. Finally, honor the treaties the US government has broken repeatedly. Get serious about investigating and prosecuting crimes against Indigenous women and girls. Indigenous people believe, with plenty of reason, that men working for fossil fuel companies are responsible for at least some of these crimes. 2. Enact strict, swift laws to stop industries from poisoning wildlife and the people who depend on them for their livelihoods. If a paper mill cannot be made environmentally safe, it should be replaced by a clean industry.

---

**Full Name (First and Last):** Tim Guinee

**Name of Organization or Community:** Climate Reality Project

**City and State:** NY

**Type of Comment:** Present Comment at Meeting

**Brief description about the concern:** Update on the Byhalia Pipeline in Memphis, with an ask that WHEJAC advise the White House to rescind the use of Nationwide Permit 12 for Byhalia because it fully ignored the environmental justice impacts and the possible threat to the city's water.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

First, I again want to express my gratitude to the Council for the extraordinary work you are doing. My name is Tim Guinee. I am a member of the Climate Reality Project. I return to you again this week to give you an update on the Byhalia Pipeline in Memphis Tennessee and the need for federal action to stop the environmental injustice occurring there. There is an enormous regulatory gap which is endangering the people of Southwest Memphis and which I believe the members of this committee could help alleviate. Last week the Memphis City Council met to discuss an ordinance to protect its water supply. A representative of Plains All American (one of the companies with Valero) behind the pipeline threatened litigation if the City moved forward and stated that federal action supersedes local action. The city, in my opinion fearing the financial resources the oil company might bring to bear in legal proceedings, postponed any action to protect their citizens until July. But there is a problem with the federal permitting of this pipeline. The fast-tracked application of Nationwide Permit 12 ignored both the threat to the city's aquifer, which a million people drink from, and the fact that the pipeline is being shunted through a lower-wealth, Black community which already carries the burden of 17 toxic-release inventory facilities and cancer risks 4X the national average. If you want proof that this area has long been a sacrifice-zone, you need look no further than the EPA's own 2017 "snapshot" which showed that 2/5's of all National Priority List Superfund sites in the entire state of Tennessee are in Shelby County. ( [https://19january2017snapshot.epa.gov/tn/list-superfund-sites-tennessee .html](https://19january2017snapshot.epa.gov/tn/list-superfund-sites-tennessee.html) ) I recognize this data is a couple years old, but it is the most recent I have been able to find. But it makes clear two things: 1) The historic and disproportionate burden this area has been saddled with. 2)The fact that the federal government has known about the situation. You have an opportunity now to stem the tide of

injustice. Please advise the White House to rescind the permit advanced by the Army Corps of Engineers under Nationwide Permit 12 on the basis that it wholly ignores the issues of environmental justice and the possible endangerment of the people's water supply in Memphis. The use of the permit should also be re-evaluated for other pipeline projects to ensure that full deliberation has been ensured to protect the people and environment of the United States. Thank you for your service.

---

**Full Name (First and Last):** Chya Aisha

**Name of Organization or Community:** Bronzeville

**City and State:** Chicago, IL

**Type of Comment:** Written Comment Only

**Brief description about the concern:** Language is powerful. Let's discuss how best to engage and communicate with and about communities who have been and continue to be oppressed.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

Shift deficit language and framing of issues (i.e. disadvantaged, vulnerable, sensitive, frontline, redline, marginalized, minority, etc.). This removes the onus on the community and to the Federal Government and Private Sector. I also recommend that we move away from "justice" and move to freedom. Justice as a term silences the oppressor/offender. We need a communication style that isn't punitive and not problem-based to transform and evolve.

---

**Full Name (First and Last):** Candice Stevenson

**Name of Organization or Community:** Preserving Grayson

**City and State:** Elk Creek, VA

**Type of Comment:** Written Comment Only

**Brief description about the concern:** I am representing the grass roots organization, Preserving Grayson, here in the Blue Ridge Mountains of Southwest Virginia. The town that is our county seat of government has fewer than 1,000 residents, and our county seal from 1793 is "protectors of nature." Our beautiful countryside is being engulfed by one of the most toxic forms of agribusiness — the Christmas tree industry. Corporations are buying up thousands of acres of our natural woodland in patches scattered throughout communities & then clear cutting and destroying the natural habitat and creating toxic and unsustainable waste fields. Thousands of gallons of chemicals are aerial sprayed over the span of 7 years to produce full grown Christmas Trees. The aerial chemical spraying knows no bounds, spraying near homes, wells, and waterways. They operate with complete impunity, flouting the few laws that are in place, never paying even the tiny fines that have taken citizens great lengths to prove the infractions. The cancer rates of Grayson County are the highest in all 95 counties of Virginia, according to the latest data and rising. We have reports of damaged eco systems everywhere, healthy beehives have died shortly after spraying, we're hearing reports of rabbits filled with tumors, finding dead turtles, birds and small mammals. Our creeks feed into one of America's nationally protected Heritage Rivers, the New River. After these Christmas trees are harvested, the land is useless for generations. Citizens have been trying to get local and area officials to address our concerns, but nobody is taking charge of making these changes. The migrants who work these strenuous and dangerous jobs face desperate working and living conditions. Overcrowded conditions, and lack of health care especially during the pandemic, are main concerns. Many have gotten sick, & are living in trailer camps, even the children have reported no beds or blankets in the middle of winter. Migrant workers have no bathroom facilities and are working with chemicals unprotected. Our farming laws were developed in the 1930's, and farming technology and chemicals are entirely different now. Christmas trees are considered agricultural instead of forestry in Virginia. The health of our community should raise a flag somewhere that these actions need to stop until we can further investigate the spike of cancer in our area. No data does not equal, no problem. The biggest concern among talking about this in our community is retaliation from the industry. We need these companies held accountable for the damage they have done to our community, and to no longer be able to self-regulate and threaten the community. Please view our

website where we have a platform for the community and for people to share their experiences along with a 1.5 minute video documentary.

<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.preservegrayson.com%2F&mp;data=04%7C01%7CNejac%40epa.gov%7C0259cf9c7c5e43326c5108d9165a97a6%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637565401346441070%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ikl1haWwiLCJXVCi6Mn0%3D%7C3000&data=sFnROLlgzxt51ywB8hDWbEz620IQI87ateLt%2BZpjN14%3D&reserved=0>

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

We are asking for a moratorium on aerial spraying, we want a health & environmental study, and are asking for oversight to hold this industry liable for enforcing laws and ensuring they are adequate enough to protect us. We want Christmas trees to be regulated as forestry instead of agriculture, and we want Halloween pumpkins, to be disqualified from agricultural labeling as they are not produced for food. These products need to be labeled for consumers to be aware of the toxins as many people get sick ("Christmas Tree flu") from bringing these products into their homes. We want water testing to be a requirement & for these businesses to have financial responsibility for water & soil contamination. Revoke the legal access to exploiting migrant workers by rejecting their H2A Agricultural Clearance order granted by the United States department of labor. The efforts for Economic Justice should include those of us marginalized by living in underserved rural areas, and that a new balance is needed between corporate agriculture and human rights. We need pesticide exposure data, we need the government to partner with existing technological systems for this purpose rather than creating its own department, as this is an emergency that cannot wait.

---

**Full Name (First and Last):** Paul Vetter

**Name of Organization or Community:** Coalition for American Electronics Recycling

**City and State:** Washington, DC

**Type of Comment:** Written Comment Only

**Brief description about the concern:** E-Waste Recycling Leaders Call on Biden Administration to Ratify Basel Convention Treaty ratification key to comprehensive strategy for circular economy, responsible recycling The Coalition for American Electronics Recycling (CAER), the voice of the emerging e-waste recycling industry, today called on the Biden Administration to ratify the Basel Convention to ensure electronic scrap and other wastes are responsibly reused or recycled. CAER members are committed to processing e-waste to high standards for protecting the environment and workers. Yet despite our efforts, e-waste exports from American homes and businesses continue to be exported to developing countries where these toxic materials are processed in primitive conditions that lack safeguards to support sustainability and safety. Because the U.S. has not ratified, exports of hazardous e-waste, plastics and other waste become criminal trafficking once they are on their way to developing countries that have signed onto the Convention. The U.S. is the only developed nation that has not ratified the Convention. Only eight United Nations countries have not ratified: East Timor, Granada, Haiti, San Marino, South Sudan, Fiji, Solomon Islands and the U.S. By ratifying the Basel Convention, the U.S. will: Enact a key part of a comprehensive set of policies needed to drive the circular economy to achieve net-zero emissions, a key goal for the Biden Administration. By supporting responsible domestic reuse and recycling, the Basel Convention will reduce the need for resource-intensive virgin materials and thus reduce emissions. Promote environmental justice in developing countries. Ensure U.S. e-waste is responsibly recycled in the U.S. with safeguards for the environment and workers while creating up to 42,000 jobs. Have a seat at the table where the global movement of post-consumer resources are discussed and governing regulations and standards are agreed upon Promote growth of U.S. recycling operations because it will allow the import of e-waste into the U.S. for responsible recycling, which will also ensure the scrap materials are processed at higher environmental and worker safety standards than are used in developing countries. Together with passage of the Secure E-waste Export and Recycling Act

(SEERA), ratification of the Basel Convention will ensure the U.S. has the policy foundation needed to ensure we join with other developed countries to ensure hazardous wastes are responsibly managed. SEERA and Basel ratification will also increase the amount of domestically produced waste that will be responsibly recycled in the U.S., promoting economic growth and job creation. About CAER CAER members believe electronics recycling should be performed securely and sustainably to protect the environment and national security while strengthening the American economy. CAER includes more than 130 companies and supporting members operating more than 300 facilities in 37 states as well as Puerto Rico and the District of Columbia.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

We urge the Biden Administration to ratify the Basel Convention for the reasons outlined above.

---

**Full Name (First and Last):** Andrea Vidaurre

**Name of Organization or Community:** Senior Policy Analyst

**City and State:** Rancho Cucamonga

**Type of Comment:** Written Comment Only

**Brief description about the concern:** The People's Collective for Environmental Justice would like to report that our collective and allied environmental justice organizations are coming off a local win on a warehouse indirect source rule that will reduce warehouse pollution and truck traffic here in the Southern California region. We recognize this is one regional win and we know much more needs to be done across our region and the country to address the high levels of air pollution and subsequent health issues that are pervasive. Members of our collective, along with Prof. Dan Klooster and 277 students at the University of Redlands authored and published a report last month on an analytical view of the logistics industry's impacts on environmental justice communities across Southern California, titled: WAREHOUSES, POLLUTION, AND SOCIAL DISPARITIES. Some key findings from the data include: There are more than 3,000 large warehouses (over 100,000 sq ft) in southern California, and they are concentrated in areas that rank in the highest percentile for toxic emissions in the state (worse than 86% of the state's census tracts). The populations living within half a mile of a warehouse are 85% people of color (compared with California, which is 64% people of color). There are 640 schools in the region that are located within a half-mile of a warehouse. More than 450 warehouses are located in the top 10% worst census tracts for traffic-related pollution. The majority of warehouses are located in areas that do the least amount of online shopping in southern California overall. And the communities dominated by Amazon warehouses have the lowest rates of Amazon sales per household. The report can be found here:

[https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fearthjustice.org%2Fsites%2Fdefault%2Ffiles%2Ffiles%2Fwarehouse\\_research\\_report\\_4.15.2021.pdf&data=04%7C01%7CNejac%40e pa.gov%7Ce7a708a490a540a0572a08d91728e49c%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637566287442861560%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLjBTi6I6k1haWwLjCjXVCI6Mn0%3D%7C3000&data=9GBfv3aFdCV8e4cwVIOh%2FGyzWzYXkAPJnW1TxCPCHK4%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fearthjustice.org%2Fsites%2Fdefault%2Ffiles%2Ffiles%2Fwarehouse_research_report_4.15.2021.pdf&data=04%7C01%7CNejac%40e pa.gov%7Ce7a708a490a540a0572a08d91728e49c%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637566287442861560%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLjBTi6I6k1haWwLjCjXVCI6Mn0%3D%7C3000&data=9GBfv3aFdCV8e4cwVIOh%2FGyzWzYXkAPJnW1TxCPCHK4%3D&reserved=0) Locally, we also need federal action on a sustainable goods movement and a sustainable plan with meaningful engagement.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

We hope WEJAC can prioritize the issue of goods movement and their impacts on BIPOC communities. We need to start every rule making possible that electrifies our system of moving goods, addresses the rampant labor violations in the industry and stops the dangerous land use associated with this industry. WHEJAC can make recommendations and designate funding for groups like ours to support solutions that will reduce harmful emissions and protect public health. Please follow up with our collective with our Senior Policy Analyst Andrea Vidaurre.

---

Al Hendricks asked that I forward to you his response to the EPA's request for public comment in regard to the EPA's Passaic River Cleanup Plan. As noted in his letter, with this proposed cleanup plan, the EPA

has disregarded its own Environmental Justice mandates and selection criteria by which cleanup plans are prioritized per CERCLA. Further, it shows a lack of innovation, as the EPA proceeds along the path of toxic waste management in virtually the same manner as has been done for decades. This Plan shows nearly a total disregard for innovation and acceptance of alternatives that are available right now, that are PERMANENT SOLUTIONS, cost effective, and conform to the EPA's Environmental Justice mandates and CERCLA cleanup plan selection criteria. While the Administration "talks" about their push for Environmental Justice to end Environmental Racism, the EPA's proposed Passaic River Clean Plan does none of that. Regards, Bill Cutler, Volcano Partners, LLC

---

**Full Name (First and Last):** Ashby Rice

**Name of Organization or Community:** Self

**City and State:** West Chester, PA

**Type of Comment:** Written Comment Only

**Brief description about the concern:** Stop all the divisive rhetoric about various form of supposed "injustice". We're not a country of victims who need government to coddle and protect us from all those "evil people and corporations" who've been inflicting all manner of injustice on "disadvantaged groups" for decades. Actions like forming the WHEJAC serve only to validate victimhood and advance self-serving political interests.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

Dissolve and put a stop to this blatant political pandering. We don't have any broad systemic injustice in this country...only the perception of same created and promoted by activists and politicians determined to replace the "equal opportunity" philosophy that made our country great with an "equal outcomes" agenda that will destroy it from within.

---

**Full Name (First and Last):** Anitra Hadley

**Name of Organization or Community:** Mount Vernon

**City and State:** NY

**Type of Comment:** Written Comment Only

**Brief description about the concern:** In the City of Mount Vernon, NY many residents are dealing with the unthinkable - raw sewage backing up into their homes. This issue, which is particularly pronounced in our lower income neighborhoods, has caused years of angst, emotional trauma, and added expense for some of our most vulnerable community members. Mount Vernon is a majority, Black city in Westchester County - one of the wealthiest counties in the United States of America. Our clay sewer system is more than 100 years old and in desperate need of replacement. The City has estimated the cost of replacement to be nearly 100M dollars. In addition to the devastating toll this issue is taking on residents in our City, it is also taking a toll on our waterways. Though steps have been taken in the past year to mitigate the environmental damage caused by our crumbling sewer system, the City remains a defendant in a federal lawsuit lodged by the EPA and joined by the NYS Department of Environmental Conservation. In my view, the punitive nature of this relationship between the EPA, et. al., and the City of Mount Vernon is antithetical to promoting a community involved approach to the resolution of environmental justice issues and addressing the unequally burdensome impact these issues have in Black, brown and poorer communities. Predominantly Black cities like Mount Vernon, NY have been subject to years of disinvestment, devaluation, and, in some cases, deliberate destruction. To right these past wrongs, we need collaborative and supportive partnerships with the federal government that take into account our country's collective history and operate intentionally to provide much needed relief.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I**

respectfully request that the WHEJAC advise the White House Council on Environmental Quality to: (1) recommend a less punitive approach to address environmental concerns in the City of Mount Vernon, NY. and (2) recommend that the federal government provide the necessary funding, resources, and technical expertise to allow the City to replace the decrepit sewer system and, thus rectify the

environmental damages to our waterways, as well as, the detrimental effects this issue is having on the mental, physical and economic well-being of our community members who are living with raw sewage backups in their homes.

---

**Full Name (First and Last):** Leslie Allicks

**Name of Organization or Community:** The City of Mount Vernon, New York

**City and State:** Mount Vernon, NY

**Type of Comment:** Written Comment Only

**Brief description about the concern:** The city of Mount Vernon, NY is facing a major infrastructure issue related to our aged and crumbling sewer system. This issue not only has negative environmental impacts on our waterways, but it also has a human toll as many residents are dealing with raw sewage backups in their homes. The physical and emotional toll of this issue is unimaginable for anyone not directly impacted and devastating for those who are. Sewage and wastewater infrastructure is collapsing all over town. The city of Mount Vernon, NY is an extreme example of ailing wastewater networks across the country crumbling faster than cities can afford to maintain them – and communities of color may bear an outsized share of the burden.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

We are requesting that the WHEJAC/the federal government work in partnership with our community to resolve this issue for the betterment of the environment and those directly impacted by sewage backups.

---

**Full Name (First and Last):** Michael Justino

**Name of Organization or Community:** Fleetwood Neighborhood Association

**City and State:** Mount Vernon, NY

**Type of Comment:** Written Comment Only

**Brief description about the concern:** The sanitary sewer system is in very poor condition. There are numerous and often backups into people's homes. The sanitary system is also leaking into the storm sewer system, polluting our streams and rivers.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

Our city needs federal money to repair these sewer issues. Mount Vernon is a majority minority community with a high level of poverty. The property owners cannot afford to fund these needed repairs.

---

**Full Name (First and Last):** Delia Ridge Creamer

**Name of Organization or Community:** on behalf of the Stop Formosa Plastics coalition

**City and State:** San Francisco, California

**Type of Comment:** Written Comment Only

**Brief description about the concern:** The proposed Formosa Plastics petrochemical complex would be built in a predominantly Black district of St. James Parish, already being overrun by petrochemical development. If constructed, the Formosa complex would double toxic air emissions in the St. James community and desecrate the graves of people who were enslaved on the plantations that used to operate there. As well, this petrochemical complex would destroy storm protecting wetlands, harm local fish populations and our seafood economy, and emit 13.6 million tons of greenhouse gases per year to accelerate the climate crisis, of which we are already at the forefront.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

The members of the Stop Formosa Plastics coalition are requesting the opportunity to meet with members of the White House Environmental Justice Advisory Council about the proposed Formosa Plastics petrochemical complex, the threats it poses, and the need to revoke its federal permit. The WHEJAC can advise the CEQ to tell President Biden to make stopping the project a top environmental justice priority of his administration.

---

Dear White House Environmental Justice Advisory Council, Pipelines, and the infrastructure supporting

pipelines like compressor stations, are often deliberately sited in places populated largely by Black and Brown, and Indigenous peoples, and the rural, poor, polluting their water and air, desecrating sacred lands, and destroying family farms, along with adjacent old-growth forests, and fragile ecosystems. One of the main reasons for targeting those areas : the belief held by many in the fossil fuel industry that the people living in those communities haven't the money, or the "political clout," to successfully fend off the environmental destruction wrought by large Fossil Fuel Companies. That is why the Mountain Valley Pipeline, Lines 3 and 5, Byhalia, et. alia, should be stopped before they can cause further damage, just as Keystone was stopped on day-one of this new Presidency. Thanking you, for your time, Sharon Wilson, Virginia

---

**Full Name (First and Last):** Eri Saikawa

**Name of Organization or Community:** Emory University Department of Environmental Sciences

**City and State:** Atlanta, Georgia

**Type of Comment:** Written Comment Only

**Brief description about the concern:** Thank you for the opportunity to provide comments on WHEJAC's May 13, 2021 virtual public meeting. We – Dr. Eri Saikawa, Associate Professor of Environmental Sciences at Emory University; Rosario Hernandez, Director of Historic Westside Gardens; and Dr. Yomi Noibi, Executive Director of Environmental Community Action Inc. ECO-Action – advocate for environmental justice in Georgia communities including Metro Atlanta. We write to you to raise concerns regarding the disproportionate exposure of communities of color and low income-earning communities (“environmental justice communities” or “EJ communities”) to lead (Pb) through multiple pathways, including soil, air, paint, drinking water, and food. Our full comment has been submitted for the record via whejac@epa.gov.

**What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?**

We urge WHEJAC to advise the Chair of the Council on Environmental Quality and the agencies comprising the Interagency Council on Environmental Justice that (1) all federal agencies responsible for regulating lead exposure in soil, air, paint, drinking water, and other media should seek to remedy the disproportionate and cumulative impact of lead exposure on EJ communities, (2) agencies should strengthen lead standards accordingly, and (3) agencies should equitably enforce environmental laws regarding lead.

---

We request CEQ to organize a longer meeting with us that includes EPA, USDA, DOI and possibly others to align around the importance of our engagement moving forward and discuss specific opportunities for that engagement on matters pertaining to forests, forestry, renewable energy and green jobs for rural communities. We also ask that CEQ provide us with points of contact at EPA, USDA and DOI that can work with us moving forward on these issues.

Intact, biodiverse forests are critical to solving the climate crisis, protecting communities from the worst impacts of climate change such as flooding and supporting healthy communities and thriving rural economies. The forests of the Southern US are our nation's most diverse, but least protected.

The South is the world's largest wood producing region with a rate of forest destruction from logging estimated to be four times that of South American rainforests. In addition to widespread forest destruction, wood processing mills are major sources of pollution. These impacts are concentrated in the Coastal Plain region of the South, with disproportionate impacts to low income and communities of color, including specifically across the rural Black Belt.

In the last several years these rural communities have come under increased assault by the rapid growth of the wood pellet industry. Europe is subsidizing the conversion of coal plants to burn wood pellets. They claim it is green and renewable, ignoring scientific evidence that burning wood pellets for electricity is dirtier than coal and gas and will make climate change worse not better. Without enough wood in the EU to supply its own needs, the forests of the Southern US have become the global target

for this industry. The South is currently exporting more wood pellets to Europe than any other country in the world. 22 wood pellet mills have already been built and a dozen more are planned, adding to the forest destruction and pollution in communities already overburdened with both. Scientific and community concerns about the climate, health AND economic impacts are being ignored at every level of government.

We understand that big greens, national organizations, and Southern forest landowners are actively being engaged by this Administration on these issues. The voices of communities impacted in the South are absent. We want to help the Administration close that gap and live up to its commitment of making sure that impacts to environmental justice communities are addressed. Below is a list of topics we want to discuss:

1- Permitting and Health Impacts: The permitting process for wood pellet mills is ineffective in protecting community health or addressing cumulative, disproportionate impacts on EJ communities. Wood pellet mills are permitted under the minor source category though there is a well-documented pattern of mills violating air permit limits. Government agencies at the state level are failing to address the cumulative impacts of air pollution in Environmental Justice Communities. Public opposition is being ignored. What oversight role does EPA have and why is USDA promoting biomass without any acknowledgement of these disproportionate impacts?

2- Climate Change Impacts: Biomass is not a climate solution. Burning wood pellets to generate electricity releases more CO<sub>2</sub> than coal. Governments around the world erroneously count biomass as “carbon neutral” despite scientific evidence to the contrary. Biomass will make climate change worse, not better. Carbon emissions from industrial scale logging are not being transparently reported. This perpetuates the false notion that logging, and wood products are climate solutions. Where is EPA on this issue and why is USDA promoting biomass as a climate solution? How can the EPA ensure that these emissions are adequately and transparently reported? What can the Administration do to address these issues at a global level?

3- Forestry Impacts: Widespread and unregulated clearcutting forests, including wetland forests, is tearing apart our communities’ natural flood control system at a time when flooding linked to climate change is getting worse. Flooding is not only displacing people but causes the contamination of drinking water and mold. Subsidized tree planting perpetuates the establishment of monocultures vs restoring native ecosystems. What can be done at an administrative level to restrict the exemption of forestry from the Clean Water Act and protect wetland forests in the Coastal Plain? What can be done to ensure that subsidies for replanting are being used to restore ecosystems vs establish plantations for commercial production?

4- Economic Development and Just Transition: Agencies at the state and local levels are wrongly characterizing the wood pellet/wood products industry as providing green jobs/renewable energy jobs. This industry is restricting other types of economic development, such as outdoor recreation, that could be creating more jobs and more tax revenue for rural communities without the ecological destruction and air pollution. How can resources available for “build back better” and the Administration’s America the Beautiful plan be used to ensure healthy jobs vs jobs that perpetuate pollution and ecological destruction and how can rural communities access these funds? Why does the President’s America the Beautiful Plan state that private landowners are helping protect forests and create thriving healthy rural economies, when that is not our experience?

5- Land Inequity: Land Ownership patterns across the South perpetuate and reinforce inequity. There is not an equitable distribution of public lands in the Southern Coastal Plan/Black Belt and a long history of discriminatory practices and policies have significantly restricted Native American and Black ownership of private land throughout the region. This has operated to restrict these communities’ access to nature and associated health and economic opportunities. Major investments in strategic land acquisition will be necessary to address these inequities and advance a just transition in the forest economy. How will

the Administration's America the Beautiful Plan address this issue and how can we engage in its development and implementation?

Sincerely, Erniko Brown

---

Dear White House Environmental Justice Advisory Council,

Attached are comments from Western Environmental Law Center (WELC) and National Parks Conservation Association (NPCA), in PDF and Word form. Natalie Levine from NPCA has submitted these same comments via email as well. We greatly appreciate all of your work, your Recommendations, and the opportunity to submit comments.

Thank you, Allyson (Ally) Beasley (She/Her/Ella), MPH, JD, Staff Attorney, Western Environmental Law Center

---

Dear WHEJAC,

On behalf of the St. Croix Environmental Association, we humbly submit our public comment for your consideration. I apologize for any inconveniences for this email submission but the online portal for submitting comments was taken down. Please consider our written submission, if it is indeed late. The communicated deadline of May 27th for submitting a written public comment was only voiced verbally during the meeting, rather than being posted on the website which is usual practice by government entities. Also, the emails did not contain the deadline for submission either.

Can you confirm the receipt of this comment, and if they will be accepted? We would be so grateful.

Again, SEA very much appreciates WHEJAC's careful thoughts and considerations for our situation, and their preliminary recommendations to help our cause thus far. We welcomed the opportunity to submit written comments and to testify to tell our story to WHEJAC. SEA is looking forward to reading WHEJAC's final report and engaging with them in the future on environmental justice initiatives.

Thank you for your time and consideration. We look forward to hearing from you soon. Best Regards, Heather, Board Member, St. Croix Environmental Association

---

Please help us in any way possible to repair and replace our sewers in our city. -- Mary Kingsley, J.Philip Real Estate #49FA1074963, Pelham, NY 10803

---

We need outside help, this has been a problem for many years and the current, past and no doubt future leadership will not be capable of handling this problem. We need help from professionals with no personal gain at stake. Leadership in Mount Vernon is purely lacking. Concerned resident, William D. McLeod

---

I have been a resident of Mount Vernon for six years and love the area. But I am very concerned about the failing sewage and wastewater infrastructure. It seems deeply unfair that the only majority-black city in Westchester suffers from these systemic inequities and hope the administration does something to address it. Sincerely, Nadya Labi

---

Mount Vernon's sewer systems are crumbling and threatening public health. Families have even had sewage back up right into their homes. Because of the age of our system this situation is getting out of control. When the most basic of human services is failing in a community it demoralizes its citizens and cynicism sets in. Unfortunately, due to a variety of complex reasons we are now desperate for assistance and are appealing to you as an intervention is needed. Please consider that we need this foundational support to begin to turn the management of our city around. There are so many engaged, capable and committed citizens who are now coming to the table and getting involved to plan for the city's future. People who are all trying to do the right things. People who are sparking hope in others. But we need to know that there is enough foundation to build a future on. Thank you for your consideration. Jennifer Purdon

---

Please see my comment for the White House Environmental Justice Advisory Council

The sewage issue of Mount Vernon, NY here in Westchester County, severely impacted our home to the point of us begin displaced for 4 months from October 2020 to February 2021 and for 3 month in

November 2017 to February 2018, We are tax paying Mount Vernon homeowners and human beings and the trauma over having to pump and dump our own waste from our basement has taken an emotional toll that is indescribable for my Senior aged mother and our tenant and no human should have to live like this year after year, when there is a fix that can be implemented.

Please see our full story here: <https://www.theguardian.com/us-news/2021/may/06/sewage-crisis-hits-majority-black-town-new-york-mount-vernon>

We need the funds and resources necessary to replace our dilapidated sewer system and help to bring attention to the need for federal resources. We need the federal government to work in partnership with our community to resolve this issue for the betterment of the environment and those of us directly impacted by sewage backups. Please let me know if you need any further information in order to get some assistance to Mount Vernon, we are in dire need. Eileen Lambert, Mount Vernon Homeowner

---



## VOLCANO PARTNERS LLC

150 Spartan Drive, Suite 100, Maitland, FL 32751

May 13<sup>th</sup>, 2021

Diane Salkie, Remedial Project Manager  
U.S. Environmental Protection Agency  
290 Broadway, 18th Floor,  
New York, NY 10007-1866

Email: [salkie.diane@epa.gov](mailto:salkie.diane@epa.gov)

### Passaic River Cleanup Plan: A Formula for Failure

Ms. Salkie:

We are writing you in response to the proposed cleanup plan for the Passaic River. As you know, since 2007, there have been numerous plans proposed for the cleanup of the Passaic River, with little to no action of actual cleanup. And now, rather than deal with the real problem, which is contaminants that impact the prolonged health and economic / social vitality of surrounding communities, a plan is proposed to bury harmful pollutants. Burying contaminants means those contaminants remain a health risk for current and future generations. There is no escaping the reality that decisions to build containment storage facilities are toxic "time-bombs". They wear-out and fail. The EPA's files are full of catastrophic failures in the manner of the Kingston and Dan River pond failures, and the flooding of the San Jacinto River Waste Pits in Houston due to Hurricane Harvey, to name only a few. Even more recently, in Florida, the toxic wastewater reservoir nearly collapsed and narrowly caused another "catastrophic event" in Tampa Bay.

The idea that burying contaminated materials/waste, hoping there is not a health crisis, is irresponsible. Anything buried, eventually becomes un-buried. Mitigating health risks today for future health risks tomorrow would ordinarily seem unwise, unless it impacts the parts of our society that are the least able to fight back. For example, the contaminants released upon the community of Kingston, TN, due to a spill, were shipped to the Arrowhead landfill near Uniontown, Alabama, a predominately African-American community. This community, like many other minority communities, face the possibility of health risks due to a contaminated waste storage facility failure, often impacting the groundwater or presenting other health challenges.

And now the EPA wants to bury contaminants again, either in the Passaic River or ship them off-site. This plan is in disregard to the EPA's own Environmental Justice mandates, the April 30<sup>th</sup> Memorandum on Strengthening Enforcement in Communities with Environmental Justice Concerns<sup>(1)</sup> and the manner by which cleanup plans are selected, established under the EPA's CERCLA regulations, Clean Up Standards (Sec. 121):

*"Remedial actions which treatment which permanently and significantly reduces the volume, toxicity, or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment would be the least favored alternative remedial action where practical treatment technologies are available."*

- (1) Increase opportunities for community engagement in the development of cleanup and reuse agreements to ensure community concerns are addressed in a meaningful manner.

[www.cementlock.com](http://www.cementlock.com)

1

The storage of contaminants within or near a community, labels that community as not-worthy of the protections granted other, perhaps wealthier communities. The EPA's decision to consistently ignore its own mandates tells America's minority and impoverished communities that America values you less. Even the EPA concluded in Uniontown, Alabama that after 4 million cubic yards of toxic waste from Tennessee was dumped in their backyard, there was "insufficient evidence" that the resident's Civil Rights were violated.

The Passaic River has been a contaminated waste dump for decades. Plans for a clean-up date back to 2007. And today, the best cleanup solution the EPA can come up with is violating its own mandates and burying the contaminants in the river or hauling them off to likely another minority community where they will be stored as a future health risk.

This would not be so frustrating were it not for the fact that an alternative toxic waste solution does - and has existed. That alternative is a technology developed at the behest of the EPA and the US Army Corps of Engineers. It is a technology that conforms to the EPA's mandates by permanently destroying the toxicity of contaminated materials and convert those materials to a non-hazardous building product, with commercial value called "Ecomelt". This treatment process of contaminants is in compliance with the EPA's Environmental Justice mandates and instead of being a blight on poor communities, this process can be used to rebuild and create value in those same communities.

Of course, you know I am speaking of the **Cement Lock** technology. An innovative technology that has been brought before the EPA many times before and endorsed by reputable 3<sup>rd</sup> Party organizations. It fulfills the EPA's strategic goals by being a PERMANENT solution that treats toxic materials in our environment because it *significantly reduces the volume, toxicity, or mobility of the hazardous substances*. The Cement Lock technology has been recommended to the EPA as a cleanup solution for the Passaic River by the **National Advisory Council for Environmental Policy and Technology**, NACEPT (February 12, 2012). It was recommended again by the **Passaic River Coalition** (November 14, 2012). Even James Woolford, the EPA Director of Office of Superfund Remediation and Technology Innovation told Volcano Partners that his staff had reviewed the Cement Lock technology and found it to be mature, having completed full-scale demonstrations as well as commercial applications (July 31, 2018).

#### Carbon Capture

Concrete is the world's most widely used building material. Cement accounts for 7% of all CO<sub>2</sub> emissions. If cement manufacturing were a country, it would be the third-largest carbon emitter in the world, behind the U.S. and China. In the quest for innovation, Volcano Partners and its engineering firm, Wood, have introduced the ability to reduce Greenhouse Gases (GHG) with a new "carbon capture" technology as part of the Cement Lock process. With the production of Ecomelt from Superfund material, CO<sub>2</sub> is captured and commercially re-introduced to industry for food preservation, carbonated drinks, refrigeration, etc. As a result, for every cubic yard of Ecomelt that is manufactured, one cubic yard of cement production is eliminated along with the GHG that would otherwise have been produced.

So why is the EPA leaning towards a cleanup plan that is about as antiquated as might be possible? Why does the EPA have an Office of Technology Innovation when in 2021 the EPA wants to bury toxic material, as it was similarly done 50-years ago? It would seem the calls for "*innovation in the field of hazardous waste management have fallen upon deaf ears*".

The polluters, per CERCLA, are liable for the full and total costs of response and damages. And as long as there is buried toxic material, there is liability and health risks to many minority neighborhoods in New Jersey from future exposure. Perhaps it is time that those responsible for the pollution of the Passaic River are held accountable. There are also "Orphan" sites under the control of government agencies that have liability and must be addressed at the tax-payers expense.

It should be noted that besides permanently extinguishing the risk of future health risks, the Cement Lock process is also an economical alternative since toxic substances are converted to building materials and available in commerce at a lower cost than similar products, thereby reducing treatment costs.

As always, I remain available to meet with you and others responsible for the enactment of the Passaic River Cleanup Plan. We would hope that the EPA would consider their own cleanup mandates with a focus on how adhering to such mandates would benefit minority communities and put an end to the environmental racism that has been allowed to flourish under past waste management practices.

Regards.

By: 

Al Hendricks, President and CEO  
Phone: 407-492-9731  
Email: [al.hendricks@cement-lock.com](mailto:al.hendricks@cement-lock.com)

C: Michael Regan, Administrator - [regan.michael@epa.gov](mailto:regan.michael@epa.gov)  
Shereen Kandil - [kandil.shereen@epa.gov](mailto:kandil.shereen@epa.gov)

WHEJAC May Meeting Public Comments  
May 22, 2021

To Members of the Whitehouse Environmental Justice Advisory Council:

Thank you for your very difficult work and for the opportunity to comment on these vital issues. And thank you to the Environmental Protection Agency and the Council on Environmental Quality for convening this group of inspiring and courageous front-line people of knowledge, experience, and action to develop recommendations for the Biden Administration to address the long standing inequities and injustices resulting from government policies, and to inform our response to climate injustices.

As a public health professional with many years in the public and academic sectors, I want to ask that the recommendations of the WHEJAC be given highest priority by the Biden administration for implementation. The time to correct and heal is NOW, and the public is watching.

Regarding Justice 40, 100% of investments MUST DO NO HARM to environmental justice. Justice 40 should be the floor, not a ceiling. Putting a ceiling on the numbers of dollars of investments puts a limit once again on the value of human life, to the disadvantage of those persons most in need.

Investments must be community controlled so that they are made to address community needs that are identified and addressed by communities themselves, not determined by outside entities. And, investments must be sufficient to get the job done, as determined by the communities being funded and affected. If insufficient funds are made available, then the work will fail to correct the problems.

Priorities need to shift. If the United States, in its current investment priority system, allocates better than half of its funds to the military, to cause destruction and death, then, it seems that a much greater amount should be prioritized to go to life sustaining work. Perhaps a real shift in priorities is NECESSARY if we are to face our interconnected environmental public health emergencies effectively: catastrophic climate disruption, global pandemic, systemic racism and injustice.

It is inappropriate for communities to have to demonstrate through superimposed criteria that an environmental justice problem exists. This frequently results in the claim that there is insufficient data to show that a problem exists, when in fact, no one has looked. As one member of the Council stated: NO data does NOT mean that there is NO Problem.

We need to shift the paradigm for managing our lands and waters from the old way of doing things: “act now and think about what we did later”. We need to consider what will work for sustainability of the earth before taking actions. Again, think ahead and DO NO HARM. For example, act to prevent gentrification while developing infrastructure; avoid adding to fossil fuel extraction and use when finding ways to address climate disruption by looking at the entire energy cycle for each energy source.

We need to educate our youth: climate justice education with a focus on sustainability of the earth needs to be built into the core curriculum for all K-12 programs as it affects every aspect of our world.

Again, I thank you, each member of the WHEJAC, for your courage, your dedication, and your diligence in developing your recommendations. We are learning so much from you. You are appreciated and I know there are many more like me who will work to support your work.

Theodora Tsongas, PhD, MS

**To: Karen Martin & WHEJAC**  
**From: St. Croix Environmental Association**  
**Date: May 27, 2021**

**Re: Public Comment, May 27, 2021 Submission**

**1. Public Comment (340 words)**

Thank you for including the St. Croix Environmental Association in the Justice40 recommendations. We are also grateful to the EPA for the Clean Air Act 303 order that has paused the operations of the Limetree Bay oil refinery for 60 days. This mandated pause in operations has given the community of St. Croix much needed relief from the noxious fumes that were causing widespread sickness, closing schools, and interrupting public services. We are hopeful that this relief will not be short-lived and that the refinery will be held accountable for their severe impact on this vulnerable environmental justice community.

The air monitors that the Limetree Bay Refinery is required to operate are not turned on. They are apparently weeks if not months away from functioning. In the meantime, EPA is operating temporary monitoring equipment to develop baseline emissions data on Limetree, but it is unclear how long EPA's monitoring will remain on St. Croix. The local environmental regulatory body, the Department of Planning and Natural Resources, does not have the equipment or personnel to conduct monitoring, so effectively, this refinery has been operating without the monitoring necessary to protect the community from their frequent accidents and emissions exceedances. Given the community's vulnerability, St. Croix needs a UV Hound monitor in place, when and if the refinery restarts.

We need permanently funded community-based air, water, and soil monitoring that is supported by EPA federal methods, because our community lacks resources and key data to hold Limetree Bay Refinery accountable for their pollution. We need trained surveyors to go door-to-door to conduct community health assessments based on informed consent so people can disclose how these toxic fumes are making them sick. Historically, there has been a serious lack in health care record keeping, due to limited resources and infrastructure. Currently, health impacts are limited to data collected from people visiting doctors, urgent care clinics, and the emergency room. In a low-income community with many uninsured residents, people are hesitant to invest in costly visits to doctors, resulting in under-reporting of health effects.

**2. Recommendations for WHEJAC (251 words)**

SEA recommends the following policies and procedures for WHEJAC to relay to the Federal Government for their consideration.

- Require Limetree to monitor its emissions and timely release the information, upgrade the refinery with best available control technology, and develop a sound mitigation plan.

- Provide tools, best practices, or resources so that St. Croix can create a Just Transition plan so the territory can move from a fossil-fuel based economy to one based on the VI 2040 vision, which includes focusing on an economy based on renewable energy, agriculture, blue economy, place-based tourism, and sustainability.
- Sustained support for monitoring programs in the community, university and local government.
- Federal funding for programs that address environmental justice through protecting groundwater, surface water, air quality, and soil resources. Additionally, support for clean-up of existing degraded resources, as a result of the refinery (see WHEJAC report)
- Provide funding for community-based monitoring and science programs
- Funding for the UV hound and training to protect the community
- Assign EPA monitors and EPA personnel in St. Croix permanently because the local DPNR does not have the capacity to effectively monitor air quality due to lack of equipment and personnel. Establish community resilient hubs for shelters
- Require non-fluorinated fire foam
- Test water and soil for effluent for PFAS (AFFF)
- Ensure that all requirements of the CAA 303 order are followed and that the audit of the Limetree Bay facility is performed by an independent, third party. In general, independent monitors must be required and it should not be optional.

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 615-921-9470

1033 DEMONBREUN STREET, SUITE 205  
NASHVILLE, TN 37203

Facsimile 615-921-8011

---

May 27, 2021

Dear Members of the White House Environmental Justice Advisory Council,

We write to supplement the record of the WHEJAC's May 13, 2021 meeting. This letter follows comments filed by Southern Environmental Law Center, on behalf of Memphis Community Against the Pipeline on April 25, 2021, as well as oral comments by MCAP at the April 28<sup>th</sup> meeting of the WHEJAC. In particular, we write requesting specific recommendations from the WHEJAC regarding southwest Memphis and the threat of the proposed Byhalia pipeline, Nationwide Permit 12, the Justice40 Initiative, and disavowing the use of eminent domain for pipeline projects such as these. We appreciate the initial May 21<sup>st</sup> recommendations of this Council that set out what types of projects would not be considered as beneficial community investments under the Justice40 Initiative. One of those categories includes "[f]ossil fuel procurement, development, infrastructure repair that would in any way extend lifespan or production capacity, transmission system investments to facilitate fossil-fired generation or any related subsidy".<sup>1</sup> We agree that this type of project does not comport with the goals of the Justice40 Initiative or environmental justice. As you submit additional recommendations to the White House as it implements the Justice40 Initiative we request that you continue to consider the specific issues facing southwest Memphis, including the imminent threat of the Byhalia pipeline.

Southwest Memphis, which is over 97% Black, is overburdened by numerous polluting facilities, including a toxic unlined coal ash pond, a crude oil refinery that has topped the national emissions inventory in the category of stationary sources, a natural gas plant, highway traffic, and a rail yard. 22 of the top 30 major emission sources in Shelby County, Tennessee are in or near southwest Memphis. In addition to the on-going pollution burden, the proposed Byhalia crude oil pipeline threatens the homes, drinking water supply, and community health of southwest Memphis, as it is to be routed through the historic southwest Memphis Boxtown community and over the well-field that supplies drinking water to over one million Memphians.

The southwest Memphis community has also borne the burden of the improper use of eminent domain and condemnation proceedings to acquire property for the pipeline. The use of eminent domain proceedings by oil pipeline companies results in particularly harsh environmental injustice. In the case of the Byhalia Pipeline project, the pipeline company threatened landowners in southwest Memphis with condemnation litigation if they did not agree to grant pipeline easements to the company. Because many landowners cannot afford to hire a lawyer to fight a multi-billion dollar pipeline company, the company's heavy-handed tactics put many Memphians in a real bind. However, when two landowners decided to stand and fight, the pipeline company decided that it did not want a Tennessee state court to rule on the important legal question of whether or not Tennessee statutes actually give the power of eminent domain to crude oil pipeline companies.

---

<sup>1</sup> May 21, 2021 WHEJAC Final Report Executive Order 14008, p. 57.

Since MCAP's first set of written and oral comments to the WHEJAC regarding the environmental threats facing southwest Memphis, and the specific needs that could be addressed through the Justice40 Initiative, there have been important local developments that continue to demonstrate the need for federal intervention to achieve environmental justice. On May 4<sup>th</sup>, the local government decision-making body refused to legislate to protect Memphis drinking water, delaying an important vote on an aquifer protection ordinance. This action was taken pursuant to an agreement with the pipeline developers, despite specific evidence of the need for water quality protection and despite widespread support for the action from the local community. On May 5<sup>th</sup>, in order to avoid a judge making a crucial decision on whether or not Tennessee statutes actually give the power of eminent domain to crude oil pipeline companies, Byhalia Pipeline non-suited its condemnation litigation against African-American landowners in the path of the pipeline. It did this while remaining free to threaten other landowners with condemnation litigation as a means of extracting easements from them. Byhalia's attempted use of eminent domain against Black landowners in southwest Memphis highlights the environmental justice problems associated with allowing large oil infrastructure projects to proceed under fast track nationwide permits. By relying on nationwide permits, oil pipeline companies are able to skip environmental justice review. After avoiding environmental justice review, the companies then use the condemnation power to install oil pipeline projects in minority communities, whether they like it or not.

On May 6<sup>th</sup>, the Department of Earth Science and Center for Applied Earth Science and Engineering Research ("CAESER") presented to Memphis, Light, Gas, and Water ("MLGW") regarding two important concerns regarding the drinking water well-field that is at risk from the proposed Byhalia pipeline. First, they found evidence that there is another breach in the well-field, making the water supply even more vulnerable in the event of a pipeline leak. They also discovered an arsenic contamination threat to the well-field. And on May 16<sup>th</sup>, MCAP filed a civil rights complaint against the Tennessee Department of Environment and Conservation regarding state permitting associated with the Byhalia Pipeline. (Att. A)

As an entity with the authority to make recommendations that would aid in achieving environmental justice the WHEJAC can:

- a) Recommend Abandonment of use of Nationwide Permit 12 for the proposed Byhalia pipeline. Nationwide Permit 12 allowed fast tracked approval for this project, without an adequate look at the environmental or environmental justice consequences of the pipeline.
- b) Recommend completion of a full National Environmental Policy Act review of the proposed pipeline's environmental and environmental justice impacts.
- c) Recommend that the federal government invest in Southwest Memphis through the Justice40 Initiative.
- d) Disavow the use of eminent domain or the threat of eminent domain to acquire property in the path of the proposed Byhalia pipeline. Already, southwest Memphis residents have had an uphill battle to keep full access to the use and enjoyment of their property under the cloud of threats of, and actual, condemnation lawsuits and eminent domain proceedings. The on-going scourge of African-American land-loss, and environmental harm should not be exacerbated by the use of these tools of disempowerment.

We request that you consider this letter and make these recommendations to the White House. Thank you for your consideration of these comments.

Best,

A handwritten signature in cursive script, appearing to read "CTaylor".

Chandra T. Taylor  
Senior Attorney  
Leader of SELC Environmental Justice Initiative

# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 615-921-9470

1033 DEMONBREUN STREET, SUITE 205  
NASHVILLE, TN 37203

Facsimile 615-921-8011

May 16, 2021

**VIA E-mail to [Regan.Michael@epa.gov](mailto:Regan.Michael@epa.gov); [Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov);**  
**[Title VI Complaints@epa.gov](mailto:Title.VI.Complaints@epa.gov)**

Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
Mail Code 1101A  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Lilian Dorka  
Director, External Civil Rights Compliance Office  
U.S. Environmental Protection Agency  
Mail Code 2310A  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

**Re: Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d,  
regarding the Tennessee Department of Environment and Conservation**

Dear Administrator Regan and Director Dorka:

On behalf of Memphis Community Against Pollution, Inc. (“MCAP”),<sup>1</sup> the Southern Environmental Law Center submits this complaint against the Tennessee Department of Environment and Conservation (“TDEC”) for its issuance of the Aquatic Resource Alteration Permit and Section 401 Certification for the Byhalia Connection Pipeline (combined, “Byhalia Pipeline Permit”),<sup>2</sup> which will result in unjustified disparate adverse impacts on the basis of race against African Americans in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, as well as the Title VI implementing regulations of the United States Environmental Protection Agency (“EPA”), 40 C.F.R. Part 7.

---

<sup>1</sup> Memphis Community Against Pollution, Inc. (“MCAP”) is a Tennessee not-for-profit corporation founded in October 2020 and incorporated in March 2021. MCAP continues to organize and advocate as Memphis Community Against the Pipeline, the name used at founding. MCAP supporters include local community members who oppose the Byhalia Connection Pipeline. MCAP opposes the proposed Byhalia Pipeline because the risks to drinking water, damage to surface water resources, and infringement of property rights cause disproportionate harms to Black residents and landowners.

<sup>2</sup> NRS20.089 (Nov. 17, 2020).

[http://tdec.tn.gov:8080/pls/enf\\_reports/f?p=9034:34051:::NO:34051:P34051\\_PERMIT\\_NUMBER-NRS20.089](http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051:::NO:34051:P34051_PERMIT_NUMBER-NRS20.089) (“Byhalia Pipeline Permit”) (Attachment A).

The Byhalia Connection Pipeline is a proposed 49-mile high-pressure crude oil pipeline that would run directly through the municipal wellfield that supplies drinking water for historic Black neighborhoods in Memphis, Tennessee. The developer of this proposed pipeline, Byhalia Pipeline LLC, chose a route through communities that are 97% Black, low-income, and already burdened by dozens of industrial facilities and major pollution sources. Byhalia Pipeline LLC had other options, as demonstrated in an addendum to its permit application. However, the company did not bother to analyze whether any of those routes might cause fewer disproportionately adverse impacts, and TDEC did not require that analysis, despite public comments raising concerns about the environmental justice implications of the proposed pipeline route. Byhalia Pipeline LLC also has options in addition to those disclosed in its addendum to its permit application including, as discussed below, an existing pipeline which could serve the same proposed purpose as the Byhalia Pipeline.

Relying on Byhalia's inadequate application, TDEC issued a permit that will disparately impact Black communities in southwest Memphis, without any justification or explanation for those disparate impacts. By doing so, it has violated Title VI of the Civil Rights Act of 1964, which provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."<sup>3</sup> TDEC is further violating Title VI by adopting a policy of not considering disproportionate impacts and environmental justice in its permitting decisions, as the agency explains in the Notice of Determination for the Byhalia Pipeline Permit.<sup>4</sup>

To remedy these violations, EPA must require TDEC to revoke the Byhalia Pipeline Permit in order to fully consider the disproportionate adverse impacts that result from the current pipeline route, and whether those impacts are justified. With EPA's guidance, TDEC must also develop a permit approval process that appropriately considers the potential for disproportionate impacts, as required by Title VI.

## I. Jurisdiction

Jurisdiction for an EPA Title VI complaint requires four elements: (1) the complaint must be in writing; (2) it must allege discriminatory acts that, if true, violate EPA's Title VI regulations; (3) it must identify a recipient of EPA funding that committed the alleged discriminatory act; and (4) it must be filed within 180 days of the alleged discriminatory act.<sup>5</sup> This complaint is clearly in writing, alleges below discriminatory acts that violate Title VI, and

---

<sup>3</sup> 42 U.S.C. § 2000d.

<sup>4</sup> See TDEC, *Notice of Determination for NRS20.089* (Nov. 9, 2020), 8-9 ("Notice of Determination") (Attachment B).

<sup>5</sup> 40 C.F.R. § 7.120; see also EPA External Civil Rights Compliance Office, *Case Resolution Manual* (January 2017), 7-11, [https://www.epa.gov/sites/production/files/2017-01/documents/final\\_epa\\_ogc\\_ecrco\\_crm\\_january\\_11\\_2017.pdf](https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).

was filed within 180 days of those acts.<sup>6</sup> The third element is met by noting that TDEC committed the alleged discriminatory acts, and it is a recipient of EPA funding.

TDEC is an state government agency that must comply with Title VI requirements.<sup>7</sup> At the time of the Byhalia Pipeline Permit approval, TDEC was a recipient of EPA assistance.<sup>8</sup> According to USASpending.gov, “the official source for spending data for the U.S. Government”<sup>9</sup>, EPA awarded TDEC \$56.38 million in funds in fiscal year 2020.<sup>10</sup> This figure includes \$23.09 million in capitalization grants for Clean Water State Revolving Funds and \$19.13 million in capitalization grants for Drinking Water State Revolving Funds.<sup>11</sup> It also includes \$9.6 million in Performance Partnership Grants.<sup>12</sup> The Performance Partnership Grant in effect in November 2020 was specifically “for the operation of [TDEC’s] continuing environmental programs in their efforts to improve air, surface, and ground water quality, and ensure safe public drinking water supplies.”<sup>13</sup>

Under Title VI, if any part of a public institutions, such as a state environmental agency, receives federal funds, the whole entity is covered by Title VI.<sup>14</sup> TDEC is required to comply with Title VI and EPA’s Title VI implementing regulations in the operation and enforcement of its Aquatic Resource Alteration Permit (“ARAP”) and Section 401 Certification program, and this complaint alleges that it failed to do so, resulting in disproportionate adverse impacts to

---

<sup>6</sup> 40 C.F.R. § 7.120(b)(2). The Byhalia Pipeline Permit was issued on November 17, 2020, so this complaint is timely filed. EPA also retains authority to waive the time limit for good cause. *Id.*

<sup>7</sup> Tenn. Code Ann. § 4-21-904.

<sup>8</sup> Under EPA’s Title VI regulations, a “[r]ecipient” is “any State or its political subdivision, any instrumentality of a State or its political subdivision, [and] any public or private agency... to which Federal financial assistance is extended directly or through another recipient . . .” 40 C.F.R. § 7.25. “EPA assistance” is “any grant or corporative agreement, loan, contract . . . , or any other arrangement by which EPA provides or otherwise makes available assistance in the form of funds. . .” *Id.*

<sup>9</sup> USA Spending, *About*, <https://www.usaspending.gov/about> (accessed May 16, 2021).

<sup>10</sup> USA Spending, *ENVIRONMENT AND CONSERVATION, TENNESSEE DEPARTMENT OF | Federal Award Recipient Profile*, <https://www.usaspending.gov/recipient/42d3aa10-7619-e5e2-769a-19a265670ece-C/2020> (accessed May 16, 2021).

<sup>11</sup> *Id.* The Clean Water State Revolving Fund capitalization grants provide federal financial assistance for the purpose of developing and financing various water quality improvement and protection projects. USA Spending, *GRANT to ENVIRONMENT AND CONSERVATION, TENNESSEE DEPARTMENT OF*, [https://www.usaspending.gov/award/ASST\\_NON\\_47000120\\_6800](https://www.usaspending.gov/award/ASST_NON_47000120_6800) (accessed May 16, 2021). The Safe Drinking Water Revolving Fund capitalization grants provide federal financial assistance for the purpose of developing and financing “drinking water improvement projects and activities to protect human health.” USA Spending, *GRANT to ENVIRONMENT AND CONSERVATION, TENNESSEE DEPARTMENT OF*, [https://www.usaspending.gov/award/ASST\\_NON\\_98427220\\_6800](https://www.usaspending.gov/award/ASST_NON_98427220_6800) (accessed May 16, 2021).

<sup>12</sup> USA Spending, *GRANT to ENVIRONMENT AND CONSERVATION, TENNESSEE DEPARTMENT OF*, [https://www.usaspending.gov/award/ASST\\_NON\\_00D39119\\_6800](https://www.usaspending.gov/award/ASST_NON_00D39119_6800) (accessed May 16, 2021).

<sup>13</sup> *Id.*

<sup>14</sup> See EPA, *U.S. EPA’s External Civil Rights Compliance Toolkit, Chapter 1* (Jan. 18, 2017), 2, [https://www.epa.gov/sites/production/files/2020-02/documents/toolkit\\_ecrco\\_chapter\\_1-letter-faqs\\_2017.01.18.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf) (“Civil Rights Compliance Toolkit”).

groups protected under Title VI. In the event that TDEC does not take the actions requested in this complaint to achieve full compliance with Title VI, EPA should revoke federal funding used by TDEC for the ARAP and Section 401 Certification program.

## II. Background

### A. *The Southwest Memphis Community*

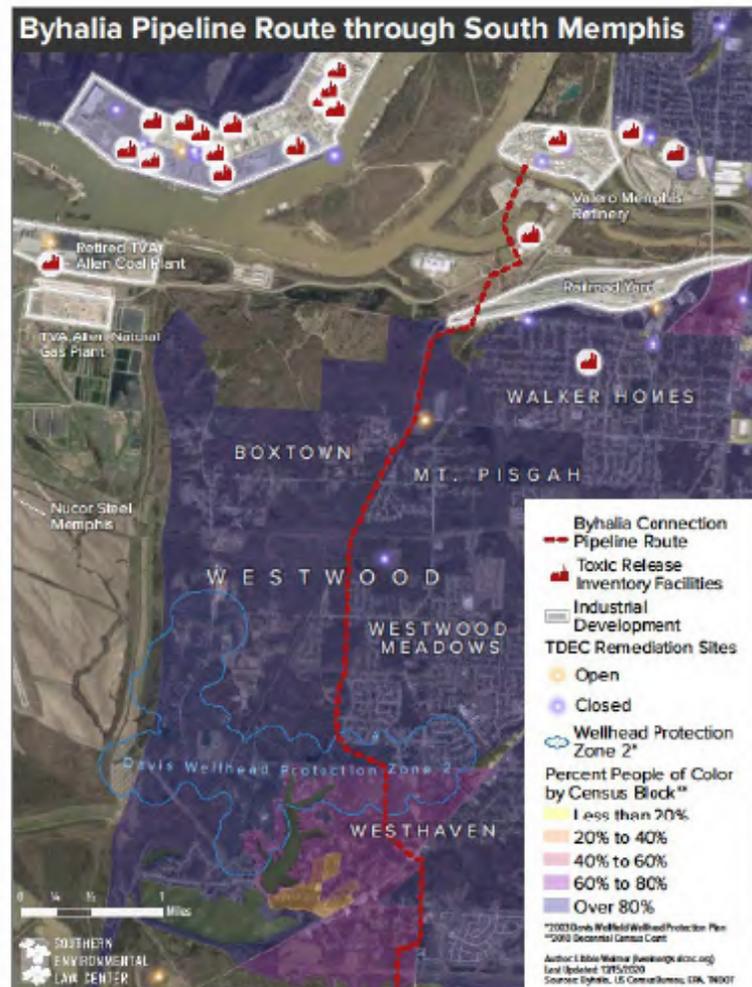
A crude oil spill or leak from the Byhalia Pipeline along the route approved by TDEC could contaminate the drinking water source of southwest Memphis, a predominately Black community long overburdened by industrial pollution. The proposed route cuts through the heart of Boxtown, a freedmen's community established by formerly enslaved people following the Emancipation Proclamation of 1863.<sup>15</sup> Residents in the neighborhood's zip code, 38109, are 97% Black,<sup>16</sup> and nearly half of the households have an income below \$25,000 a year.<sup>17</sup> As shown on the map below, southwest Memphis is already home to numerous industrial facilities, including an oil refinery, a steel mill, a recently retired coal-fired power plant with leaking, unlined coal ash pits, and a new natural gas plant.

---

<sup>15</sup> Aubrey Ford, Phoebe Weinman and Walker Weinman, *Boxtown: The Land of Broken Promises*, Storyboard Memphis (Sept. 16, 2019), <https://storyboardmemphis.org/neighborhood-board/boxtown/>.

<sup>16</sup> United States Census Bureau, *RACE (TOTAL RACES TALLIED), ZCTA5 38109, Tennessee*, <https://data.census.gov/cedsci/table?q=38109%20race&tid=DECENNIALSF12010.P6> (accessed May 16, 2021).

<sup>17</sup> United States Census Bureau, *INCOME IN THE PAST 12 MONTHS (IN 2018 INFLATION-ADJUSTED DOLLARS), ZCTA5 38109, Tennessee*, [https://data.census.gov/cedsci/table?q=8600000US38109&tid=ACSST5Y2018.S1901&hidePreview=false&vintage=2018&laver=zcta5&cid=DP05\\_0001E](https://data.census.gov/cedsci/table?q=8600000US38109&tid=ACSST5Y2018.S1901&hidePreview=false&vintage=2018&laver=zcta5&cid=DP05_0001E) (accessed May 16, 2021).



These industrial facilities have burdened the predominantly Black communities of southwest Memphis with what may be some of the nation’s worst air quality, and with increasing threats to their drinking water and surface waters. For example, the Tennessee Valley Authority’s Allen Coal Plant spewed pollutants into the air in southwest Memphis for decades. Although that coal plant retired in 2018, it remains a pollution problem due to high levels of arsenic and other coal ash contaminants leaching into groundwater and surface waters such as the Horn Lake Cutoff and McKellar Lake.<sup>18</sup> The Tennessee Valley Authority now operates a natural

<sup>18</sup> John Carmichael et al., *Preliminary evaluation of the hydrogeology and groundwater quality of the Mississippi River Valley Alluvial Aquifer and Memphis Aquifer at the Tennessee Valley Authority*

gas plant next door to the coal plant. The gas plant contributes to the area's air pollution and also consumes an enormous amount of southwest Memphis's clean drinking water to operate.<sup>19</sup> For decades the Valero Memphis Refinery has been emitting toxic fumes, as well as being the center of convergence for several existing hazardous liquids pipelines.<sup>20</sup> As recently as February 2021, the Valero Refinery polluted Nonconah Creek with oil and the air with toxic hydrogen sulfide during a flare event.<sup>21</sup> The site of the Valero Memphis Refinery is also a long-standing source of groundwater contamination, including benzene, that has been in remediation for decades.<sup>22</sup> Driven by toxic pollutants like benzene and formaldehyde, the cumulative cancer risk in southwest Memphis is four times higher than the national average.<sup>23</sup>

### B. The Proposed Byhalia Connection Pipeline

Byhalia Pipeline LLC proposes to run a 49-mile high-pressure crude oil pipeline through these already overburdened communities in order to connect the existing Valero Memphis Refinery with the Valero Collierville Terminal in Marshall County, Mississippi.<sup>24</sup> Rather than lead Byhalia to look elsewhere, the environmental injustice in southwest Memphis is precisely *why* Byhalia chose this route. Instead of taking the shortest route due east, the proposed route heads due south, through communities of color, before turning east and traversing parts of Northern Mississippi, and eventually back north. Explaining the circuitous route to landowners, a

---

*Allen Power Plants, Memphis, Shelby County, Tennessee, United States Geological Survey Open-File Report 2018-1097*, <https://pubs.er.usgs.gov/publication/ofr20181097>; MLGW Interdepartmental Memorandum (May 5, 2021), 15, 20 (Attachment C).

<sup>19</sup> Tom Charlier, *TVA absorbing higher costs to cool new Memphis power plant*, *Memphis Commercial Appeal* (July 6, 2018), <https://www.commercialappeal.com/story/news/2018/07/06/tva-mlgw-cooling-water/759124002/>.

<sup>20</sup> Sarah Macaraeg, *Byhalia pipeline: Toxic refinery pollution, monitoring blind spot in southwest Memphis*, *Memphis Commercial Appeal* (Mar. 16, 2021), <https://www.commercialappeal.com/in-depth/news/2021/03/17/takeaways-toxic-refinery-pollution-southwest-memphis/4718350001/>; PHMSA National Pipeline Mapping System, *NPMS Public Viewer*, <https://pvnpm.phmsa.dot.gov/PublicViewer/> (choose Tennessee, then Shelby County, to view pipeline map in area) (accessed May 16, 2021).

<sup>21</sup> Carrington J. Tatum, *Valero cleans up oil after Memphis refinery flare; excess toxic gas release*, *MLK50* (Feb. 24, 2021), <https://mlk50.com/2021/02/24/valero-cleans-up-oil-after-memphis-refinery-flare-excess-toxic-gas-release/>.

<sup>22</sup> EarthCon Consultants, Inc., *Valero Refining Company-Tennessee, LLC Semi-Annual Site Status Monitoring Report* (May 21, 2019), [https://static1.squarespace.com/static/5b7b3e99d274cb770c84b404/t/5ed184032c0f245a2e211f48/1590789165192/Valero\\_OCTOBER+2018+%E2%80%93MARCH+2019\\_small.pdf](https://static1.squarespace.com/static/5b7b3e99d274cb770c84b404/t/5ed184032c0f245a2e211f48/1590789165192/Valero_OCTOBER+2018+%E2%80%93MARCH+2019_small.pdf).

<sup>23</sup> Chunrong Jia and Jeffrey Foran, *Air Toxics Concentrations, Source Identification, and Health Risks: An Air Pollution Hot Spot in Southwest Memphis, TN*, 81 *Atmospheric Env't* 112–116 (Dec. 2013), <https://www.sciencedirect.com/science/article/abs/pii/S1352231013006948?via%3Dihub#>.

<sup>24</sup> Byhalia Pipeline LLC, *Byhalia Connection*, <https://byhaliaconnection.com/about-project/> (accessed May 16, 2021). The purpose of the pipeline is to facilitate movement of crude oil from Cushing, Oklahoma to St. James, Louisiana by connecting two existing crude oil pipelines: the Diamond Pipeline, beginning in Cushing, Oklahoma and currently terminating at the Valero Memphis Refinery, and the Capline Pipeline, which is being reversed to run from Patoka, Illinois to St. James, Louisiana. See Plains All American Pipeline, L.P. Annual Report (Form 10-K), 19 (Mar. 1, 2021) (Attachment D).

land agent disclosed that Byhalia saw southwest Memphis—poor, Black, already polluted—as the “point of least resistance.”<sup>25</sup>

Byhalia Pipeline LLC is a joint venture between Plains All American, L.P. (a Texas-based multibillion-dollar fossil fuel transportation conglomerate) and a subsidiary of Valero Energy Partners (a Texas-based multibillion-dollar energy conglomerate).<sup>26</sup> As the people of southwest Memphis know too well, private industries making decisions based on their bottom line often leads to the toxic concentration of pollutants in low-income communities and communities of color. It is the government agencies that regulate those industries, like TDEC, that must ensure that these communities do not face further disproportionate impacts and environmental injustice.

### *C. The ARAP and Section 401 Certification Process*

Because the proposed pipeline would cross wetlands and streams in Tennessee, on April 20, 2020, Byhalia Pipeline LLC applied for an ARAP and Section 401 Certification for the project. On April 24, 2020, the Department notified Byhalia Pipeline LLC that its application was deficient, for, among other reasons, failure to submit a detailed alternatives analysis.<sup>27</sup> On June 19, 2020, Byhalia Pipeline LLC submitted an alternatives analysis describing five alternatives, including a no action alternative, and identifying its preferred route—a route that turns abruptly south to snake through predominantly Black neighborhoods in southwest Memphis—as the least environmentally damaging alternative.<sup>28</sup> Byhalia Pipeline LLC’s alternatives analysis did not identify environmental justice or disproportionate impacts as one of its “route criteria.” The pipeline company’s social and economic justification, which it also misleadingly styled as an “environmental justice” analysis, had no demographic analysis and suggested only that “[t]he project would have significant economic benefits to the local economies.”<sup>29</sup>

TDEC’s ARAP and Section 401 Certification regulations require the agency to invite and consider public comments on the application for an individual permit.<sup>30</sup> From July 21 through

---

<sup>25</sup> Michaela A. Watts and Laura Testino, *Memphis Question Plains All American About Route for Proposed Byhalia Connection Pipeline*, *Commercial Appeal* (Feb. 15, 2020), <https://www.commercialappeal.com/story/news/2020/02/15/memphians-question-plains-all-american-byhalia-connection-pipeline/4761549002/>.

<sup>26</sup> Byhalia Pipeline LLC, *About Us*, <https://byhaliaconnection.com/partner/> (accessed May 16, 2021).

<sup>27</sup> Letter from Mike Lee, TDEC, to William Gore, Byhalia Pipeline LLC, re: Letter of Deficiency- §401 Water Quality Certification; State of Tennessee Application NRS 20.089- Byhalia Pipeline Connection; Shelby County, TN (April 24, 2020) (Attachment E) (“Detailed information is required under Section 10. Detailed Alternative Analysis, especially in regards to any other sites that were evaluated, avoidance and minimization. The social and economic justification should include information on jobs created, revenue generated, and taxes collected”).

<sup>28</sup> Alternatives Analysis, Byhalia Connection Pipeline, TDEC ARAP NRS20.089 (June 19, 2020) (Attachment F).

<sup>29</sup> *Id.*

<sup>30</sup> Tenn. Comp. R. & Regs. 0400-40-07-.04(4)(b) and (e).

September 11, TDEC received numerous public comments. Many comments from the public expressed concerns that the pipeline would present an unacceptable threat to the Memphis Sand Aquifer, the city's sole drinking water source, a few of which are excerpted below:

- “This pipeline not only poses a risk to the pristine drinking water supply provided by the Memphis aquifer, but it will also cross multiple streams, posing a risk to our wetlands and waterways, which has a literal trickledown effect into our agriculture, industry, economy, and community. Once contaminated, the aquifer cannot be recovered.”<sup>31</sup>
- “Public data [] shows that about a quarter of the proposed Byhalia Connection route traverses the unconfined area of the Memphis/Sparta aquifer in DeSoto and Marshall Counties. The unconfined area... is highly vulnerable to a pipeline leak or rupture which could result in a crude oil spill directly contaminating the source of the region's drinking water. Of course, the entire proposed route should be considered sensitive because even where a confining clay layer isolates the Memphis/Sparta aquifer, a shallow alluvial aquifer is present, and gaps or breaches in the confining clay layer can provide a pathway for surface water and pollution to reach the deeper Memphis/Sparta aquifer. Even if crude oil contamination only impacted the shallow aquifer, it would be harmful to locals who rely on the shallow aquifer for industrial, agricultural and domestic wells.”<sup>32</sup>
- “Byhalia Pipeline's application assumes that the aquifer is protected by the protective clay layer all along its route—until it enters the aquifer's recharge area. This application ignores the fact that the protective clay layer has holes and gaps. ... The Applicant has failed to examine whether its proposed route transits areas where there is a gap, hole, or thin point in the clay protective layer. This pipeline may be up to industry standards, but its contents, its pressure (1500 psi), and the ground over which it travels are all risky. An oil spill of any sort will contribute to significant ground, groundwater, upper aquifer, and if we are not careful, unthinkable Memphis Sand Aquifer pollution. Hydraulic connectivity, clay layer gaps, and stream-scoured holes all connect the upper to the lower aquifer. *These connections are well-documented in parts of south Memphis [] though they have not been examined or studied along the proposed route.*”<sup>33</sup>

Many other public comments specifically addressed how the pipeline would unjustly burden the Black community of southwest Memphis through increasing the pollution and health risks in an already over-burdened community, as well as the negative impacts of the pipeline on Black wealth and Black homeownership. A few examples demonstrate the depth of concern about these environmental justice issues:

- “I am writing you today as a concerned Memphis citizen, opposing the Byhalia Pipeline Project, and its intended construction through the heart of the Boxtown neighborhood. This community already deals with lower than average health outcomes due to surrounding chemical plants and factories. The last thing Memphis needs is another noxious construction project with few-to-no environmental impact projections. For

<sup>31</sup> Comment from Emily Graves (Sept. 11, 2020) (Attachment G).

<sup>32</sup> Comment from Deborah Carrington (Sept. 11, 2020) (Attachment H).

<sup>33</sup> Comment from Protect Our Aquifer (Sept. 11, 2020) (Attachment I) (emphasis original).

heaven's sake! At the very least take the time to finalize a legitimate environmental impact study before potentially devastating a unique community where many homeowners still live in houses built by their ancestors. Have some respect."<sup>34</sup>

- "In a city with a history of segregation and treating people of color as second-class citizens, the residents of Boxtown have somehow defied the odds and have a rate of homeownership well beyond the national average for Black people. Despite rampant poverty and meager incomes, residents have done this through generations, many of their homes being in the family since they were first built in the 19th century. Boxtown residents already have enough to deal with due to the industrial complex they are surrounded by, but to gut their neighborhood with an explosive substance constantly running mere feet below them is, to me, unconscionable. ... I know they claim that the pipeline will bring jobs to the area, but they are likely to be specialized and temporary, and therefore offer almost zero benefit to the residents who are going to be affected. There is only risk and almost no reward to these residents who have worked so hard to get where they are. The only people who will benefit from this project are the rich oil tycoons who will further line their pockets, possibly at the expense of the environment, the aquifer, and the livelihood of hard-working, disadvantaged residents."<sup>35</sup>
- "As a resident of Memphis and Shelby County, I feel strongly that the proposed pipeline poses significant environmental risk and causes great concern for our local water source, property values, and especially the health of my family, friends, and neighbors in Shelby County. Byhalia Pipeline, LLC... has proposed to run the crude oil pipeline through a stable African American community with generations of land ownership, and without any meaningful involvement of local community leaders in the process."<sup>36</sup>
- "As a citizen of Memphis, I implore you to act in opposition to allowing the Byhalia Oil Pipeline project to proceed. T.O. Fuller State Park is not only a historical and cultural site for Black and Indigenous Tennesseans, but the communities that surround it are valued by the generations of families that worked to secure home ownership in a country that has historically implemented policies that made this all but impossible. ... Now, with the proposed pipeline, an area that has already suffered so much industrial contamination will be further endangered by the potential threat of a pipeline breach. ... The Boxtown community just South of the park has voiced its opposition to this project, and I stand in solidarity with its residents."<sup>37</sup>
- "Boxtown is 99% Black, according to U.S. Census data, and it has experienced decades of environmental racism. In a five-mile radius around Smith's church in Boxtown, near where Fields Road trails to an end at Boxtown Road, are at least 32 industrial facilities. To the west sit iron and steel mills; to the east, a pesticide manufacturer. A few miles north, between McKellar Lake and Nonconnah Creek, a Valero oil refinery pumps 195,000 barrels of oil per day. According to a 2013 study, the cumulative cancer risk from toxic air in southwest Memphis, which includes Boxtown, is four times higher than

---

<sup>34</sup> Comment from Caitlin Hassinger (Sept. 11, 2020) (Attachment J).

<sup>35</sup> Comment from Brian Martinelli (Sept. 11, 2020) (Attachment K).

<sup>36</sup> Comment from John Paul Shaffer (Sept. 11, 2020) (Attachment L).

<sup>37</sup> Comment from Uele Siebert (Sept. 11, 2020) (Attachment M).

the national average, and driven by industrial and transportation-related pollutants like benzene and formaldehyde.”<sup>38</sup>

- “This project would be disastrous for the residents of 38109 as a whole. It is known that a project of this magnitude would decrease home values, potentially would cause residents to sale/move and would cause pollution to this predominantly black area. Boxtown is 99% black and has over 60% of home ownership, some of the highest rates in the states. These individuals are also the marginalized unfortunately. ... Many homes in Boxtown have generational families living in them. This project would destroy black wealth while lining the pockets of developers.”<sup>39</sup>

Notwithstanding the concerns it heard from the affected communities and others, TDEC issued the ARAP and Section 401 Certification on November 17, 2020. In the Notice of Determination for the permit, TDEC expressly found that “the permittee’s preferred alternative, with conditions, represents the practicable alternative that would achieve the project objective and have the least adverse impact on resource values.”<sup>40</sup> TDEC’s primary answer to the many comments regarding threats to the Memphis Sand Aquifer was that its permitting program “do[es] not regulate discharges to groundwater (only surface waters) or the operation of the pipeline,” and TDEC therefore had no reason to evaluate or consider those impacts.<sup>41</sup>

Responding to the numerous comments about disproportionate impacts and environmental injustice, TDEC’s only response was that it has no “specific language within rule or statute that requires and/or provides TDEC the explicit authority to consider environmental justice within its environmental regulatory program actions,” and, therefore, TDEC cannot conduct an inquiry to evaluate claims of environmental injustice or disparate impact.<sup>42</sup> Instead, TDEC asserted that its job was done simply by conducting a public hearing and taking public comment on the project.<sup>43</sup> TDEC also decided it had no ability to consider negative effects on home values or the questionable economic benefits of the project, and no need to include the social and economic justification for the project in the permit.<sup>44</sup> This was an unexplained departure from TDEC’s earlier position, in which it had required Byhalia Pipeline LLC to submit a social and economic justification, and had included that justification in the draft permit posted on November 3, 2020.<sup>45</sup>

### III. Legal Violation

The prohibition on discrimination in Title VI is mirrored in EPA’s Title VI implementing regulations, which state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA

<sup>38</sup> Comment from Prudence Katze (Sept. 11, 2020) (Attachment N).

<sup>39</sup> Comment from Johnnie Robinson (Sept. 11, 2020) (Attachment O).

<sup>40</sup> Notice of Determination, 3.

<sup>41</sup> *Id.* at 6.

<sup>42</sup> *Id.* at 9.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 7-8, 10.

<sup>45</sup> Draft Byhalia Pipeline Permit (Nov. 3, 2020), 21 (“November 3 Draft Permit”) (Attachment P).

assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act.”<sup>46</sup> As EPA guidance notes, “EPA and other federal agencies are authorized to enact regulations to achieve the law’s objectives in prohibiting discrimination,” including through regulations preventing federal funding recipient actions that cause racially disparate impacts.<sup>47</sup>

These impacts are often health and environmental harms, but can also include non-health harms, “including, among other things, economic (e.g., depressed property values), nuisance odors, traffic congestion, noise and vermin.”<sup>48</sup> State permitting agencies are “responsible for minimizing the environmental impacts to local communities and ensuring that their practices and policies are implemented in a nondiscriminatory manner.”<sup>49</sup> EPA’s regulations make this clear through the specific prohibition at 40 C.F.R. § 7.35(b)-(c):

A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin, . . . or have the effect of defeating or substantially impairing accomplishment of this subpart.

Even “policies, criteria or methods of administering programs that are neutral on their face but have the effect of discriminating” can result in a Title VI violation if the recipient cannot articulate a “‘substantial legitimate justification’ for the challenged policy or practice.”<sup>50</sup> Even when there is a substantial legitimate justification, employing a neutral policy that leads to disparate impacts may still constitute a violation of Title VI if there are less discriminatory alternatives that would achieve the same purpose.<sup>51</sup>

In issuing the Byhalia Pipeline Permit without consideration of the potential for disproportionate adverse impacts based on the route, or the potential for the contamination of drinking water in already-overburdened Black communities, TDEC used a method of administering its program that the agency may characterize as neutral on its face, but that has the effect of subjecting individuals to discrimination because of their race. To date, TDEC has not put forward any substantial legitimate justification for avoiding that consideration, and has not explained why the primary purpose of its permitting program—the protection of water quality and water resources—cannot be achieved equally well in a less discriminatory manner. This constitutes a violation of Title VI.

---

<sup>46</sup> 40 C.F.R. § 7.30.

<sup>47</sup> See Civil Rights Compliance Toolkit, 8.

<sup>48</sup> *Id.* at Chapter 1 FAQs, 4.

<sup>49</sup> EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 71 Fed. Reg. 14207, 14214 (March 21, 2006).

<sup>50</sup> Civil Rights Compliance Toolkit, 2, 9.

<sup>51</sup> *Id.* at 10.

*A. The Byhalia Pipeline Permit issued by TDEC has clear adverse impacts, including risking the contamination of the drinking water source for southwest Memphis.*

In issuing the Byhalia Pipeline Permit, TDEC approved a project which would have immediate adverse effects on members of the community in proximity to the pipeline. In the construction of the pipeline, Byhalia Pipeline LLC would need to clear land, excavate, stage construction, install pipe and other structures, re-level, and restore vegetation.<sup>52</sup> These activities can be noisy, increase traffic, limit use of private and public property, cause local air pollution through dust and heavy equipment emissions, cause water pollution through increased stormwater runoff, and harm valuable wetlands, which can help protect against floods. When the rights-of-way are revegetated, they often end up hosting weeds and invasive plant species, further degrading property values and homeowners' enjoyment of their property.<sup>53</sup>

Even after construction is complete, pipelines continue to have adverse effects. Constructing a pipeline requires obtaining easements, and these easements can inhibit future development due to concerns about hitting the pipeline or maintaining the right-of-way above it.<sup>54</sup> Between these constraints, concerns about the risks of leaks and oil spills, and uncertainty about whether abandoned pipes will remain in the ground indefinitely, property values often fall around pipelines.<sup>55</sup>

A decline in property values would be particularly harmful for many southwest Memphians. Southwest Memphis has an unusually high homeownership rate compared to demographically similar communities, despite having a relatively low median income, and for many their home is their sole source of wealth.<sup>56</sup> The damage would also be more than economic; many families live on property that has been passed down over generations, including some with homesteads first created by newly emancipated Black Americans in the aftermath of the Civil War, and hope to pass the land to the next generation.<sup>57</sup> TDEC received many public comments on this issue during its consideration of the permit, as noted in the section above, and so was well aware of the concern community members had about these impacts. These are all

---

<sup>52</sup> See generally *Byhalia Pipeline Permit*.

<sup>53</sup> U.S. Fish and Wildlife Service, *Oil and Gas Pipelines*, <https://www.fws.gov/ecological-services/energy-development/pipelines.html> (accessed May 16, 2021).

<sup>54</sup> Pipeline Safety Trust, *Pipeline Info for Landowners*, <https://pstrust.org/about-pipelines/pipelines-for-landowners/> (accessed May 16, 2021).

<sup>55</sup> Daniel Walmer, *Pipelines could affect property values*, *Lebanon Daily News* (Jan. 2, 2016), <https://www.ldnews.com/story/news/local/2016/01/02/pipelines-could-affect-property-values/77984160/> (regarding natural gas pipelines); Conversations for Responsible Economic Development, *How do pipeline spills impact property values? Assessing the real estate risk of an oil spill in southern British Columbia*, <http://credbc.ca/wp-content/uploads/2013/12/Pipeline-spills-property-values.pdf>.

<sup>56</sup> Leanna First-Arai, *Pipeline through the heart: A Black neighborhood's uphill battle against oil developers*, *MLK50* (Sept. 10, 2020), <https://mlk50.com/2020/09/10/this-black-neighborhood-is-trying-to-stop-an-oil-pipeline-theyre-running-out-of-time/>.

<sup>57</sup> *Id.*

harms that fall within the scope of Title VI concern and EPA investigation, when, as here, they are sufficiently harmful and unjustified.<sup>58</sup>

Crude oil pipelines also commonly leak, and therefore have the potential to contaminate the surrounding soil and groundwater. In a city like Memphis, which relies solely on groundwater for drinking water, this could create the conditions for a disaster. As TDEC knows, and was reminded of in many public comments, the Byhalia Pipeline route goes over the Memphis Sand Aquifer, the city's sole drinking water source. Portions of the route go over the unconfined area of the aquifer, or the "recharge zone", which is particularly vulnerable to contamination, but the entire route poses serious risks because any spills or leaks would still easily travel to the shallow, alluvial aquifer above the Memphis Sand Aquifer, which locals rely on for industrial and agricultural wells.<sup>59</sup> Additionally, southwest Memphis is an area with known and suspected breaches in the protective clay layer between the two aquifers, and so there are pathways for pollution to travel from the shallow aquifer to the Memphis Sand Aquifer much more quickly than it would through the clay layer itself.<sup>60</sup>

When pipelines leak, they release carcinogenic chemicals such as benzene and other hazardous pollutants.<sup>61</sup> And, unfortunately, pipeline leaks are common: since 2010, more than 1,650 leaks have spilled more than 11.5 million gallons of oil.<sup>62</sup> Worryingly, data from the Pipeline and Hazardous Materials Safety Administration show that there have been over 4,000 oil and fuel pipeline spills since 2010, but only 7% were detected by leak detection systems.<sup>63</sup> TDEC erroneously concluded there was "no reason to believe there is any possibility of affecting the deep regional aquifer,"<sup>64</sup> but it had more than enough information at the time of issuing the permit to suspect that leaks along the pipeline route could contaminate the drinking water supply.

*B. The adverse impacts facilitated by TDEC's grant of the Byhalia Pipeline Permit are disproportionately borne by a group protected by Title VI.*

As noted in the section above, the Byhalia Pipeline route traverses southwest Memphis, including the Boxtown community, which is predominantly Black and low-income. Southwest Memphis is also already burdened by numerous current polluting industries and legacy polluting sites; not coincidentally, the cumulative cancer risk in southwest Memphis is four times higher than the national average.<sup>65</sup> Although TDEC requested, and Byhalia Pipeline LLC provided, an

<sup>58</sup> Civil Rights Compliance Toolkit, 21.

<sup>59</sup> Comment from Deborah Carrington (Sept. 11, 2020) (Attachment H).

<sup>60</sup> Douglas Cosler, *Evaluation of the Risk of Contamination of the Memphis Sand Aquifer by the Proposed Byhalia Connection Pipeline* (February 1, 2021), 16 ("Cosler Report") (Attachment Q).

<sup>61</sup> *Id.* at 5.

<sup>62</sup> *Id.* at 4.

<sup>63</sup> Mike Soraghan, *Giant N.C. spill shows gaps in pipeline safety*, E&E News (Feb. 25, 2021), <https://www.eenews.net/stories/1063725961>.

<sup>64</sup> Notice of Determination, 6.

<sup>65</sup> Chunrong Jia and Jeffrey Foran, *Air Toxics Concentrations, Source Identification, and Health Risks: An Air Pollution Hot Spot in Southwest Memphis, TN*, 81 *Atmospheric Env't* 112–116 (Dec. 2013), <https://www.sciencedirect.com/science/article/abs/pii/S1352231013006948?via%3Dihub#>.

analysis of several alternatives to the southwest Memphis route, neither TDEC nor Byhalia engaged in any kind of demographic comparison between the routes or examined the existing pollution and polluting infrastructure burdens borne by the respective communities.

*C. TDEC has not articulated a “substantial legitimate justification” for its decision to issue the Byhalia Pipeline Permit without any consideration of disproportionate adverse impacts on minority communities or potential effects on drinking water.*

Many people, including community members in southwest Memphis, submitted comments to TDEC during the public comment period for the Byhalia Pipeline Permit. As noted above, two related issues predominated: concern about the pipeline’s risk to drinking water, and concern that those risks, as well as other negative impacts, would be disproportionately shouldered by low-income, predominately Black communities already suffering under a legacy of industrial pollution facilitated by systemic racism in Memphis and Tennessee.<sup>66</sup>

In response to these comments on environmental justice, TDEC emphasized that “Tennessee does not have an [executive order] or specific language within rule or statute that requires and/or provides TDEC the explicit authority to consider environmental justice within its environmental regulatory program actions.”<sup>67</sup> But issuance of an executive order or specific language in state regulations has no bearing on TDEC’s obligations to comply with the Civil Rights Act as a recipient of federal funding. Claiming that it “striv[es] for the equal treatment of all communities,” TDEC cited only the public notice and public hearing on the draft permit as sufficient to resolve any environmental justice concerns.<sup>68</sup> This is not sufficient. As EPA guidance provides, “[u]nderstanding the existing environmental and health impacts as well as the demographics, in the areas under consideration for the siting of new facilities, may help [permitting agencies] ensure they do not issue permits in a discriminatory manner.”<sup>69</sup> Non-health-related harms, such as harms to property values or quality of life, are also factors in disparate impact analysis.<sup>70</sup> Justification of these environmental and other harms requires TDEC to “offer evidence that its policy or decision in question is demonstrably related to a significant, legitimate goal related to its mission,” but TDEC has provided no such evidence.<sup>71</sup>

TDEC’s non-response to comments raising concerns about the economic benefits (or lack thereof) to affected communities, and the negative impacts on Black homeownership and property values, is inadequate. In the November 9, 2020 Notice of Determination for the Byhalia Pipeline Permit, TDEC noted that many public comments questioned the validity of the supposed economic and social justification and raised issues about whether the project would actually economically and socially harm, rather than benefit, the affected communities, but TDEC then

<sup>66</sup> Aubrey Ford, Phoebe Weinman and Walker Weinman, *Boxtown: The Land of Broken Promises*, Storyboard Memphis (Sept. 16, 2019), <https://storyboardmemphis.org/neighborhood-board/boxtown/>.

<sup>67</sup> Notice of Determination, 9.

<sup>68</sup> *Id.*

<sup>69</sup> EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 71 Fed. Reg. 14207, 14215 (March. 21, 2006).

<sup>70</sup> Civil Rights Compliance Toolkit, Chapter 1 FAQs, 4.

<sup>71</sup> *Id.* at 15.

entirely omitted *any* consideration of the economic and social effects of the project.<sup>72</sup> TDEC completely avoided responding to the numerous public comments raising these concerns, and simply stated that the environmental degradation from the project was mitigated to such a degree that no consideration of social or economic effects was necessary, and that TDEC had no authority to consider things like effects on property values.<sup>73</sup> What TDEC did *not* say was that it had previously requested just such an analysis from Byhalia Pipeline LLC, and had included that analysis in a draft permit posted on TDEC's permit data viewer website just 6 days earlier, on November 3, 2020.<sup>74</sup> That November 3 draft permit also noted that the environmental degradation was sufficiently mitigated, and nothing had changed in the interim 6 days; TDEC's decision to just drop that analysis in the final permit and Notice of Determination is completely unexplained.<sup>75</sup>

When considering the economic impacts of a permitting decision, and whether they would justify a disparate impact on a particular community, EPA guidance instructs TDEC to consider whether any purported economic benefits would be “delivered directly to the affected population,” keeping in mind “the views of the affected community” about whether the benefits justify the disparate impacts.<sup>76</sup> The community made its voice very clear, as the comments given above indicate: it did not think the pipeline benefited them, and thought it would actually harm them—socially, economically, and environmentally. As a comment from the President of the Whitehaven Community Development Corporation put it:

[W]ho, other than the oil companies who use these pipelines, will benefit from this project? Certainly not the already struggling families who will be mostly affected... Even the hired PR firm stated that the jobs created would not be the type of jobs the local economy could support or fill. So, how is this proposed partnership creating and perpetuating a sustainable economic and preferred development for the local economy?<sup>77</sup>

With no explanation for why it dropped the social and economic analysis specifically requested from Byhalia Pipeline LLC, TDEC's ultimate refusal to engage in this question because it may not be necessary under the permitting regulations appears pretextual. TDEC is fully able to ensure that its ARAP program fulfills its primary water quality protection purpose while also ensuring the program does not have discriminatory effects, and regularly considers social and economic impacts in many situations.<sup>78</sup> Its decision to forgo such analysis here, when comments and evidence suggest that the decision to issue the permit will cause disproportionate adverse impacts to primarily low-income, Black communities, violates Title VI's requirement to administer programs in a non-discriminatory manner.

---

<sup>72</sup> Notice of Determination, 7-10.

<sup>73</sup> *Id.*

<sup>74</sup> November 3 Draft Permit, 21.

<sup>75</sup> *Id.* at 23.

<sup>76</sup> Civil Rights Compliance Toolkit, 15.

<sup>77</sup> Comment from Whitehaven Community Development Corporation (Sept. 11, 2020) (Attachment R).

<sup>78</sup> See, e.g., Tenn. Comp. R. & Regs. 0400-40-03-.06.

TDEC's refusal to consider the potential contamination of drinking water and groundwater is also unjustified, particularly where, as here, that contamination contributes to disparate adverse impacts to communities protected by Title VI. Although TDEC's permitting decision focused on impacts to surface waters, the Tennessee Water Quality Control Act allows TDEC to consider groundwater, too, particularly when that groundwater is a drinking water source. TDEC's own regulations require it to consider "any other factors relevant under the Act" when evaluating a permit application.<sup>79</sup> The Tennessee Water Quality Control Act prohibits the unpermitted "alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state."<sup>80</sup> The waters of the state include groundwater,<sup>81</sup> and the "government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve" the public's right to clean water.<sup>82</sup> Because the Act seeks to protect *all* waters of the state, a substantial risk of groundwater pollution—especially near drinking water intakes—is highly relevant to TDEC's decision to issue an ARAP for the development of a high-pressure crude oil pipeline.

TDEC also has an additional statutory basis for considering drinking water in its permitting decisions. The people of Tennessee, including Memphians, have a "right to unpolluted waters,"<sup>83</sup> including groundwater. The Department is charged with "prevent[ing] the future pollution of the waters . . . so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters."<sup>84</sup> Given its duty to protect drinking water, TDEC's attempt to avoid analyzing the potential impacts to drinking water resulting from issuing the Byhalia Pipeline Permit because of some perceived lack of statutory authority falls flat.

Finally, though Tennessee may not have a statute expressly requiring TDEC to consider environmental justice, such analysis is essential here for TDEC to ensure that its policies and practices do not disparately impact Black residents, as required for compliance with Title VI. TDEC has not shown its policy to forgo environmental justice analysis, particularly when, as here, public comments clearly frame it as an issue, is somehow "necessary to meeting a goal that [i]s legitimate, important, and integral to the [recipient's] institutional mission."<sup>85</sup> TDEC's only justification for not considering environmental justice is that the agency could not identify any explicit provisions in a Tennessee statute that "required and/or provided" it authority to perform such analysis. A purported lack of explicit authority to consider disparate impacts under *state* law cannot alone be sufficient reason to uphold a policy that creates disparate impacts on groups protected by Title VI, a federal civil rights law with which TDEC is required to comply. And absence of a state statute explicitly *requiring* that analysis is no excuse for failure to comply with the Civil Rights Act.

---

<sup>79</sup> Tenn. Comp. R. & Regs. 0400-40-07.04(6)(c).

<sup>80</sup> Tenn. Code Ann. § 69-3-108(b)(1).

<sup>81</sup> *Id.* 69-3-103(45).

<sup>82</sup> *Id.* § 69-3-102(a).

<sup>83</sup> Tenn. Code Ann. § 69-3-102(a).

<sup>84</sup> *Id.*

<sup>85</sup> Civil Rights Compliance Toolkit, 9.

#### IV. Undisclosed Information

Since TDEC issued the Byhalia Pipeline Permit on November 17, 2020, additional investigation has revealed information which make the disproportionate adverse impacts of the Byhalia Pipeline even more clear: the proposed pipeline would not only run over the Memphis Sand Aquifer in an area where the aquifer is known to be vulnerable to contamination<sup>86</sup>—it would also plow right between two wells in a municipal wellfield that provides drinking water to Black communities in southwest Memphis.<sup>87</sup> Any pipeline spill or leak could therefore contaminate not just the drinking water aquifer, but actual drinking water supplies, even more quickly than previously suspected. This information should have been available to TDEC in its permitting process but Byhalia Pipeline LLC did not disclose it. Accordingly, it has only come to light since TDEC issued the permit.

The following map shows where the pipeline route crosses the municipal wellfield, and the sensitive area around the wells designated by Memphis Light, Gas and Water (“MLGW”) as Wellhead Protection Zone 2, near areas of known or suspected breaches in the clay layer separating the shallow alluvial aquifer from the Memphis Sand Aquifer.<sup>88</sup>

---

<sup>86</sup> MCAP et al. Demand to Revoke ARAP and 401 for Byhalia Pipeline (Apr. 29, 2021), 7 (“MCAP Demand Letter”) (Attachment S).

<sup>87</sup> *Id.*

<sup>88</sup> Although the attached map is based on MLGW’s 2003 Wellhead Protection Plan maps, advocates with the local groundwater protection organization Protect Our Aquifer recently inspected the current version of MLGW’s Wellhead Protection Plan and confirmed that Zone 2 is the same or very similar in scope.



contamination could reach the Memphis Sand Aquifer and MLGW's drinking water intakes relatively quickly—years rather than the decades often associated with groundwater travel times.<sup>92</sup> Operating at 1500 psi—more than twice the pressure of fire hoses that spray water 30 stories into the air—the pipeline offers no margin of error, as “hundreds of gallons of crude oil can spew out of a small opening” in a pipeline operating at such high pressure.<sup>93</sup> Crude oil contains known and probable carcinogens, including benzene.<sup>94</sup> Cleaning up crude oil once it reaches the groundwater is an expensive and difficult task.<sup>95</sup> After consideration of these and other factors, Memphis Mayor Jim Strickland recently announced that after consultation with environmental scientists, he considers the Byhalia Connection Pipeline an “unacceptable risk” to the city's drinking water.<sup>96</sup> In addition, earlier this month geologists from the University of Memphis Center for Applied Earth Science and Engineering Research presented additional compelling evidence of a breach in the clay layer in the immediate vicinity of the proposed pipeline's route through the Davis Wellfield.<sup>97</sup>

Byhalia Pipeline LLC did not disclose the fact that its proposed pipeline would run through the municipal drinking water wellfield that serves Black communities in southwest Memphis during the permitting process. Nor did TDEC request Byhalia perform the groundwater analysis that would have brought that information forward.

Similarly, Byhalia Pipeline LLC failed to disclose the fact that a pipeline connecting the Diamond and Capline crude oil pipelines *already exists*.<sup>98</sup> Use of the existing Collierville Connection Pipeline could avoid all of the construction- and many of the operational-related impacts of the proposed Byhalia Pipeline on southwest Memphis. Yet the pipeline company did not disclose the existence of the Collierville Pipeline, and TDEC did not consider use of that existing pipeline in its alternatives analysis.<sup>99</sup>

Because Byhalia failed to disclose fully all relevant information during the permitting process, the Southern Environmental Law Center on behalf of MCAP and other groups sent a letter to TDEC on April 29, 2021 demanding that TDEC immediately revoke or suspend the

---

<sup>92</sup> *Id.* at 7–12.

<sup>93</sup> *Id.* at 4.

<sup>94</sup> *Id.* at 6.

<sup>95</sup> *Id.* at 4–7.

<sup>96</sup> Sarah Macaraeg, ‘An unacceptable risk’: Memphis Mayor Jim Strickland opposes Byhalia pipeline, Memphis Commercial Appeal (April 20, 2021), <https://www.commercialappeal.com/story/news/2021/04/20/memphis-mavor-jim-strickland-opposes-byhalia-pipeline-tennessee-mississippi/7301469002/>.

<sup>97</sup> Michaela Watts and Samuel Hardiman, New possible threat to Memphis' drinking water discovered along Byhalia pipeline route, Memphis Commercial Appeal (May 12, 2021), <https://www.commercialappeal.com/story/news/environment/2021/05/13/aquifer-breach-byhalia-oil-pipeline-threaten-memphis-drinking-water/5022458001/>.

<sup>98</sup> MCAP Demand Letter, 3.

<sup>99</sup> Alternatives Analysis, Byhalia Connection Pipeline, TDEC ARAP NRS20.089 (June 19, 2020) (Attachment F); Notice of Determination.

Byhalia Pipeline Permit, and demanding that any future re-evaluation of the permit application evaluate drinking water and environmental justice impacts.<sup>100</sup> To date, TDEC has not responded.

## V. Relief Requested

*A. TDEC must revoke the current Byhalia Pipeline Permit and consider environmental justice impacts in determining whether to re-issue that permit.*

In order to comply with Title VI, and prevent unjustified disparate impacts, TDEC must revoke the current Byhalia Pipeline Permit. If Byhalia Pipeline LLC applies for another ARAP and Section 401 water quality certification, TDEC must consider all factors in its permitting decision relevant to whether the permit would have discriminatory effects, which includes disparate levels of risk to drinking water resources.

Attempted compliance with environmental laws does not ensure compliance with Title VI. To comply with the latter, TDEC must take affirmative steps to consider and prevent disparate impacts. Beyond rejecting the permit outright, TDEC may be able to ensure compliance with Title VI by modifying permit conditions or requiring a different route; these would potentially be less discriminatory alternatives that satisfy TDEC's other obligations.<sup>101</sup>

*B. TDEC must create and enforce a permit review policy that considers and evaluates the potential for disproportionate adverse impacts on groups protected by Title VI.*

In addition to rectifying TDEC's violation of Title VI in issuing the Byhalia Pipeline Permit, TDEC must also change its current policy of refusing to engage in analysis to determine whether its decisions have discriminatory effects. This is a policy or practice that leads to disparate adverse impacts, and EPA should counsel TDEC on how to develop a permit decision-making policy that is fair, equitable, and Title VI-compliant going forward, as well as on how to administer that policy in a non-discriminatory manner.

## VI. Conclusion

The Byhalia Pipeline's proposed route, approved by TDEC, will endanger the drinking water, depress the property values, threaten surface waters, and inhibit future development in the poor, majority Black communities in southwest Memphis. By refusing to consider the concerns of the affected communities on these issues and issuing the permit without any consideration of the potential for disparate impacts, TDEC has violated Title VI. EPA should ensure that TDEC revokes the discriminatory Byhalia Pipeline Permit, and develops a Title VI-compliant policy for evaluating future permits. Should TDEC fail to come into compliance with Title VI voluntarily,

---

<sup>100</sup> MCAP Demand Letter. TDEC has cause to modify, suspend, or revoke a permit when the permit applicant obtained "a permit by misrepresentation or failure to disclose fully all relevant facts." Tenn. Comp. R. & Regs. 0400-40-07-.04(6)(b).

<sup>101</sup> Civil Rights Compliance Toolkit, 15.

Title VI Complaint regarding the Tennessee Department of Environment and Conservation  
May 16, 2021  
Page 21 of 21

we request that EPA initiate proceedings to suspend or terminate EPA funding to TDEC in accordance with Title VI and 40 C.F.R. §§ 7.115, 7.130.

Sincerely,



Chelsea Bowling  
Amanda Garcia  
Chandra Taylor

Attorneys for Memphis Community Against  
Pollution, Inc.

Attachments available via ShareFile at:

<https://southernenvironment.sharefile.com/d-s3693be33e6b043b79a6eb130a41e929d>

Cc (via email):

Greg Young, Deputy Commissioner for the Environment, TDEC  
Jenny Howard, General Counsel, TDEC  
Patrick Parker, Attorney, Office of General Counsel, TDEC  
Jennifer Dodd, Director, Division of Water Resources, TDEC  
Kendra Abkowitz, Director for the Office of Policy and Sustainable Practices, TDEC

May 25, 2021

White House Environmental Justice Advisory Council  
[Public comment form](#) and [whejac@epa.gov](mailto:whejac@epa.gov)

**Subject: WHEJAC May 2021 Meeting Public Comments**

The undersigned organizations are writing to notify the White House Environmental Justice Advisory Council about the proposed Formosa Plastics petrochemical plant in St. James Parish, Louisiana.

As you may know, plastic causes serious environmental problems at every step of its lifecycle, and poses a growing environmental justice problem. Plastic production fuels the climate crisis, harming local communities with toxic air and water pollution. [Residents of Cancer Alley](#), the corridor between Baton Rouge and New Orleans, face regular exposure and health concerns from the overburden of industrial pollution, particularly in working class, Black communities.

The proposed [Formosa Plastics petrochemical complex](#) would be built in a predominantly Black district of St. James Parish, already being overrun by petrochemical development. If constructed, the Formosa complex would double toxic air emissions in the St. James community and desecrate the [graves of people who were enslaved](#) on the plantations that used to operate there. As well, this petrochemical complex would destroy storm protecting wetlands, harm local fish populations and our seafood economy, and emit 13.6 million tons of greenhouse gases per year to accelerate the climate crisis, of which we are already at the forefront.

We are members of [the Stop Formosa Plastics coalition](#), including Sharon Lavigne, founder and director of local grassroots organization RISE St. James. We are requesting a virtual meeting with the members of the newly formed Environmental Justice Interagency and Advisory Councils to discuss the proposed Formosa Plastics project. Robust legal opposition and grassroots power prompted the US Army Corps of Engineers to suspend its federal permit decision for the Formosa Plastics plant complex, pausing the plant's construction. Now, reevaluation of the federal permit is underway.

**The members of our growing coalition appreciate the opportunity to meet with members of the White House Environmental Justice Advisory Council about this proposed project, the threats it poses, and the need to revoke its federal permit. Please advise how to schedule a meeting.**

Looking forward to hearing back from you. If you have any questions, you can reach me at [sharonlavigne@gmail.com](mailto:sharonlavigne@gmail.com).

Sincerely,



Sharon Lavigne

President of RISE St. James

---

Louisiana Bucket Brigade  
Earthworks  
Healthy Gulf  
A Community Voice  
Coalition Against Death Alley  
Concerned Citizens of St. John  
Greater New Orleans Interfaith Climate Coalition  
Justice & Beyond  
Louisiana League of Conscious Voters  
Climate Reality Project, New Orleans Chapter  
350 New Orleans  
Sierra Club New Orleans Office  
Sunrise Movement New Orleans Hub  
No Waste Louisiana  
Sunrise Movement Tulane  
Southwings  
Center for Biological Diversity



May 26, 2021

**Via Web Form<sup>1</sup> and Email**

White House Environmental Justice Advisory Council  
[whejac@epa.gov](mailto:whejac@epa.gov)

Re: **WHEJAC May 2021 Meeting Public Comments, Filed Pursuant to 86 Fed. Reg. 20,493 (Apr. 20, 2021)**

Dear White House Environmental Justice Advisory Council,

Thank you for the opportunity to provide comments on WHEJAC's May 13, 2021 virtual public meeting. We – Dr. Eri Saikawa, Associate Professor of Environmental Sciences at Emory University;<sup>2</sup> Rosario Hernandez, Director of Historic Westside Gardens;<sup>3</sup> and Dr. Yomi Noibi, Executive Director of Environmental Community Action Inc. ECO-Action<sup>4</sup> – advocate for environmental justice in Georgia communities including Metro Atlanta. We write to you to raise concerns regarding the disproportionate exposure of communities of color and low income-earning communities (“environmental justice communities” or “EJ communities”) to lead (Pb) through multiple pathways, including soil, air, paint, drinking water, and food. We urge you to advise the Chair of the Council on Environmental Quality and the agencies comprising the Interagency Council on Environmental Justice that (1) all federal agencies responsible for regulating lead exposure in soil, air, paint, drinking water, food, and other media should seek to remedy the disproportionate and cumulative impact of lead exposure on EJ communities, (2) agencies should strengthen standards accordingly, and (3) agencies should equitably enforce environmental laws regarding lead.

---

<sup>1</sup> <https://www.epa.gov/environmentaljustice/forms/white-house-environmental-justice-advisory-council-whejac-public-comment>

<sup>2</sup> Professor Saikawa conducts interdisciplinary research on the environment, including research on the health impacts of air pollution, soil chemistry and climate change, and environmental policy. The Saikawa Lab and Historic Westside Gardens discovered lead pollution in Atlanta's Westside leading to a Superfund site cleanup. See <http://envs.emory.edu/home/people/bios/saikawa-eri.html> and <https://atlsoilsafety.com/>.

<sup>3</sup> Historic Westside Gardens promotes environmental and economically successful practices for communities and operates five greenspaces around Westside Atlanta. See <https://www.historicwestsidegardens.org/>.

<sup>4</sup> ECO-Action helps communities organize to prevent and respond to environmental health threats, with a focus on empowering vulnerable communities. See <https://eco-act.org/>.

1. *There is no safe level of lead exposure.*

Lead is extremely toxic, particularly to children, and there is no safe level of lead in children's blood.<sup>5</sup> According to the Department of Health and Human Services National Toxicology Program, there is evidence that even small amounts of blood lead in children (less than 5 micrograms per deciliter [ $\mu\text{g}/\text{dL}$ ]) causes attention-related behavioral problems, greater incidence of problem behaviors, and decreased academic achievement and IQ. Blood lead levels in children less than 10  $\mu\text{g}/\text{dL}$  are associated with delayed puberty, decreased hearing, and reduced post-natal growth. In adults, blood lead levels less than 10  $\mu\text{g}/\text{dL}$  can cause increased blood pressure, decreased learning, memory, and attention, damage to reproductive organs, and miscarriage. Exposure to higher amounts can cause damage to the brain and kidneys and can be fatal.<sup>6</sup> Once exposed to lead, these health effects cannot be corrected.<sup>7</sup>

2. *CDC blood lead standards support strengthening regulations.*

The Centers for Disease Control and Prevention (CDC) collects nationwide data and sets standards for what constitutes an elevated blood lead level. In 2001, CDC set a blood lead "level of concern" at 10  $\mu\text{g}/\text{dL}$ . In 2012, CDC halved this level to 5  $\mu\text{g}/\text{dL}$  and adopted a new term, the "blood lead reference value," to indicate that 5  $\mu\text{g}/\text{dL}$  represented the level of blood lead in the highest 2.5% of children and to reflect that there is no safe level of lead in children's blood.<sup>8</sup> Based on data collected as part of the National Health and Nutrition Examination Survey conducted from 2011-2014, CDC is now considering lowering the blood lead reference value from 5  $\mu\text{g}/\text{dL}$  to 3.5  $\mu\text{g}/\text{dL}$ .<sup>9</sup>

3. *Existing lead regulations by government agencies are not adequately protective.*

While the dangers of lead exposure are well known, regulation of lead exposure by federal agencies is inconsistent, lags behind the times, and allows for significant harm, especially to members of environmental justice communities. The outdated soil-lead standards set by the Environmental Protection Agency (EPA) provide an illustrative example.

Lead in soil is dangerous to children both because it can be ingested when playing outside and because it can be tracked inside, where it mixes with household dust. Lead in soil and household dust is transferred to children's hands when crawling or playing, and then can be ingested or transferred to food, toys, or clothing.

---

<sup>5</sup> CDC, [Blood Lead Levels in Children](https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm) (Last Reviewed April 5, 2021), <https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm>.

<sup>6</sup> National Toxicology Program Monograph, [Health Effects of Low-Level Lead](https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffects/lowlevellead_newissn_508.pdf), xix (June 2012), [https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffects/lowlevellead\\_newissn\\_508.pdf](https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffects/lowlevellead_newissn_508.pdf); Agency for Toxic Substances and Disease Registry, [ToxFAQs for Lead](https://www.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=93&toxid=22), (August 07, 2020), <https://www.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=93&toxid=22>.

<sup>7</sup> CDC, [Blood Lead Levels in Children](https://www.cdc.gov/nceh/lead/docs/lead-levels-in-children-fact-sheet-508.pdf), <https://www.cdc.gov/nceh/lead/docs/lead-levels-in-children-fact-sheet-508.pdf>.

<sup>8</sup> See CDC, [Blood Lead Reference Value](https://www.cdc.gov/nceh/lead/data/blood-lead-reference-value.htm) (Last Reviewed April 21, 2021), <https://www.cdc.gov/nceh/lead/data/blood-lead-reference-value.htm>, and CDC, [Blood Lead Levels in Children](https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm) (Last Reviewed April 5, 2021), <https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm>.

<sup>9</sup> President's Task Force on Environmental Health Risks and Safety Risks to Children, [Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts](https://www.epa.gov/sites/production/files/2018-12/documents/fedactionplan_lead_final.pdf), 5-6 (December 2018), [https://www.epa.gov/sites/production/files/2018-12/documents/fedactionplan\\_lead\\_final.pdf](https://www.epa.gov/sites/production/files/2018-12/documents/fedactionplan_lead_final.pdf).

EPA's standards for lead contamination in soil were derived from the Toxic Substances Control Act and set in 2001. These standards allow for lead contamination in soil of up to 400 parts per million (ppm) in play areas of a residential yard, and up to 1,200 parts per million in non-play areas.<sup>10</sup>

In 2013, after the CDC lowered the blood lead reference value from 10 µg/dL to 5 µg/dL, the Children's Health Protection Advisory Committee recommended that EPA establish new goals for childhood lead poisoning and exposure prevention and incorporate the new CDC reference value.

In 2019 and 2021, EPA lowered its standards for dust lead on floors from 40 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup> and from 250 µg/ft<sup>2</sup> to 100 µg/ft<sup>2</sup> for window sills, but made no changes to the standards for lead in soil or paint, leading to a lawsuit against EPA in the Ninth Circuit, which alleged that EPA breached its responsibilities under the Toxic Substances Control Act by not updating the soil and paint lead standards and by setting too lenient a standard for dust lead. In a decision on May 14, 2021, the Ninth Circuit agreed, stating that "[t]he current dust-lead hazard standards, lead-based paint definition, and soil-lead hazard standards do not identify all levels of lead that lead to adverse human health effects and therefore violate the [Toxic Substances Control Act]."<sup>11</sup> The court ordered EPA to reconsider and strengthen the dust lead rules and update EPA's "antiquated" standards for paint and soil lead to account for the recognition that there is no safe level of lead exposure.<sup>12</sup>

EPA's multiple, independently set standards for lead exposure from soil, dust, and paint highlight that *even within a single federal agency* there is not a unified approach to lead regulation that takes into account cumulative impacts from various exposure pathways. When EPA reconsiders its lead rules pursuant to the Ninth Circuit's recent order, it has the opportunity to take such a unified and comprehensive approach.

#### 4. Lead is regulated by multiple agencies in inconsistent ways.

The problem is bigger than EPA's soil, dust, and paint standards, though. Regulation of lead among different agencies varies widely. Medicaid, the Children's Health Insurance Program, and the Food and Drug Administration (FDA) have adopted the 5 µg/dL blood lead reference level from CDC. The Department of Housing and Urban Development also adopted CDC's 5 µg/dL standard, but not until 2017, and until that point had used an 'action level' of 20 µg/dL.<sup>13</sup>

The FDA also sets the level of permissible lead intake from food, currently set at 3 µg per day for children and 12.5 µg per day for adults. FDA set strict standards for lead in candy (0.1 ppm) and juice (50 parts per billion (ppb)), in recognition of the likelihood that those foods will be consumed by children.<sup>14</sup> FDA also regulates lead in bottled water (at 5 ppb), and EPA regulates lead in public drinking water (at 15 ppb) and in ambient air (at 0.15 µg/m<sup>3</sup>).<sup>15</sup>

<sup>10</sup> 40 C.F.R. § 745.65(c). A "play area" is defined as "an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners." 40 C.F.R. § 745.63.

<sup>11</sup> A Community Voice, et al. v. U.S. E.P.A. et al., No. 19-71930, 2021 WL 1940690, at 7 (9<sup>th</sup> Cir. 2021).

<sup>12</sup> Id. at 24.

<sup>13</sup> Brian Sullivan, HUD Issues Final Rule to Help Children Exposed to Lead Paint Hazards – Stricter definition of "elevated blood lead level" in young children matches CDC approach, U.S. Department of Housing and Urban Development (Jan. 13, 2017), <https://archives.hud.gov/news/2017/pr17-006.cfm>.

<sup>14</sup> FDA, Lead in Food, Foodwares, and Dietary Supplements, (updated Feb. 27, 2020),

<https://www.fda.gov/food/metals-and-your-food/lead-food-foodwares-and-dietary-supplements>.

<sup>15</sup> Id., EPA, NAAQS Table, <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

The Occupational Safety and Health Administration (OSHA) regulates lead exposure in the workplace. OSHA standards set a permissible lead in air exposure limit of 50 µg/m<sup>3</sup>, mandates blood tests for any employee exposed to 30 µg/m<sup>3</sup>, and requires that an employee who tests at 60 µg/dL or averages 50 µg/dL in three or more blood tests be removed until that employee's blood lead level falls below 40 µg/dL.<sup>16</sup> Exposure to lead in the workplace results in "take-home exposure" to children when these employees bring home lead on their clothing, bodies, or vehicles.<sup>17</sup>

What happens if an individual is exposed to lead in soil, dust, air, paint, drinking water, and food? Agency standards vary due to the mission of the agency, but this patchwork of different agencies, exposure pathways, and standards creates difficulty in assessing, preventing, and responding to the cumulative impacts of lead exposure in a community. Agencies must work together to ensure multiple exposure pathways are accounted for and communities are fully protected.

##### 5. Lead poisoning disproportionately burdens environmental justice communities.

Lead contamination disproportionately burdens environmental justice communities.<sup>18</sup> Although improvement has been made since the initial recognition of widespread lead contamination in the 1990s, lead remains "a source of ecological inequity by race and a pathway through which racial inequality literally gets into the body."<sup>19</sup> Other public health and environmental justice issues such as nutritional deficiencies and the presence of other health conditions affect how children's bodies respond to lead exposure,<sup>20</sup> and the negative cognitive, behavioral, and health effects of lead exposure may exacerbate issues associated with structural racism.

One such environmental justice community is the Westside of Atlanta, where a Superfund site contaminated with lead slag from industrial smelting is located in a low-income earning and majority Black community. Historic Westside Gardens and the Saikawa Lab discovered this slag in residential yards, leading EPA to begin conducting sampling and cleanup activities in an area of over 2,000 properties.<sup>21</sup> However, EPA's outdated standards prevented the cleanup of many contaminated yards. EPA has taken the position that lead contamination of 400 ppm is unsafe but that 394 ppm is acceptable, which has caused dissatisfaction within the community.<sup>22</sup> Emory scientists and public health experts are concerned that present approaches to lead contamination do not adequately screen potentially vulnerable communities or proactively test for lead exposure.<sup>23</sup>

---

<sup>16</sup> 29 C.F.R. § 1910.1025.

<sup>17</sup> President's Task Force on Environmental Health Risks and Safety Risks to Children, Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts, 11 (December 2018), [https://www.epa.gov/sites/production/files/2018-12/documents/fedactionplan\\_lead\\_final.pdf](https://www.epa.gov/sites/production/files/2018-12/documents/fedactionplan_lead_final.pdf).

<sup>18</sup> Vanessa Sacks and Susan Balding, The United States can and should eliminate childhood lead exposure, Child Trends (Feb. 02, 2018) <https://www.childtrends.org/publications/united-states-can-eliminate-childhood-lead-exposure>.

<sup>19</sup> Robert J. Sampson and Alix S. Winter, The Racial Ecology of Lead Poisoning: Toxic Inequality in Chicago Neighborhoods, 1995-2013, DuBois Review: Social Science Research on Race 13(2), 19 (2016).

<sup>20</sup> CDC, Blood Lead Levels In Children (Last Reviewed April 5, 2021), <https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm>

<sup>21</sup> EPA, Superfund Site: Westside Lead (Updated March 1, 2021), <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0407160#bkgground>.

<sup>22</sup> Andy Miller, Threshold For Fix Leaves Some In Atlanta Living With Contamination, WABE (August 18, 2020), <https://www.wabe.org/threshold-for-fix-leaves-some-in-atlanta-living-with-contamination/>.

<sup>23</sup> See Samantha Distler and Eri Saikawa, A new screening index to better target low-level lead exposure in Atlanta, Georgia, Scientific Reports 10:18087 (2020).

## 6. Conclusion and Recommendation.

Atlanta's Westside is, unfortunately, not unique in being an environmental justice community disproportionately burdened with lead exposure. Achieving the "fair treatment" goal of environmental justice requires strengthening protections for communities from the disparate and cumulative pathways of lead exposure.<sup>24</sup> This may require a number of adjustments to regulations and standards promulgated by different agencies. It may also require the collection of more public health data and a rigorous evaluation of which communities are at high risk. A thorough and nationwide study should consider housing information, income, proximity to polluting facilities, industrial history, and demographics, and provide free blood lead testing in high-risk communities. This data should be collected as part of WHEJAC's Climate and Economic Justice Screening Tool. This whole-of-government approach is perfectly suited to WHEJAC's charter goals of reducing toxic pollution in overburdened communities and increasing the Federal Government's efforts to address current and historic environmental injustice.

Therefore, we urge WHEJAC to advise the Chair of the Council on Environmental Quality and the agencies comprising the Interagency Council on Environmental Justice that (1) all federal agencies responsible for regulating lead exposure in soil, air, paint, drinking water, and other media should seek to remedy the disproportionate and cumulative impact of lead exposure on EJ communities, (2) agencies should strengthen lead standards accordingly, and (3) agencies should equitably enforce environmental laws regarding lead.

Sincerely,

Rosario Hernandez, *Director of Historic Westside Gardens*

Dr. Yomi Noiibi, *Executive Director of Environmental Community Action Inc. (ECO-Action)*

Dr. Eri Saikawa, *Associate Professor, Emory University*

---

<sup>24</sup> EPA, [Learn About Environmental Justice](https://www.epa.gov/environmentaljustice/learn-about-environmental-justice), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> ("Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies . . . Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.")



May 27, 2021

Dear Members of the White House Environmental Justice Advisory Council:

On behalf of National Parks Conservation Association and Western Environmental Law Center, we write to share our comments and recommendations regarding addressing environmental justice through federal government action. Since 1919, National Parks Conservation Association (NPCA) has been the leading voice in protecting and enhancing our National Park System for the use and enjoyment of present and future generations. The Western Environmental Law Center (WELC) uses the power of the law to safeguard the public lands, wildlife, and communities of the American West in the face of a changing climate.

We appreciate the work and listening in which the White House Environmental Justice Advisory Council ("WHEJAC" or "Council") has engaged to-date and the opportunities available to share comments and recommendations. Based on the April 28, 2021 and May 13, 2021 public meetings and the Interim Final Recommendations issued thereafter,<sup>1</sup> and the invaluable expertise and perspectives that WHEJAC members bring to the Council, it is evident that WHEJAC members and the many people and groups offering public comment, especially those in frontline groups, bring a great deal of knowledge, expertise, and firsthand experience to this work. We agree with much of what has been said during the meetings and in the Interim Final Recommendations with respect to the:

- Need to move beyond "fairness" in defining, conceptualizing and "achieving" environmental justice;
- Need for true justice and accountability;
- Importance of climate justice;
- Need for equitable, collaborative, frontline-community-driven work that actually influences agency decision-making, rather than box-checking exercises and inaccessible processes for providing after-the-fact "input" on decisions already made;
- Importance not just of government-to-government consultation with Indigenous Peoples but of free prior and informed consent and self-determination;
- Importance of cumulative impacts analyses that take into account not only multiple pollutant exposures and health risks and impacts, but also social and structural factors rooted in unjust, racist, settler-colonial systems;
- Need for legislative change; and more.

---

<sup>1</sup> White House Environmental Justice Advisory Council, Interim Final Recommendations, Justice40 Climate and Economic Justice Screening Tool and Executive Order 12898 Revisions (May 13, 2021). Available at [https://www.epa.gov/sites/production/files/2021-05/documents/whejac\\_interim\\_final\\_recommendations\\_0.pdf](https://www.epa.gov/sites/production/files/2021-05/documents/whejac_interim_final_recommendations_0.pdf) [Hereinafter "Interim Recommendations"].

The following comments start by emphasizing the general framework from which we hope the Council on Environmental Quality (CEQ), the White House Environmental Justice Interagency Council (EJ IAC), and other federal agencies will operate with respect to environmental justice, echoing and supporting much of what has been included in the WHEJAC Interim Final Recommendations and discussed in recent WHEJAC public meetings. We then offer some specific perspectives and recommendations related to the Regional Haze program--a part of the Clean Air Act statutory and regulatory scheme that has often been treated as "separate" from environmental justice. We believe that the Regional Haze Rule, and its implementation by the U.S. EPA, states, and Tribes, deeply implicates environmental justice--and is inexorably linked to climate justice. We hope the WHEJAC finds the discussion and recommendations regarding the health and environmental justice implications of, and opportunities within, the Regional Haze program helpful as it moves forward with its work and takes necessary steps towards justice.

### Federal Definition of Environmental Justice

In 1991, delegates to the First National People of Color Environmental Leadership Summit gathered to, "...build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities," and to, "re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to ensure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples..."<sup>2</sup>

Fourteen years later, in 2005, the EPA drafted a strategic plan on environmental justice which defines environmental justice as, "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to development, implementation, and enforcement of environmental laws, regulations, and policies."<sup>3</sup> This definition is widely used by the EPA and other federal agencies today.

The existing definition is flawed for many reasons, but its insistence on "fair treatment" is glaring. Nothing about environmental racism is or ever was fair. Colonialism, genocide, and resource extraction weren't and aren't fair. Redlining wasn't fair. Nor is it fair that your likelihood of living next to polluting industries or having a dearth of greenspace and tree cover in your community is highly dependent on your skin color, gender, and/or income level. If we acknowledge the inherent unfairness of environmental racism, then we have to admit that "fair treatment" is not how we achieve environmental justice. It will take equitable and just treatment, treatment that offers the strongest protections to the most vulnerable in our society, to achieve the justice we seek.

Ultimately, we are aware that we need far more than just and inclusive definitions to achieve environmental justice. However, it is of common understanding that the first, and perhaps most important step to solving a problem, is properly framing the problem at hand.

---

<sup>2</sup> Principles of Environmental Justice, Energy Justice Network. <http://www.einet.org/ej/principles.pdf>.

<sup>3</sup> EPA Office of Environmental Justice. <https://www.epa.gov/environmentaljustice>.

## Recommendations

Existing definitions of environmental justice have largely failed to take into consideration the intersectionality<sup>4</sup> of social, structural and economic factors, and environmental harms and the people and communities that suffer from them. Perhaps most importantly, these definitions fail to incorporate action towards repairing past and ongoing harms, a central aim of environmental justice.

The CEQ and EJ IAC should expand the federal government's definition of environmental justice to go beyond "fair" treatment, and to expressly encompass intersectionality, truly meaningful involvement, and proactive elimination of past and present harms and prevention of future ones. To that end, we support the WHEJAC's proposed change from "fair treatment" to "just treatment" in the definition of "environmental justice," in its Interim Final Recommendations for updating Executive Order 12898--and the proposed definition of "just treatment" that includes the elimination of systemic racism and other structural barriers, and that expressly includes outcomes affecting cultural practices and the cultural bases of human health.<sup>5</sup> Likewise, we appreciate the proposed definition of "meaningful participation" that includes consultation, actual influence on agency decision-making (not just after-the-fact input on a pre-made policy or plan), and access issues.<sup>6</sup>

Importantly, the CEQ and other federal agencies should apply this concept of environmental justice to all of their thinking, decision-making, and actions, not as an ancillary consideration or benefit but as part of the very fabric of agency and whole-of-government structure, programs, policies, and processes. We thus appreciate the proposed addition to EO 12898 in the Interim Recommendations which states, "This Order now adds that affirmatively advancing equity, civil rights, racial justice, equal opportunity, and environmental justice is the responsibility of the whole of our Government."<sup>7</sup> We also recognize that an Executive Order alone, while important, does not create legal rights of action and generally lacks binding mechanisms with which to implement this approach, evaluate progress, and hold agencies and other actors accountable when they don't abide by its mandates.

## Cumulative Impacts

As those on the WHEJAC are aware, a growing body of research explicitly links environmental justice with cumulative impacts and social and structural factors that influence health and wellbeing, often called "social determinants of health."<sup>8</sup> Indeed, many WHEJAC members have been deeply involved in developing and applying this research. We hope to see CEQ, EJ IAC and other federal agencies apply this research to take a more critical and

---

<sup>4</sup> We use the term "intersectionality" here as "[t]he interconnected nature of social categorizations such as race, class, and gender, regarded as creating overlapping and interdependent systems of discrimination or disadvantage." In addressing environmental injuries, this term requires the CEQ and other agencies to take dynamic looks both at underlying structures of power and oppression and to recognize the already existing evidence of adverse impacts on health, well-being, and culture rather than relying upon rigid definitions to identify "environmental justice communities."

<sup>5</sup> Interim Recommendations at 79.

<sup>6</sup> Interim Recommendations at 80.

<sup>7</sup> Interim Recommendations at 78.

<sup>8</sup> Although there is rightly some movement away from the word "determinants," as it can suggest conditions that are more "natural" or "immutable" than they really are.

intersectional look at how cumulative, intersecting risks and harms, from pollution exposure to water access to racism, can lead to or exacerbate health inequities and environmental injustices. As WHEJAC members and many who have commented during the April and May meetings know, these inequities and injustices are not incidental, nor are they biologically determined—they are structural, systemic, and part of unjust historical and ongoing patterns and practices of environmental racism, settler colonialism, and extractive capitalism.<sup>9</sup>

#### *Relevant Research and Recommendations*

We'd like to note some relevant research for WHEJAC to take into consideration. Dr. Anne Epstein has completed wide-ranging research which analyzes the health impacts of living in close proximity to oil and gas operations.<sup>10</sup> We would refer the Council to the work of Dr. Epstein and many others, to fully take into account the cumulative impacts of the oil and industry, and the ways that some regulations stemming from the Clean Air Act (and amendments) can be effective tools to achieve environmental justice goals.

In particular, Dr. Epstein and others found that oil and gas development can pose high risks from toxic air emissions, groundwater contamination, and impact physical and emotional health. Their research concluded that benzene levels at oil and gas completion sites reach concentrations that potentially pose health risks for workers. In addition, the research found that compared to people living more than 2 km from the nearest gas well, people living less than 1 km away had a greater incidence of upper respiratory symptoms (39% vs. 18%), skin symptoms (13% vs. 3%), and average number of reported symptoms (3.3 vs 1.6). Countless impacts on human health have also been studied and documented in addition to those in the study cited above.

A rigorous study by Johns Hopkins University, which examined 35,000 medical records of people with asthma in Pennsylvania, found that people who live near a higher number of, or larger, active gas wells were 1.5 to 4 times more likely to suffer from asthma attacks than those living farther away, with the closest groups having the highest risk.<sup>11</sup> Relatedly, a 2018 study of pediatric asthma-related hospitalizations found that children and adolescents exposed to newly spudded unconventional natural gas development wells within their zip code had 1.25 times the odds of experiencing an asthma-related hospitalization compared to children who did not live in these communities. Furthermore, children and adolescents living in a zip code with any current or previous drilling activity had 1.19 times the odds of experiencing an asthma-related hospitalization compared to children who did not live in these communities. Amongst children and adolescents (ages 2-18), children between 2 and 6 years of age had the greatest odds of hospitalization in both scenarios.<sup>12</sup>

---

<sup>9</sup> See e.g. Gilio-Whitaker D. *As Long as Grass Grows: The Indigenous Fight for Environmental Justice, from Colonization to Standing Rock*. Beacon Press; 2019; Taylor D. *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility*. NYU Press; 2014; Whyte K. *Climate Change: An Unprecedentedly Old Catastrophe*. The Society for the Diffusion of Useful Knowledge. 2018; Grafting (1):8-9; Cole and Foster, *From the Ground Up*, supra Note 5.

<sup>10</sup> "Health Risks of Oil and Gas- Development," Nov 03, 2014. Presentation given in Mansfield, TX by Anne C. Epstein MD, FACP Lubbock TX Board of Health.

<sup>11</sup> Rasmussen, Sara G. et al., *Association Between Unconventional Natural Gas Development in the Marcellus Shale and Asthma Exacerbations*, 176 *JAMA Internal Medicine* 1334 (2016).

<sup>12</sup> Willis, Mary D. et al., *Unconventional natural gas development and pediatric asthma hospitalizations in Pennsylvania*, 166 *Environmental Research* 402 (2018) (attached as Exhibit 374).

Implementation of the Regional Haze Rule, and other air quality rules, which takes environmental justice into consideration ensures that these adverse impacts which arise from industrialized fossil fuel development and other activities which degrade air quality disproportionately across communities, are fully and cumulatively assessed. A consideration of the benefits these rules have for communities with regard to public health will ensure that the rules achieve what they set out to do, in the most effective and equitable way.

### Meaningful Public Engagement

Existing U.S. federal law and policy sets some minimum standards for what constitutes meaningful engagement of federal agencies with those in frontline communities, sovereign Tribal nations, and broader publics.<sup>13</sup> CEQ and all federal agencies must adhere to those standards in all of their relevant actions and decision-making and should not treat them as mere boxes to check. These minimum standards alone do not guarantee—and indeed, often fail to lead to—truly just processes or outcomes. Additional environmental justice-related principles, frameworks, and mandates that should guide CEQ and other federal agency approaches to participation and consultation include the Jemez Principles for Democratic Organizing, and the duty of States to obtain Free, Prior and Informed Consent (FPIC) from Indigenous peoples, in the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP). The incorporation of these bottom-up principles in federal decision-making processes is an important and needed step as we address the history of public lands in the United States.

### *Recommendations*

#### Jemez Principles for Democratic Organizing

In December of 1996, the Southwest Network for Environmental and Economic Justice hosted a meeting in Jemez, New Mexico with the goal of “hammering out common understandings between participants from different cultures, politics, and organizations,” and participants adopted the “Jemez Principles” for Democratic Organizing.<sup>14</sup> These six principles are, broadly:

1. “Be Inclusive.”
2. “Emphasis on Bottom-Up Organizing.”
3. “Let People Speak for Themselves.”
4. “Work Together in Solidarity and Mutuality”
5. “Build Just Relationships Among Ourselves”
6. “Commitment to Self-Transformation.”

While the Jemez Principles often guide and help lay ground rules for relationships and processes among (and within) those in community-based groups, other NGOs, and coalitions, they could similarly contribute to more just, equitable processes, policies, and programs at CEQ and other federal agencies. But, because they were originally drafted by and for frontline organizers, by their very nature they should not be applied in a “top-down” way by federal agencies. However, certain aspects of the Jemez Principles can help federal agencies engage more meaningfully,

---

<sup>13</sup> See, e.g., 40 C.F.R. § 1506.6 (“public involvement” provisions of the CEQ implementing regulations for the National Environmental Policy Act); 36 C.F.R. §§ 800.1-800.16 (regulations governing consultation and other components of Section 106 of the National Historic Preservation Act (“NHPA”).

<sup>14</sup> Jemez Principles for Democratic Organizing. Published online 1996. <https://www.ejnet.org/ej/jemez.pdf>

equitably, and intersectionally with --and be accountable to-- those facing environmental injustices and working towards environmental justice.

#### Free, Prior and Informed Consent and the UN Declaration on the Rights of Indigenous Peoples

Essential to the work of the federal government is the recognition that American Indian and Alaska Native Tribal Nations are sovereign governments in their own right and U.S. federal government entities must interact with them on a nation-nation basis.<sup>15</sup> But legally-required consultation under statutes like the National Historic Preservation Act ("NHPA") is insufficient; it fails to provide for full nation-nation engagement, is not widely applicable to all agency action, and does not include all Indigenous Peoples, be they members of Tribal Nations who are not heads of government, or those Indigenous People who are not members of federally-recognized Tribes.

Because of the failure of current federal law to ensure meaningful involvement of Indigenous People in agency action, CEQ and all federal agencies should also honor and act in accordance with the U.N. Declaration on the Rights of Indigenous People (UNDRIP), which recognizes that states have a duty not only to consult with Indigenous peoples, but also to obtain their free, prior, and informed consent (FPIC), which "entitles Indigenous people to effectively determine the outcome of decision-making that affects them, not merely a right to be involved."<sup>16</sup> Free, prior and informed consent is rooted in the right of Indigenous people to self-determination, as articulated in Articles 3 and 4 of UNDRIP.<sup>17</sup> The duty of States to obtain free prior and informed consent from indigenous peoples is recognized specifically in UNDRIP Articles 10, 11, 19, 28, 29, and 32.<sup>18</sup> Of particular relevance to CEQ and other federal agency policies, programs, and practices, is Article 32, which states as follows:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be

---

<sup>15</sup> See, e.g. Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491 (Jan. 29, 2021).

<sup>16</sup> UN Expert Mechanism on the Rights of Indigenous Peoples, Final report of the study on indigenous peoples and the right to participate in decision-making (August 17, 2011), see especially para. 21

<sup>17</sup> UNDRIP, Articles 3 and 4. Importantly, Article 3 also states that by virtue of the right to self-determination indigenous peoples have the right to "freely pursue their economic, social and cultural development."

<sup>18</sup> See UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, available at:

[https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

The right to Free, Prior and Informed Consent is also recognized in the International Labour Organization Convention ("ILO") 169.<sup>19</sup> While the U.S. has not ratified ILO 169, and UNDRIP is not binding on U.S. federal agencies or courts, this non-binding status "does not divest it of legal authority entirely."<sup>20</sup> Furthermore, U.S. Interior Secretary Deb Haaland recently expressed support for UNDRIP in her Address to the 20<sup>th</sup> Session of the U.N. Permanent Forum on Indigenous Issues on April 19, 2021, stating "I strongly affirm the United States' support for the UN Declaration on the Rights of Indigenous Peoples, and our commitment to advancing Indigenous Peoples' rights at home and abroad. The Declaration guides us – where appropriate – to improve our laws and policies within the structure of the U.S. Constitution and international obligations. We need enhanced participation and meaningful engagement of Indigenous Peoples throughout our UN bodies."<sup>21</sup> Nothing prohibits or prevents federal agencies from going beyond the minimum requirements of existing U.S. law and policy and abiding by the Declaration--indeed, an intersectional approach to environmental justice demands it.

## Regional Haze Rule

### Background

Haze pollution is comprised primarily of particulate matter, nitrogen oxides (NOx) and sulfur dioxide (SO<sub>2</sub>), all hazardous air pollutants that can travel hundreds of miles away from their sources. Much of the country's air pollution stems from the extraction, development, and burning of fossil fuels, whether that is by cars and trucks, oil and gas infrastructure and operations, or coal-fired power plants. Air pollution is also produced by large-scale agriculture, the pulp, paper, and pellet industry, petrochemical and plastics manufacturing, and other industrial sources.

Energy development and the burning of fossil fuels impacts people of color and socioeconomically disadvantaged communities first and worst. Air pollution worsens community health, drives up healthcare costs and makes it harder for kids to learn and play and adults to work.

The Clean Air Act's Regional Haze Rule (RHR) is a tool to achieve sustained emissions reductions from pollution sources that harm air quality in 156 specially protected national parks and wilderness areas, also called Class I areas. The RHR is a time-tested, effective program that requires federal and state agencies, as well as interested non-governmental stakeholders, to work together to reduce haze and restore clear skies to public lands through the creation of 10-year State Implementation Plans (SIPs). Utilizing the Regional Haze Rule to clean up pollutants like NOx and SO<sub>2</sub> benefits people and places almost everywhere in the country – particularly those in closest proximity to and most affected by the sources of air pollution.

---

<sup>19</sup> International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, C169, available at: <https://www.refworld.org/docid/3ddb6d514.html> [accessed 28 April 2021]

<sup>20</sup> Carla F. Fredericks, Operationalizing Free, Prior, and Informed Consent, 80 Alb. L. Rev. 429, 443 (2017)

<sup>21</sup> Deb Haaland, Remarks by Secretary of the Interior Deb Haaland at the UN Permanent Forum on Indigenous Issues, U.S. Mission to the United Nations (April 19, 2021), <https://usun.usmission.gov/remarks-by-secretary-of-the-interior-deb-haaland-at-the-un-permanent-forum-on-indigenous-issues/>.

But the creation and implementation of the Regional Haze Program itself - and many such environmental protection regulations and laws - is characterized by deep environmental injustices. Pollution sources to be analyzed and controlled for haze-causing (and public health damaging) pollutants are selected based on proximity to Class I airsheds. Therefore, if there are no Class I airsheds in certain areas, major haze-causing sources are less likely to be selected for pollution controls and are more likely to have adverse impacts on communities. The 1977 Clean Air Act Amendments too narrowly constrained what areas are mandatory federal Class I airsheds subject to the highest level of protection. However, even within the current parameters of the Clean Air Act and the Regional Haze Program, there are ample opportunities to address environmental justice that have been underutilized.

#### Discretion of States, Tribes, and EPA to Consider Environmental Justice

All national wilderness areas greater than 5,000 acres and national parks greater than 6,000 acres that were in existence when the Clean Air Act was amended in 1977, are mandatory federal Class I areas.<sup>22</sup> These areas cannot be redesignated to a less protective classification. Most of the rest of the country is classified as Class II areas which don't carry the same protections as Class I areas.

Though the Regional Haze Rule only requires emissions reductions that will help return natural visibility to Class I areas, states are not limited to just assessing benefits to Class I areas in applying the Regional Haze Rule and developing their SIPs. States, Tribes, and the EPA have the discretion to address historically overlooked and underserved areas without going through the potentially time and resource intensive (and not guaranteed to be successful) process of trying to re-designate Class II areas as Class I.

For example, in Oregon, the state recently used its discretion to apply the Regional Haze Rule to the Columbia River Gorge National Scenic Area, a Class II area. The Oregon Department of Environmental Quality (DEQ), in developing a strategy to address the visibility concerns in the Gorge related to air pollution, used requirements of the federal Regional Haze Program as the vehicle and framework for improving visibility in the Gorge, the practice of which will also have ancillary benefits for local communities. Oregon's Gorge Strategy Document<sup>23</sup> interweaves implementation of the Haze Rule, smoke reduction rules, air toxics mitigation, and other strategies, all of which work together to achieve "significant reduction in air pollution and improve public health throughout Oregon, including the Gorge."<sup>24</sup> Other states can use their discretion in this way too.

#### *Recommendations*

We are motivated to not only maximize the Clean Air Act and Regional Haze Program's effectiveness and environmental justice benefits, but also to reconcile inequities with how the rules themselves have been developed and implemented. This must involve consultation and

---

<sup>22</sup> [1] U.S. Env'tl. Prot. Agency, Class I Redesignation, *supra* note 1; see also U.S. Nat'l Park Service, Air: Class I Areas (Dec. 11, 2018), <https://www.nps.gov/subjects/air/class1.htm>

<sup>23</sup> Columbia River Gorge Air Study and Strategy, September 2011, Oregon Department of Environmental Quality, Southwest Clean Air Agency.

<sup>24</sup> *Id.* Page 26.

consent, and thorough, representative, accessible, and equitable collaboration with frontline communities in the development, enhancement, and implementation of the Haze Program.

Section 164 of the Clean Air Act allows states and tribes to re-designate their Class II airsheds as non-federal Class I airsheds, subject to the procedural requirements in the Act and Prevention of Significant Deterioration ("PSD") regulations, 40 C.F.R. § 52.21 (g), and the approval of the EPA Administrator. We encourage the EPA to review and consider updating these PSD regulations, to ensure the most just and equitable processes and outcomes with respect to re-designation.

Implementers of the Regional Haze Rule have the opportunity to take into account the benefit that controls on haze-causing pollutants have for disproportionately impacted communities and ensure that those benefits are considered and prioritized in developing state and federal implementation plans. The strongest potential pollution controls are needed to ensure that industry is held accountable, and to mitigate or eliminate ongoing risks and harms to people, communities, and place--especially to those facing disproportionate, cumulative environmental, health, cultural, and economic risks and impacts from historical and ongoing resource extraction, compounded by structural and systemic racism and settler colonialism.

We recommend that implementation of the Regional Haze Rule incorporates environmental justice as a key consideration when shaping state implementation plans. Indeed, the Biden administration can direct states and EPA, in implementing the haze program, to consider environmental justice. We assert that there is not only ample room, but that it is also imperative for states and implementing entities to incorporate climate impacts and environmental justice impacts into haze planning and implementation. The Regional Haze Rule can be mutually reinforcing with other ongoing statutes, regulations, and programs that address air pollution, climate, health and environmental justice - such as federal and state-level methane regulations. However, the presence of these other programs is not an excuse to exclude these considerations from the Haze Program and related State, Tribal, and Federal Implementation Plans. Entities implementing the Haze Rule must independently consider and integrate public health, environmental justice, and climate impacts.

In addition, many near-term harm reduction measures used to meet requirements under the regional haze rule, like strong pollution controls, electrification, and making fossil fuel extraction "cleaner", are occurring against a backdrop we must recognize, and actively work towards: a transition away from fossil fuels entirely. Strategies like "net zero" and carbon capture and sequestration must not be used to prolong fossil fuel development, or as a justification for companies or agencies to punt on air quality controls - because when they are, the environmental harms are felt disproportionately by communities which have long been bearing the brunt of air quality and environmental degradation.

We agree with the Interim Final Recommendations that ultimately, projects involving or prolonging fossil fuel procurement and development or pipeline creation or expansion, are examples of the types of projects that will not benefit a community - and in fact will perpetuate harm.<sup>25</sup> Although imperfect, most recently the International Energy Agency's May 2021 report states that there is in fact no further need for investment in new fossil fuel supply to sustain energy needs and reach Paris Agreement climate goals, signaling from the world's most influential

---

<sup>25</sup> Interim Recommendations at 57-59.

energy modelling agency that we are more than ready to invest our time and resources in a just transition, rather than false energy and marketing alternatives.<sup>26</sup>

Furthermore, it is crucial to ensure that states or facilities do not use what they define as negligible improvements to visibility as an excuse to punt on the strongest pollution controls that would achieve reasonable progress overall. Under the Clean Air Act's Regional Haze Program, there are four factors to use in considering what kind of pollution reduction measures should be required at a specific source to curb emissions (the cost of control, time necessary to install controls, energy and non-air quality impacts, and remaining useful life of the source), and visibility isn't included among them. While the Regional Haze Rule is an effective tool designed to restore clear visibility in landscapes across the country, in the context of making "reasonable progress" (what each state haze plan must ultimately achieve) to restore clear skies, visibility shouldn't be used as an excuse for a state or industrial source to get out of installing new controls and reducing pollution. It is not a justifiable excuse for a state or industry to say that the visibility benefits are too small to justify limiting pollution. In haze planning processes, as regulators work to assess sources and emission-reducing measures, they should be considering whether a particular source is also harming a community and whether reducing emissions would benefit the community. If yes to either or both, the state should weight that in its decision on whether and how much pollution reduction to require. The haze rule is thus a key opportunity to require pollution reductions that benefit communities, particularly those experiencing disproportionate historical and ongoing harm.

Below, we outline the process undertaken by the state of Oregon to consider environmental justice and the benefit to communities that would arise from Regional Haze Program implementation.

#### Oregon Regional Haze Process Includes Environmental Justice Considerations

In NPCA's engagement with state level environmental agencies over the past 16 months, Oregon's Department of Environmental Quality (DEQ) has consistently been an example, albeit imperfect, of how to incorporate environmental justice and community health criteria into Regional Haze Program analyses.

The Regional Haze Rule requires states to consider what effects controls for visibility improvement are likely to have on "energy and other non-air environmental factors." After NPCA and other environmental advocacy stakeholders recommended environmental justice benefits of Regional Haze Program emissions reductions be considered in letters to EPA and state environmental agencies in mid-2020, DEQ made the move to interpret "energy and other non-air environmental factors" in a way that included considerations for environmental justice and public health. As a result, DEQ undertook an environmental justice analysis of communities surrounding the facilities that DEQ's Regional Haze decisions will affect.

#### *Vulnerable Populations Score*

In developing its environmental justice analysis, DEQ worked to create a "Vulnerable Populations Score." DEQ first identified the demographic profiles of the communities immediately surrounding the facilities for which DEQ was considering controls. They then used data provided

---

<sup>26</sup> International Energy Agency. <https://www.iea.org/reports/net-zero-by-2050>.

in the 2019 version of EJSCREEN to calculate the following measures of potentially vulnerable communities for each census block group in the state.

- Percent minority (percent population identifying as + percent of the population identified as Hispanic/Latino white)
- Percent low income (percent of population living in households making less than 200% of the federal income poverty level)
- Educational attainment (percent of the population over the age of 25 without a high school diploma)
- Linguistic isolation (percent of the population self-identified as speaking English "less than well")
- Percent of population under 5
- Percent of population over 64

For each facility, DEQ tallied a "1" if the value of that indicator was above the statewide average, or a "0" if the value was below the statewide average. The analysis showed that most communities surrounding the affected Title V facilities are above the state average vulnerability score.

#### *Towards an Environmental Justice "Score" Methodology*

A review of the published literature shows that as of January 2021, California, Washington State, and Maryland have published their own state-specific versions of EPA EJSCREEN. In addition, Minnesota, North Carolina, and some local jurisdictions have done some work to make EPA EJSCREEN applicable to a specific geography.

A key commonality of the California, Washington, and Maryland methods was the process used to develop both the list of indicators to be shown in the tool and used in score calculations, weighting, and review of other methodological considerations. All of them involved multi-year efforts (a minimum of two years) to conduct meaningful community outreach and input into developing the tool, as well as some customization of indicators available based on health outcomes as well as environmental indicators.

#### **Other Recommendations**

Thus far, despite decades of attempts, the U.S. Congress has not passed comprehensive legislation expressly dedicated to understanding and addressing environmental justice. However, state-level environmental justice bills, such as Washington's Healthy Environment for All (HEAL) Act and New Jersey's recently enacted environmental justice law, are important resources that can help guide federal agencies' approaches.

For example, the Healthy Environment for All (HEAL) Act, signed into law by Washington State Governor Inslee on May 17, 2021, acknowledges Black, Indigenous, low-income, and communities of color are disproportionately exposed to environmental harms in their communities and suffer a higher risk of adverse health outcomes; a risk that is amplified by social and economic barriers and environmental risks, which lead to cumulative environmental health impact. Second, it seeks to prevent and mitigate these injustices; including exposure to environmental hazards within Indian country, due to off-reservation activities within the state, and to improve state practices to reduce contamination of traditional foods wherever they occur.

The HEAL Act also provides a definition for environmental justice, reading: "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. This includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm."<sup>27</sup> While this definition modifies the current EPA definition of environmental justice to include consideration for the redistribution of "benefits," it is still worded in a way that will most likely lead to the treatment of the symptoms of environmental injustice and racism instead of its root causes. But all together, this bill is a strong step in the right direction.

Additionally, we hope CEQ and other federal agencies will also consider ideas and frameworks from recently introduced Congressional legislation, such as the Environmental Justice for All Act, S. 872, and the Environmental Justice Mapping and Data Collection Act, S. 101; H.R. 516.

The underlying principles and provisions in these state and federal bills provide examples of the nuanced and intersectional way agencies should think about and work toward environmental justice, including climate justice, and new ideas for environmental justice-related mapping and data. For example, the "Findings" expressed in the EJ for All Act recognize the structural and systemic nature of inequities and injustices and the inexorable relationship between climate justice and "environmental justice;" indeed, one cannot be advanced without the other and they should not be thought of or treated separately. Key "Findings" from the Act that should inform the CEQ and other federal agencies' approach to environmental justice include (but are certainly not limited to):

- (4) Environmental justice communities have been made more vulnerable to the effects of climate change due to a combination of factors, particularly the legacy of segregation and historically racist zoning codes, and often have the least resources to respond, making it a necessity for environmental justice communities to be meaningfully engaged as partners and stakeholders in government decision-making as the United States builds its climate resilience.<sup>28</sup>
- (5) Potential environmental and climate threats to environmental justice communities merit a higher level of engagement, review, and consent to ensure that communities are not forced to bear disproportionate environmental and health impacts<sup>29</sup> (emphasis added); and
- (8) Government action to correct environmental injustices is a moral imperative.<sup>30</sup>

Federal agencies should heed this "moral imperative" for federal government actors and agencies to take action not only to identify but also to "correct environmental injustices," including action to eliminate harm and act on climate (which necessarily includes climate justice).

---

<sup>27</sup> 67<sup>th</sup> Legislature, 2021 Regular Session, Washington State. Pages 3-4.  
[http://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5141-S2\\_SL.pdf?q=20210524151541](http://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5141-S2_SL.pdf?q=20210524151541).

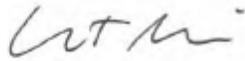
<sup>28</sup> Environmental Justice for All Act, S. 872, 117th Cong. § 2 (2021).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

Thank you for considering our comments. Please don't hesitate to contact us with any questions.

Sincerely,



Ernie Atencio  
Regional Director, Southwest Region  
National Parks Conservation Association  
Taos, New Mexico  
[eatencio@npca.org](mailto:eatencio@npca.org)



Allyson Beasley  
Staff Attorney  
Western Environmental Law Center  
Taos, New Mexico  
[beasley@westernlaw.org](mailto:beasley@westernlaw.org)



Natalie Levine  
Climate and Conservation Program Manager  
National Parks Conservation Association  
Oakland, California  
[nlevine@npca.org](mailto:nlevine@npca.org)



GOLDSTEIN  
ENVIRONMENTAL  
LAW FIRM



GOLDSTEIN  
BROWNFIELDS  
FOUNDATION



GOLDSTEIN  
BROWNFIELDS  
GROUP

## Comments of Michael R. Goldstein to The White House Environmental Justice Advisory Council at the Public Meeting Held on May 13, 2021

Good afternoon. I would again like to start by thanking the White House Environmental Justice Advisory Council (“WHEJAC”) for this opportunity to present comments. My name is Michael Goldstein, and I bring several roles and perspectives to these comments along with twenty-five years of work in support of Environmental Justice (“EJ”) communities, specifically as the Managing Partner of The Goldstein Environmental Law Firm representing affordable housing developers building in EJ communities; as the President of The Goldstein Brownfields Foundation funding EJ programming in Florida and the Southeast United States; and as the Chair of the National Brownfields Coalition's Public Policy, Redevelopment Incentives, and Regulatory Partnerships Committee advocating for more/better/smarter tools for environmental reuse.

My comments today expand upon the comments previously delivered to this committee on April 28<sup>th</sup> and upon my first recommendation that day, which was general in nature and a broad suggestion that WHEJAC should explore options for dramatically increasing the funding available for affordable housing. Today, I speak with more specificity as to how WHEJAC can and should encourage the Executive Branch and U.S. Congress to further invest in addressing the crisis in affordable housing in this country in EJ communities. This unique opportunity has acute and overriding policy, legislative, educational, and social intersections with environmental cleanup, public health, equitable redevelopment, and economic empowerment and self-determination. In the interest of time, I offer the following four recommendations:

### Recommendations

1. WHEJAC should closely study and thereafter recommend that Congress increase the 4% and 9% Low Income Housing Tax Credit (“LIHTC”) under § 42 of the IRS Code to 6% and 12% for affordable housing built on brownfield sites requiring actual remediation.
2. WHEJAC should closely study and thereafter recommend that Congress increase the Stepped Up Basis under § 42 of the IRS Code from 130% to 150% for affordable housing built on brownfield sites in Difficult Development Area (“DDA”) and Geographic Areas of Opportunity (“GAO”) and provide for 130% Stepped Up Basis for affordable housing built on brownfield sites outside of DDA and GAO zones requiring actual remediation.
3. WHEJAC should closely study and thereafter recommend that Congress enact a new, one-time LIHTC in the amount of 80% of cost of the land acquisition to develop affordable housing built on a brownfield site requiring actual remediation.

4. WHEJAC should closely study and thereafter recommend that Congress pass an enhanced tax incentive (e.g., a further stepped-up basis either to current cap with shorter hold time or up to 20% or 25% with same hold time) for redevelopment of brownfield sites for affordable housing in Opportunity Zones located in EJ communities.

Thank you and bless you all for your important, transformative work on these matters.

Michael R. Goldstein, Esq.  
[mgoldstein@goldsteinenvlaw.com](mailto:mgoldstein@goldsteinenvlaw.com)  
Office: (305) 777-1682  
Cell: (305) 962-7669

*Comments delivered remotely from Miami, Florida, on May 13, 2021, at approximately 4:20 p.m.*



GOLDSTEIN  
ENVIRONMENTAL  
LAW FIRM



GOLDSTEIN  
BROWNFIELDS  
FOUNDATION



GOLDSTEIN  
BROWNFIELDS  
GROUP

**Comments of Michael R. Goldstein to  
The White House Environmental Justice Advisory Council  
at the Public Meeting Held on April 28, 2021**

Good afternoon. I would like to start by thanking the White House Environmental Justice Advisory Council (“WHEJAC”) for this opportunity to present comments. My name is Michael Goldstein, and I bring several roles and perspectives to these comments along with twenty-five years of work in support of Environmental Justice (“EJ”) communities, specifically as the Managing Partner of The Goldstein Environmental Law Firm representing affordable housing developers building in EJ communities; as the President of The Goldstein Brownfields Foundation funding EJ programming in Florida and the Southeast United States; and as the Chair of the National Brownfields Coalition’s Public Policy, Redevelopment Incentives, and Regulatory Partnerships Committee advocating for more/better/smarter tools for environmental reuse.

My comments, consisting of eight recommendations, are directed to the following items in the WHEJAC Charter: 4.a (climate change mitigation), 4.b (pollution reduction in overburdened communities), 4.e (clean energy transition), 4.f (sustainable infrastructure, including transportation) and 4.h (increasing the Federal Government’s efforts to address EJ).

These recommendations, which are policy, programmatic, and partnering in nature, are, again, based on my experience in the private sector, the public sector, and with not-for-profits and non-government organizations.

**Recommendations**

1. WHEJAC should explore options for dramatically increasing the funding available in The American Jobs Plan for affordable housing on brownfield sites in EJ communities. And if not in The American Jobs Plan, then in future legislation.
2. WHEJAC should develop an enhanced tax incentive (e.g., a further stepped-up basis) for redevelopment of brownfield sites requiring actual remediation in Opportunity Zones located in EJ communities.
3. WHEJAC should encourage U.S. Department of Housing and Urban Development (“HUD”) to develop a new brownfields agenda with a focus on EJ communities, including resurrection and enhancement of the historic Brownfields Economic Development Initiative Program for EJ communities specifically.
4. WHEJAC should evaluate the potential to develop a task force among the U.S. Environmental Protection Agency (“EPA”), the U.S. Department of Transportation, U.S. HUD, and the U.S. Economic Development Administration to create a massive grant program for Transit Oriented Development projects on brownfield sites in EJ communities.

5. WHEJAC should direct the U.S. Department of Treasury to explore a new federal loan guarantee program for private lenders who are willing to finance environmentally risky brownfield reuse projects in EJ communities. This loan program could be modeled in many respects on the New Markets Tax Credits Program.

6. WHEJAC should convene and moderate a meeting of the Federal Brownfields Partnership so that each agency partner can update and report on its agenda for promoting equitable redevelopment of impaired sites in EJ communities.

7. WHEJAC should conduct specific outreach to faith-based organizations to encourage partnering with agencies, local governments, and private sector actors involved in brownfields reuse in EJ communities.

8. WHEJAC should recognize the extraordinary journalism that is now being performed on the issue of reusing impaired sites in EJ communities and analyze such reporting for lessons that can be incorporated into agency directives, regulatory rulemaking, and federal legislation to improve environmental, public health, social, and economic outcomes. A list of eight key articles published in the last year that WHEJAC should closely review consists of the following:

- “Pollution is Killing Black Americans. This Community Fought Back. African-Americans are 75 percent more likely than others to live near facilities that produce hazardous waste. Can a grass-roots environmental-justice movement make a difference?” Linda Villarosa, July 28, 2020, *The New York Times*
  - <https://www.nytimes.com/2020/07/28/magazine/pollution-philadelphia-black-americans.html?action=click&module=Top%20Stories&pgvpr=Homepage>
- “Hazardous Homes, Thousands of U.S. Public Housing Residents Live in the Country’s Most Polluted Places,” Angela Caputo, Sharon Lerner, *The Intercept*, January 13, 2021
  - <https://theintercept.com/2021/01/13/epa-public-housing-lead-superfund/>
- “The island where it rained oil. In the Virgin Islands, a refinery tests Biden’s environmental justice commitment,” Juliet Eilperin, Darryl Fears, and Salwan Georges, *The Washington Post*, March 25, 2021
  - [https://www.washingtonpost.com/climate-environment/interactive/2021/biden-environmental-justice-refinery-st-croix/?hpid=hp\\_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1&hpid=hp\\_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1](https://www.washingtonpost.com/climate-environment/interactive/2021/biden-environmental-justice-refinery-st-croix/?hpid=hp_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1&hpid=hp_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1)
- “Block by block, he aims to fight injustice and save the planet,” Sarah Kaplan, *The Washington Post*, March 26, 2021
  - [https://www.washingtonpost.com/climate-solutions/interactive/2021/donnel-baird-climate-change-green-energy/?hpid=hp\\_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1&hpid=hp\\_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1](https://www.washingtonpost.com/climate-solutions/interactive/2021/donnel-baird-climate-change-green-energy/?hpid=hp_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1&hpid=hp_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1)
- “Internal report cites HUD for lead poisoning in East Chicago, Ind., children. More could be at risk.” Tracy, Jan, *The Washington Post*, February 17, 2021
  - <https://www.washingtonpost.com/business/2021/02/17/hud-toxic-superfund/>
- “Something to sing about: Shingle Mountain, a giant pile of pollution, finally gone,” Darryl Fears, *The Washington Post*, February 26, 2021
  - <https://www.washingtonpost.com/climate-environment/2021/02/26/shingle-mountain-dallas-removal/>
- “‘This is environmental racism,’ How a protest in a North Carolina farming town sparked a national movement,” Darryl Gears and Brady Dennis, *The Washington Post*, April 6, 2021
  - [https://www.washingtonpost.com/climate-environment/interactive/2021/environmental-justice-race/?hpid=hp\\_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1&hpid=hp\\_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1](https://www.washingtonpost.com/climate-environment/interactive/2021/environmental-justice-race/?hpid=hp_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1&hpid=hp_hp-top-table-main-environmental-justice-refinery-st-croix%3Ahomepage%2Ft-1)
- “Deadly air pollutant ‘disproportionately and systematically’ harms Americans of color, study finds,” Juliet Eilperin and Darryl Fears, *The Washington Post*, April 28, 2021
  - <https://www.washingtonpost.com/climate-environment/2021/04/28/environmental-justice-pollution/>

Finally, I would like to recognize and thank the U.S. EPA Office of Brownfields and Land Revitalization and U.S. EPA’s Superfund Redevelopment Program for the thought, time, and care they’ve invested in effective, innovative, and equitable, cleanup, redevelopment, and reuse of

impaired sites in EJ communities. EPA's institutional and cultural commitment to the cause is the major driver incentivizing the public sector to partner with local governments and EJ stakeholders to promote and fund beneficial reuse in disparately impacted neighborhoods. Thank you.

Michael R. Goldstein, Esq.  
[mgoldstein@goldsteinenvlaw.com](mailto:mgoldstein@goldsteinenvlaw.com)  
Office: (305) 777-1682  
Cell: (305) 962-7669

*Comments delivered remotely from Miami, Florida, on April 28, 2021, at approximately 4:30 p.m.*

**2019 SUMMARY REPORT – HEALTH & ENVIRONMENTAL CONCERNS  
SOUTH END, STAMFORD CT**

**OBJECTIVE: “DO WHAT IS THE BEST AND RIGHT FOR THE PUBLIC’S HEALTH, SAFETY & WELFARE. DO IT OPENLY & HONESTLY. INSPECT THE EXPECTATIONS.”**

**HAS THE COMMUNITY’S PUBLIC’S HEALTH AND WELFARE BEEN WELL SERVED OR HAS IT BEEN COMPROMISED DURING A 20-YEAR TIME PERIOD (2000 – 2019) AT THE 177 ACRE SITE OF STAMFORD CT’S SOUTH END PENINSULA BY A STATE-DESIGNATED ‘BROWNFIELD’ REMEDIATION PLAN OF A NEW, DENSELY POPULATED, RESIDENTIAL DEVELOPMENT REPLACING A HEAVY INDUSTRIAL-MANUFACTURING SITE, BRINGING 10,000-15,000 NEW PEOPLE TO THE CURRENT 15-22 STORY HIGH RISE APARTMENTS & OFFICE TOWERS IN A PLACE LISTED ON THE U.S. PARK SERVICE’S (DEPT OF INTERIOR) NATIONAL REGISTER OF HISTORIC PLACES?**

**PART ONE – SITUATION ANALYSIS**

**HISTORY: STAMFORD’S SOUTH END DEVELOPMENT PROGRAM, MAYBE ONE OF THE LARGEST IN NORTHEAST (AND U.S.), IS A HUGE SITE EXTENSIVELY KNOWN FOR ITS INTENSIVE 150-YEAR HISTORY OF HEAVY INDUSTRIAL AND MANUFACTURING ACTIVITY AND HISTORIC SINGLE - MULTI FAMILY HOMES. IT IS THE SITE OF MANY INDUSTRIES, INCLUDING COAL-GASIFICATION PLANTS; HEAVY BOAT MANUFACTURING OF PT BOATS AND WWII TRANSPORTS FOR U.S. NAVY (LUDER’S MARINE) AT 14- ACRE BOAT YARD; TRANSFORMER PRODUCTION & DISCARD SITE OF NORTHEAST UTILITIES & CT LIGHT & POWER; MACHINE TOOL, DYE, POSTAL EQUIPMENT MANUFACTURING (PITNEY BOWES, EXCELSIOR HARDWARE), WOOD LAMINATING & CONSTRUCTION BUSINESSES, YALE LOCK SYSTEMS, OIL PRODUCTION, STORAGE TANKS, & TRANSPORT COMPANIES; GAS, FUEL AND CHEMICAL PRODUCTION, AND DUMP TRANSFER DEPOT (B & S – CITY CARTING) – ALL THESE ACTIVITIES PRODUCING TOXIC CHEMICAL MIXES OF POTENTIAL SERIOUS SOIL, WATER, AIR, AND DIRT CONTAMINATION PRODUCING FOUL ODORS AND AIR QUALITY LEVELS CARRYING RESIDUES OF FLY ASH, COAL TAR, HYDROCARBON PETRO CHEMICALS, ZINC, RADIUM, PCBs, TPHs, ARSENIC, MERCURY, CADMIUM.**

**SITUATION:**

**THERE ARE SERIOUS CONCERNS OF THE COMMUNITY HEALTH, SAFETY AND WELFARE DUE TO THE POOR COMMUNICATIONS TO THE EXPOSURE OVER TIME (15 -20 YEARS) OF UNCOVERED, UNTESTED TO CURRENT CONDITIONS, AND UNDETECTED POSSIBLE CARCINOGENIC SUBSTANCES AFFECTING THE PUBLIC’S HEALTH AND... WHERE QUESTIONS OPEN QUESTIONS.**

**NOVs (NOTICES OF VIOLATIONS) WERE ISSUED IN SUMMER OF 2019 DUE TO STRONG FOUL ODORS (REMAINING TO DATE OF THIS DOCUMENT AS BUILD-OUT & CAPPING CONTINUES), UNCOVERED STORAGE AND UNCOVERED TRANSPORT OF CONTAMINATED ‘FUGITIVE’ DIRT FROM KNOWN HAZARDOUS WASTE SITES IN THE SOUTH END OF STAMFORD, CT. THESE NOV VIOLATIONS WERE ISSUED IN JULY 2019, COMING 6-MONTHS AFTER COAL TAR/OIL TANK REMOVAL SPILLS HAD BEEN NOTED IN EIRs (EMERGENCY INCIDENT REPORTS) AT SELECTED SITES THAT HAD BEEN ISSUED 6-MONTHS EARLIER IN JANUARY 2, 2019.**

**ACTION BY DEEP FOR ON-SITE INSPECTION MAY NOT HAVE BEEN TAKEN HAD IT NOT BEEN TO CALLS BY A COMMUNITY ENVIRONMENTAL GROUP IN LATE JUNE 2019 TAKING THE INITIATIVE TO THE FOUL SMELLS, ODORS, AND UNCOVERED FUGITIVE DIRT BEING TRANSPORTED AND STOCKPILED, UNCOVERED, WITHIN 5 BLOCKS OF A LARGE (5,000) RESIDENTIAL COMMUNITY.**

THERE APPEARS THAT A 'CONFIDENCE' GAP – A 'CREDITABILITY GAP' – OF WHAT HAS BEEN SAID, WHAT HAS BEEN INSPECTED, AND WHAT HAS BEEN DONE BY DEVELOPER & CONTRACTORS WITH STATE'S OVERRIDING AUTHORITY AS TO WHAT HAS BEEN DONE *IN THE PAST* 15-20 YEARS OF INTENSE RESIDENTIAL DEVELOPMENT OF THESE CONTAMINATED INDUSTRIAL SITES AND TO THIS SUMMER'S 'DISCOVERED' VIOLATIONS.

AND THEN, WHAT IS *TO BE DONE* IN IMMEDIATE FUTURE MOVING FORWARD TO PROTECT THE COMMUNITY'S *HEALTH, SAFETY, AND WELL-BEING*. THERE CONTINUES TO BE A LACK OF CURRENT 'ON-SITE ' DEEP TESTING OF SOIL AND WATER AS TO THE AIR QUALITY & HEALTH STANDARDS OF FUGITIVE DIRT PILES & SITES UNDER DEVELOPMENT, INCLUDING A 14-ACRE BOATYARD ON THE TIP OF THE PENINSULA.

THERE ARE TOO MANY UNANSWERED QUESTIONS. SHOULD THERE BE A DEEP COMMISSIONER AUDIT OF THE REMEDIATION ACTION PLAN (CGS CHAPTER 445 SEC 22A-134A (3) (A) TO THE ENVIRONMENTAL AND PUBLIC HEALTH CONDITIONS FOR AN ASSESSMENT DEFINED IN 445 OR TO PUBLIC HEALTH CHAPTER 368L – 'CARCINOGENIC SUBSTANCES' WITH REFERENCES TO SEC. 19A-329 AND SEC19A-331?

QUESTION # 1: SUPERFUND DESIGNATION - SHOULD SOME OF THESE AREAS HAVE BEEN DESIGNATED 'SUPERFUND SITES' IN SELECT LOCATIONS WHERE THERE HAS BEEN INTENSE INDUSTRIAL USE ACTIVITIES AND REQUIREMENT FOR MORE SERIOUS TESTING PROTOCOLS? THIS QUESTION COMES AFTER CALLS BY A STAMFORD, CT SOUTH END COMMUNITY ENVIRONMENTAL ACTION GROUP IN JUNE OF 2019 THAT WERE REQUIRED REQUESTING STATE DEEP INSPECTION OFFICIALS AT THE SITE – UPON INSPECTION IN JUNE 2019, THERE WERE ISSUANCES OF SEVERAL VIOLATION NOTICES (NOVs) TO AIR QUALITY AND TO THE UNCOVERED FUGITIVE DIRT STORAGE AND TRANSPORT OF CONTAMINATED, CARCINOGENIC SOIL FROM HAZARD WASTE SITES IN THE DEVELOPMENT. THERE WAS UNCOVERED SOIL STORAGE AT SITES WITHOUT THE APPROPRIATE IMPERVIOUS GROUND COVER TO PREVENT FURTHER GROUND CONTAMINATION AT THESE STORAGE SITES. THERE WERE QUESTIONS RAISED ON ENVIRONMENTAL VIOLATIONS OF BULKHEAD PERMITS INTO STAMFORD HARBOR 'S WEST CHANNEL OF PERMITS ISSUED 08/15/17 BY U.S. ARMY CORPS OF ENGINEERS.

NOTE: OVER HOW MANY YEARS HAS THERE BEEN POOR BEHAVIOR CONDUCTED BY EXPERIENCED DEVELOPERS TO THE STATE'S 'ENGINEERED SOLUTIONS' WITH APPARENT LITTLE PUBLIC ACKNOWLEDGEMENT OF THE HARMFUL IMPACT OF POSSIBLE CARCINOGENIC EXPOSURE TO HEALTH, SAFETY AND WELFARE ISSUES OF AN AREA TRANSITIONING FROM HEAVY INDUSTRIAL-MANUFACTURING TO DENSE RESIDENTIAL WHERE 10,000 NEW APARTMENT AND HOME RESIDENTS RESIDE AND ARE COMING OVER THE NEXT 3-4 YEARS? ARE THE DOT'S BEING CONNECTED ON REGULATION STANDARDS ACROSS DEPARTMENT LINES ON HEALTH AND ENVIRONMENTAL IMPACT? HAVE RSRs (REMEDIAION STANDARD REGULATIONS) OF CT STATE AGENCIES (RCSA) BEEN FOLLOWED – I.E. CGS SECTIONS 22A-133K-1 THROUGH 133K-3); SHOULD THERE BE 'PUBLIC HEARINGS' ON HEALTH RISKS (I.E.22A-133K-1-D)?; HAVE THERE BEEN DEEP COMMISSIONER PERIODIC REVIEWS?; SHOULD A DEEP COMMISSIONER AUDIT (CHAPTER 588GG – SECTIONS 32-776.7/7) HAVE BEEN DONE REGULARLY OR TO BE DONE ON RECENT DISCOVERIES IN 2019 OF COAL TAR/OIL TANK SPILLS IN JANUARY 2019 FOLLOWED BY ENSUING NOVs IN JULY 2019 WHERE ACKNOWLEDGED TOXIC SUBSTANCES (PCBs AND TPH CHEMICAL MIXES) MAY HAVE BEEN FOUND THAT WERE SUBSTANTIATED IN A DEEP POWERPOINT PRESENTATION (SEPT 2019); OR; IMPORTANTLY HAVE ELURs (ENVIRONMENTAL LAND USE RESTRICTIONS) BEEN SERIOUSLY CONSIDERED IN

2.

RECENT TIMES (PAST 3-5 YEARS), ALONG WITH CGS CT CHAPTER #445 (HAZARD WASTE SITE HANDLING) IN SPECIFIC AREAS WHERE CONTAMINATED MATERIALS AND ODORS ARE NOW 'DISCOVERED, STILL IN THE AIR FALL 2019, AND CAN THEY BE EXPECTED MOVING FORWARD?

**QUESTION # 2: HOW DOES ONE KNOW THAT THIS BEHAVIOR HAS NOT BEEN THE UNDETECTED ROUTINE OF POOR MANAGEMENT BEHAVIOR BECAUSE OF A BREAKDOWN OF COMMUNICATION AT OTHER SITES OVER PAST 20 YEARS WITH SIMILAR 'REACTIONARY' & RETROACTIVE STEPS BEING TAKEN AFTER EVENTS HAD OCCURRED, BEEN REPORTED, BUT WITH APPARENTLY LITTLE, IF ANY, COMMUNICATION TO COMMUNITY OR OTHER STATE AGENCIES OF HEALTH HAZARDS?**

AND STILL, AFTER REPEATED REQUESTS BY COMMUNITY ENVIRONMENTAL GROUP DURING SUMMER OF 2019, THERE WERE NO SOIL OR WATER TESTS CONDUCTED OF CARCINOGENIC CONCENTRATIONS OF FUGITIVE DIRT, FOLLOWING AIR QUALITY INSPECTIONS, AT ANY SITE.

NOTE: APPARENTLY, THERE HAD BEEN A STATE EIR REPORT DONE 6-MONTHS PRIOR IN JAN, 2019 OF COAL TAR/OIL 'TANK' SPILLS, UNREPORTED TO COMMUNITY FOR ITS HEALTH IMPACT. THIS IS DEMONSTRATED BY THE JANUARY 2, 2019 EIR, AND WHAT APPEARS TO BE APPARENT FAILURE TO INSPECT EFFECTIVE TESTING, REMOVALS, TRANSPORT & STORAGE BY ACTION OF DEEP ISSUING NOVs IN JULY 2019 AND WITH LITTLE PUBLIC COMMUNICATION OF HEALTH HAZARD WARNINGS OVER 6 MONTHS?

**QUESTION # 3: WHY WERE THERE NOT RETROACTIVE FINANCIAL PENALTIES & INSPECTIONS DONE OVER THE 6 MONTHS, A LOSS OF PERMIT RIGHTS TO THE INFRACTIONS FOUND, AND MORE SERIOUS DISCIPLINARY ACTION?**

ONLY NOVs WERE WRITTEN FOR EXHIBITED POOR BEHAVIOR AND AIR QUALITY VIOLATION.

NOTE: THERE WAS LITTLE APPARENT CONNECTION OF THE DOTS FOR 'HEALTH, SAFETY, AND WELFARE' ISSUES – I.E. REFERRALS AMONGST STATE AND FEDERAL AGENCIES FOR PROTECTION OF 'PUBLIC'S RESIDENTIAL HEALTH AND FOR AN ON-SITE SOIL & WATER TESTING REQUEST, REVIEW, SOIL INSPECTIONS, ALERTS REQUESTED SEVERAL TIMES BY COMMUNITY TO DEEP AND REFERRALS TO OTHER STATE AGENCIES: STATE HEALTH & ENVIRONMENTAL AGENCIES, OSHA, FEDERAL EPA &, FOR INSTANCE, AT 14-ACRE BOATYARD, CONTACT TO U.S. ARMY CORPS OF ENGINEERS FOR VIOLATIONS.

SITUATION: VIOLATION NOTICES (NOVs) WERE ISSUED BY STATE DEEP IN SUMMER OF 2019. THESE NOVs ISSUED ONLY AFTER COMMUNITY CALLS FOR ACTION, WHERE VIOLATIONS WERE 'DISCOVERED'. THIS ACTION WAS TAKEN AFTER, APPARENTLY A PREVIOUS EIR ISSUED BACK ON JANUARY 2, 2019). SITES WERE INSPECTED IN A RETROACTIVE, REACTIONARY FASHION WHEN PROPER BMP'S WERE CONDUCTED BY MIDSUMMER 2019, BUT WHERE FOUL OIL/COAL TAR ODORS PERSIST TO DATE OF THIS WRITING INTO FALL AND WHERE QUESTIONS LEFT UNANSWERED TO THE COMMUNITY'S HEALTH, AND TO POOR MANAGEMENT PRACTICES THAT MIGHT HAVE FOLLOWED REMEDIATION PLAN AND THAT MIGHT FOLLOW.

**CONCERNS:**

- **COMMUNITY COMMUNICATION – APPEARS TO BE COMMUNICATION PROBLEMS— THERE HAS BEEN A BREAK-DOWN OF THE COMMUNICATION AND INFORMATION EXCHANGE TO THE COMMUNITY'S HEALTH CONCERNS WHEN SPILLS OR 'DISCOVERIES' ARE MADE THAT IMPACT NEIGHBORHOOD'S HEALTH AT A 177 ACRE SITE LISTED ON NATIONAL REGISTER OF HISTORIC WHERE 10,000 PEOPLE (CHILDREN AND FAMILIES) LIVE, WORK, AND ARRIVE EACH DAY.**

3.



- **HEALTH INFORMATION – THE EXCHANGE OF INFORMATION OVER 20 YEARS HAS BEEN LIMITED AND BETWEEN A SMALL HANDFUL OF INDIVIDUALS DEALING WITH ‘CONTROLLED ENGINEERING’ SOLUTIONS, NOT ON HEALTH RISKS, AND WHAT APPEARS LIMITED ON-SITE TESTING OF SOIL, WATER & AIR QUALITY – PARTICULARLY FOR OVERSIGHT OF THE HEALTH AND POTENTIAL ENVIRONMENTAL IMPACT ON COMMUNITY.**
- **MANAGEMENT OVERSIGHT – HAS THERE BEEN PROPER & CONSISTENT ON-SITE INSPECTIONS AND OVERSIGHT AT THE HIGHEST LEVELS OF TOP MANAGEMENT OVER 20 YEARS, CONNECTING DOTS TO THE HEALTH & ENVIRONMENTAL SPILL CONDITIONS TO THE WORK BEING DONE, THE AIR QUALITY, SOIL TESTING & TRANSPORT, PROPER BMPs FOLLOWED BEFORE & DURING, NOT AFTER DISCOVERIES ARE MADE;**
- **APPARENTLY, CONTINUES TO BE A LACK OF CURRENT AND ON-GOING SOIL, WATER & AIR TESTING DATA – QUESTIONABLE CONDUCT OF SOIL TESTING, DIFFICULT TO ACCESS UP-TO-DATE SOIL, WATER, AND AIR QUALITY TESTING RESULTS AT HAZARD WASTE SITES.**
- **PERMITS AND PENALTIES – WHY PERMITS WERE NOT ISSUED FOR IMPROPER HANDLING DURING EXCAVATION, TRANSPORT AND STORAGE OF CARCINOGENIC SOIL BY BMP PROTOCOLS; QUESTIONS TO PERMITS ISSUED; COMMUNICATION FAILURES & VIOLATIONS WITHOUT EFFECTIVE FINANCIAL OR REVOCATION PENALTIES WHEN EIRs ARE NOT COMPLIED AND FOR POOR MANAGEMENT BEHAVIOR WITNESSED IN SUMMER OF 2019 (I.E. UNCOVERED TRANSPORT, STORAGE AND RE-FILL OF CONTAMINATED SOIL/DIRT) FROM HAZARD WASTE SITES WITHIN 4-5 BLOCK OF MAJOR RESIDENTIAL COMMUNITY – SUBSTANCES, KNOWN FOR CURRENT ‘UNTESTED’ CARCINOGENIC CONCENTRATIONS OF PCBs AND TPHs.**
- **LEGISLATION – IS THERE A NEED FOR BETTER REGULATIONS OF REMEDIATION SOIL, AIR, AND WATER TESTING, INSPECTIONS, AND PENALTIES AT SIMILAR LARGE SITES?**

**THE COMMUNITY APPRECIATES THE EFFORTS MADE ON ITS BEHALF AND WOULD ASK FOR A REPLY AS IT IS PREPARED TO PURSUE: 1. RESPONSIBLE ACTION FOR BETTER REGULATIONS TO SOIL, AIR, & WATER TESTING AT THESE SITES; 2. CONNECTING DOTS TO OTHER AGENCIES FOR THE PUBLIC’S HEALTH AND ENVIRONMENTAL IMPACT CONCERNS, AND; 3. INSURE BETTER ON-SITE INSPECTION & TESTING PROTOCOLS OF THE EXPECTATIONS BEING OUTLINED BY THESE CONSIDERATIONS.**

**SO END ENVIRONMENTAL CITIZEN’S GROUP  
NOVEMBER \_\_\_\_\_, 2019**

**PART TWO: SUGGESTIONS & CONSIDERATIONS:**

- 1. SUPERFUND DESIGNATION IN SELECTED AREAS:** ON FUTURE SITES TO BE EXCAVATED (2020) WITH SUCH INTENSE HISTORY, SITES OUGHT TO BE CONSIDERED DESIGNATED AS 'SUPERFUND' SITES – TO INCLUDE EPA STANDARDS – TO INSURE THE CONTEMPORARY TESTING OF SOIL & SURROUNDING WATER (IF ANY) AND TO DETERMINE CONCENTRATIONS OF CARCINOGENIC SUBSTANCES FOR THE REFILL OPTIONS OF CLEAN SOIL AND; TO CLOSELY INSPECT THE TRANSPORT OF CONTAMINATED SOIL TO BE COVERED ON AND FROM IDENTIFIED HAZARDOUS WASTE SITES, INSURING NO NOV'S OR MORE SERIOUS CONSEQUENCES. TAKE CARCINOGENIC DIRT OFF SITE – RE-FILL WITH CLEAN SOIL.  
NOTE: ITS NOT 'MEMBRANE' QUESTIONS AS AN ENGINEERED SOLUTION, BUT THE DEPTH OF SOIL RE-FILL AFTER MEMBRANE IS LAID DOWN. IT'S THE SOIL ABOVE CAPPING THE SERIOUSLY CONTAMINATED STUFF – AND TO WHAT LEVEL – CAPPING BETWEEN MEMBRANE AND LOWEST LEVEL OF CARCINOGENIC SUBSTANCES.
- 2. SOIL, WATER, & AIR TESTING – STATE STANDARDS:** MORE STRINGENT SOIL AND WATER TESTING TO PHASE III LEVELS BUT, IF NECESSARY WITH DISCOVERIES OR HISTORY OF INTENSE INDUSTRIAL USE, SOIL AND WATER TESTING TO PHASE IV IF CARCINOGENIC SUBSTANCES ARE FOUND AT ABOVE MINIMUM LEVELS AND BEYOND 4 FEET TO 12-15 FEET OR TO THE MOST SAFE LEVEL IF CONCENTRATIONS OF THOSE SUBSTANCES MUST REMAIN IN SOIL TO BE CAPPED. SHOULD SUCH CONCENTRATIONS OF CONTAMINATION HAVE BEEN TRANSPORTED OFF SITE AND NOT USED FOR RE-FILL BACK IN THE SAME AREA THAT HAD BEEN EXCAVATED.
- 2. LEGISLATION:** REVIEW WITH EYE TO MODIFY MORE STRINGENT STATE LEGISLATION FOR THE PUBLIC THAT IS IMPACTED BY REQUIRED REMEDIATION PROGRAMS, TIGHTENING UP BETTER SOIL, AIR & WATER TESTING PROTOCOLS, REPORTING, INSPECTION, GRADING TO DEPTH LEVELS BEYOND 4 FEET TO LOWEST REASONABLE LEVELS (15 - 20 FEET) WHERE SERIOUS CARCINOGENIC CONCENTRATIONS ARE 'DISCOVERED' – AND TO LEVELS THAT, CLEARLY, PROTECT PUBLIC'S HEALTH, PARTICULARLY WHERE THERE IS OR HAS BEEN INTENSE RESIDENTIAL AREA BUILD OUT OF AREAS OF HEAVY MANUFACTURING-INDUSTRIAL USE.
- 3. TRANSPORT OF DIRT OFF SITE – THAT HIGHLY CARCINOGENIC SOIL FOUND AT QUESTIONABLE PHASE III-IV LEVELS IS REMOVED FROM THE SOUTH END, TRANSPORTED TO SAFE STORAGE AREAS OFF SITE, NOT AS WAS DONE IN SUMMER 2019 IN THIS HEAVY 'RESIDENTIAL & WORK ENVIRONMENT WHERE ADULTS, CHILDREN, STUDENTS, AND WORKERS, INCLUDING CONTRACTOR EMPLOYEES, LIVE AND WORK.**
- 4. CAPPING & MEMBRANE PLACEMENTS – THAT CLEAN RE-FILL IS USED IN ALL PLACES AND TO LOWEST HIGHLY CONTAMINATED SOIL LEVELS EXCAVATED FROM THESE HAZARDOUS WASTE SITES BEFORE CAPPING. CAPPING DONE TO THE LOWEST LEVEL FOR PUBLIC'S HEALTH AND THOSE RESIDENTS THAT WILL LIVE IN 22-STORY HIGH RISES AT A SPOT IN A FLOOD ZONE – TO PROTECT FUTURE POSSIBILITIES OF CAP MALFUNCTIONS IN STORM EVENTS.**

1.

5. DISCIPLINARY ACTION – HAS APPROPRIATE DISCIPLINARY ACTION BEEN TAKEN TO VIOLATIONS OF PERMIT ABUSES AND BEHAVIOR:(1). SUSPENSION OR REVOCATION OF PERMITS FOR A TIME PERIOD & TO CORRECTIVE ACTION; (2) FINANCIAL PENALTIES, INCLUDING FEES AND FINES; (3) CEASE & DESIST RESTRAINT ORDERS – AS POSTED IN STATE REGULATIONS.

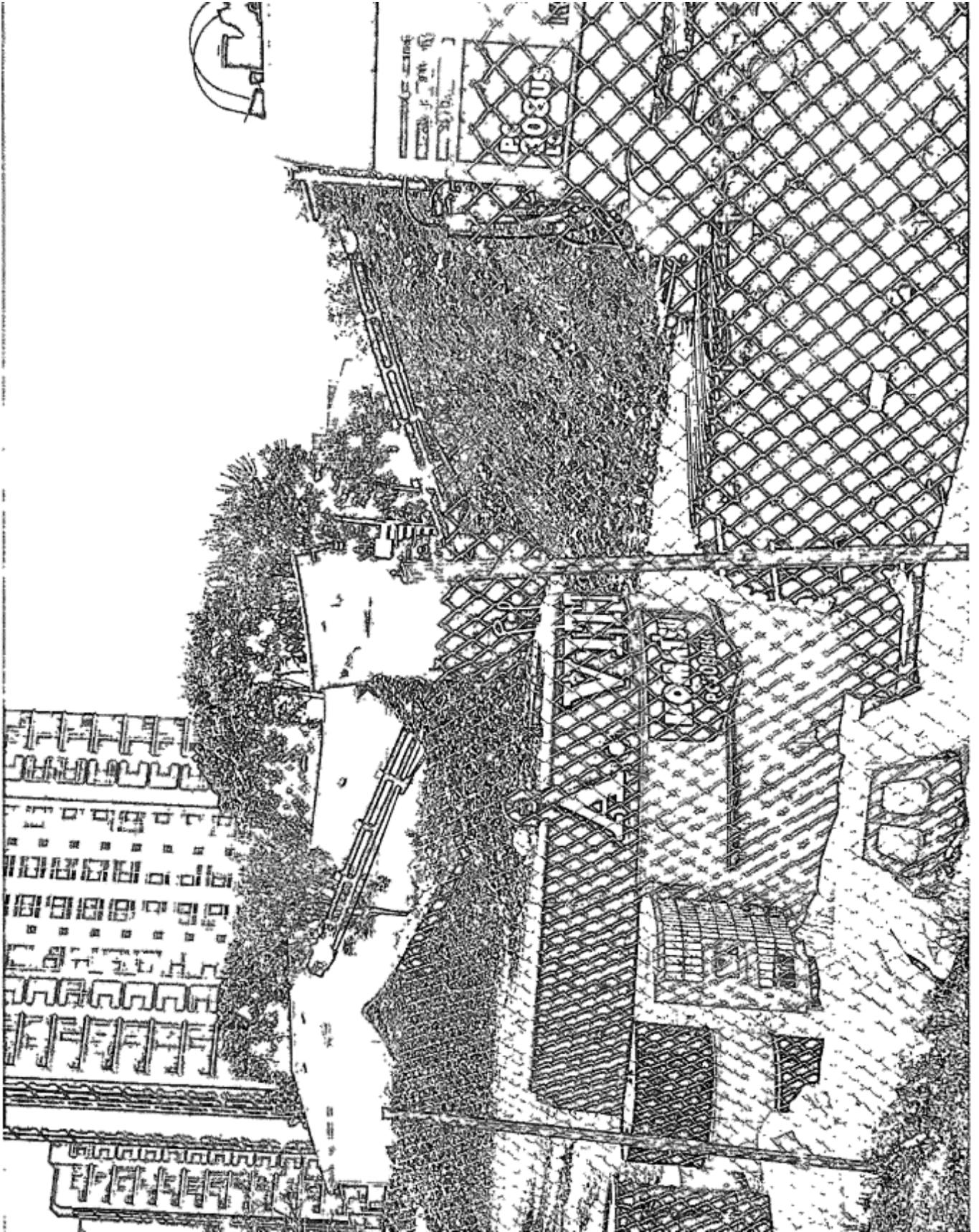
6. 'PUBLIC HEARING' ON THE HEALTH AND ENVIRONMENTAL IMPACT TO THE COMMUNITY AT COMMISSIONER LEVEL– IS A PUBLIC HEARING WELCOMED DIRECTLY TO COMMISSIONER FOR THE ASSURED ATTENTION TO TOP MANAGEMENT FINANCIAL AUDITS OF THE SOUTH END RE-DEVELOPMENT AREA IF TAXPAYER FUNDS HAVE BEEN USED FOR REMEDIATION?

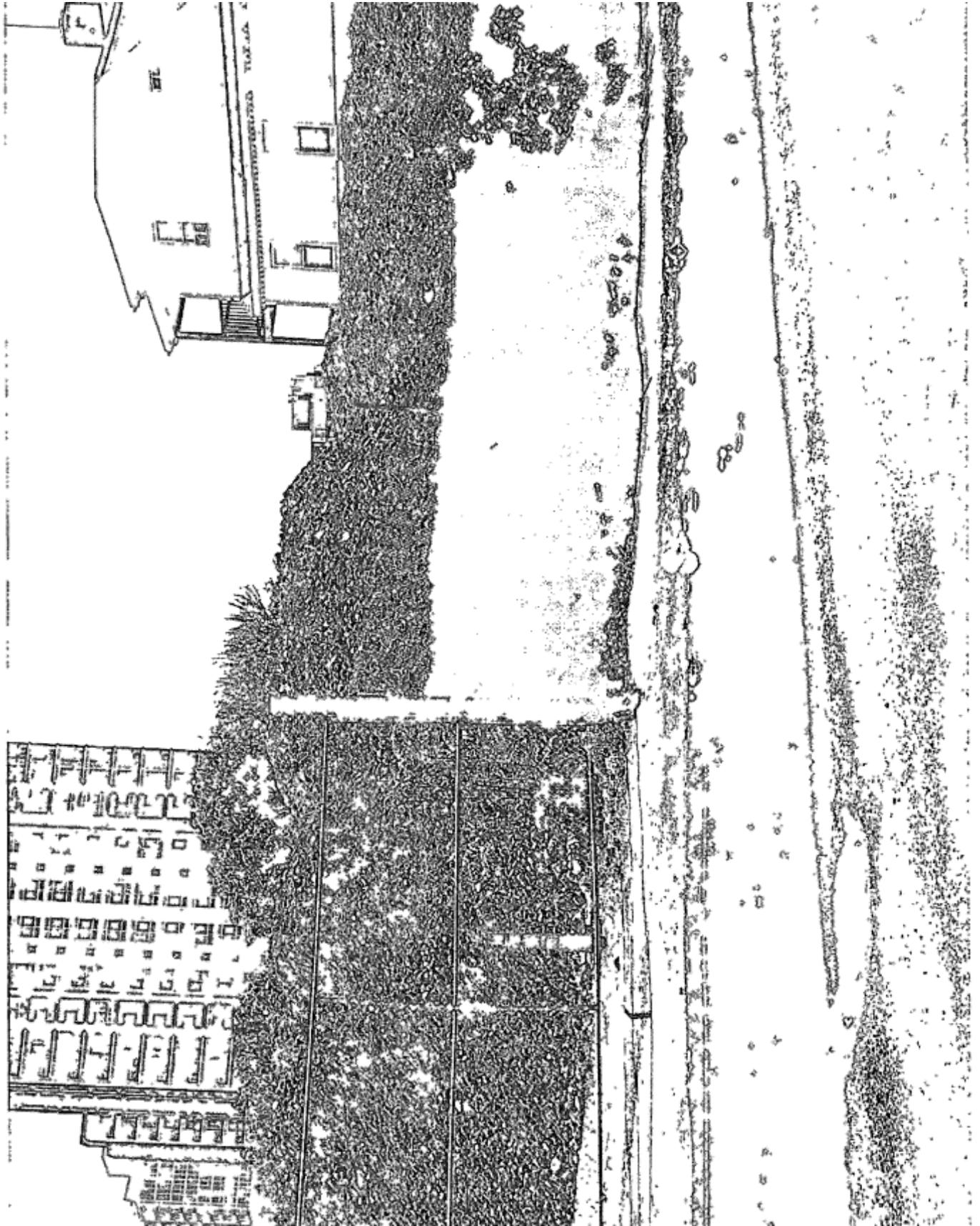
7. INVESTIGATION REQUEST (AND POSSIBLE AUDIT) BY DECD AND STATE'S AG TO INSURE TAXPAYER FUNDS MADE AVAILABLE BY COMMISSIONER OF DEPARTMENT OF ECONOMIC & COMMUNITY DEVELOPMENT (DECD) ON JANUARY 4, 201, IF USED FOR REMEDIATION AT SOUTH END SITE IS AVAILABLE TO PUBLIC AND WAS USED PROPERLY BY TL 6 HOLDINGS LLC/C/O HARBOR POINT HOLDING COMPANY, LLC.

SOUTH END ENVIRONMENTAL CITIZEN'S GROUP

REFERENCES:

1. ADDED: AUG 3, 2019 [HTTPS://WWW.BLTOFFICE.COM/2019/01/TEAMING-UP-FOR-GROWTH-AT-STAMFORDS-HARBOR-POINT/](https://www.bltooffice.com/2019/01/teaming-up-for-growth-at-stamfords-harbor-point/)
2. ADDED: [HTTPS://WWW.DREDGINGTODAY.COM/2019/01/04/HARBOR-POINT-UPDATE-BL-ACHIEVES-ENVIRONMENTAL-MILESTONE/](https://www.dredgingtoday.com/2019/01/04/harbor-point-update-bl-achieves-environmental-milestone/)
3. [HTTP://WWW.COURANT.COM/BUSINESS/HC-ENGLISH-STATION-CLEANUP-UNITED-ILLUMINATING-IBERDROLA-20150605-STORY.HTML](http://www.courant.com/business/hc-english-station-cleanup-united-illuminating-iberdrola-20150605-story.html)
4. [HTTP://WWW.COURANT.COM/BUSINESS/HC-ENGLISH-STATION-CLEANUP-UNITED-ILLUMINATING-IBERDROLA-20150605-STORY.HTML](http://www.courant.com/business/hc-english-station-cleanup-united-illuminating-iberdrola-20150605-story.html)
5. [HTTPS://WWW.BLTOFFICE.COM/2019/01/TEAMING-UP-FOR-GROWTH-AT-STAMFORDS-HARBOR-POINT/](https://www.bltooffice.com/2019/01/teaming-up-for-growth-at-stamfords-harbor-point/) (HELCO – UTILITIES, \$
6. LUDERS: [HTTPS://WWW.STAMFORDADVOCATE.COM/NEWS/ARTICLE/ANGELA-CARELLA-SHIPYARD-HISTORIAN-BL-T-GOT-THE-9188923.PHP](https://www.stamfordadvocate.com/news/article/angela-carella-shipyard-historian-bl-t-got-the-9188923.php)





19  
11  
11

06/15/2019 07:50



**South End  
Neighborhood  
Revitalization  
Zone Initiative**

May 11, 2004

CITY OF STAMFORD  
Office of Operations  
Tim Curtin – Director  
888 Washington Boulevard  
P.O. Box 10152  
Stamford, CT 06904-2152

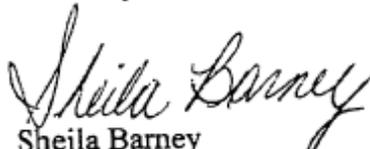
Re: Stamford Health Department Review of the Phase II-  
Environmental Site Assessment for Kosciuszko Park

Dear Mr. Curtin:

The opening of the Kosciuszko Park is an ongoing concern of the residents within the South End Community; therefore it was mentioned at the April 13<sup>th</sup> meeting to forward a letter of support on behalf of Johnnie Lee's method of remediation.

On April 13, 2004 Johnnie A. Lee the Director of Health and Social Services gave a brief update on the conditions surrounding Kosciuszko Park to the members of the South End NRZ. Upon hearing his method of remediation, which calls for the placement of more than eight inches of geofabric over the affected areas for protection, the members felt that it was a reasonable solution that should be acted upon immediately. The sense of urgency is based upon people fishing and using the park not knowing which area consist of safety hazards.

Sincerely,

  
Sheila Barney  
Chair of South End NRZ



TEL (203)977-4399  
FAX (203)977-5882  
E-mail: JALect@cityofstamford.ct.us

**CITY OF STAMFORD**  
**DEPARTMENT OF HEALTH & SOCIAL SERVICES**  
STAMFORD GOVERNMENT CENTER  
888 WASHINGTON BOULEVARD  
P.O. BOX 10152  
STAMFORD, CT 06904-2152

March 24, 2004

Mr. Glenn MacWilliams, Public Services Bureau Chief  
City of Stamford Department of Operations  
888 Washington Boulevard, P.O. Box 10152  
Stamford, CT 06904-2152

Subject: Stamford Health Department Review of the Phase II -  
Environmental Site Assessment for Kosciuszko Park

Dear Mr. MacWilliams:

The Stamford Health Department has completed its review of the report entitled, "Phase II Environmental Site Assessment Report, Kosciuszko Park, Stamford Connecticut", prepared by Dvirka and Bartilucci, Consulting Engineers for the City of Stamford. This department's review involved an in-depth look at the field test findings, comparison of the findings to an overview of Connecticut Department of Environmental Protection (CTDEP) remediation standard regulations, and comparison of the report's health and human exposure assessment with an overview of the Connecticut Department of Public Health (CTDPH), Division of Environmental Health Epidemiology and Occupational Health, "Assessment Guidelines for Evaluation of Associated Health Risks" (1996).

It is the Stamford Health Department's understanding that the landfill was never designated as a superfund site. Therefore, field and laboratory evaluations to characterize, quantify, locate, or remove particular organic and inorganic contaminants were never required. Instead, the Phase II Environmental Site Assessment Report was conducted in response to a CTDEP Notice of Violation for disruption and use of a closed municipal landfill without the Commissioner's written approval. As such, the objectives, and focus and nature of field and laboratory findings reported in the Environmental Assessment Report, were designed to assess the integrity of the closed landfill according the CTDEP requirements, and evaluate potential impacts to human health and the environment that could result from exposure to historic waste disposal activities at the site. In addition, the objectives of the report were to evaluate the thickness and adequacy of the cover material currently over the former solid waste disposal area.

(Continued on page 2)

The Stamford Health Department concurs with the CTDEP that the Phase II Environmental Assessment Report satisfactorily evaluated the physical and chemical composition of the subject landfill area. Field data, subsequent laboratory analysis of field samples, chemical identifications and descriptions obtained from "Dangerous Properties of Industrial Materials, sixth edition (Sax, 1984), and discussions of human exposure routes contained in the Environmental Assessment Report provide adequate links to the potential health risks associated with the historic waste disposal activities at the site. Additionally, a review of local lead poisoning cases in children, childhood asthma cases, and state reported cancer standard incidence levels was conducted; but no associations could be made between the location of this historic landfill or its use as a recreation site, with any of the epidemiological data reviewed at this time.

Of particular concern is the observation that the seep test and sediment test data are not denoted on the same referent site maps as the other soil sample locations. Lead was listed as a contaminant in seep and sediment samples, while polycyclic aromatic hydrocarbons (PAHs) and arsenic were identified as soil contaminants in the other soil samples. Since none of these contaminants are amenable to onsite treatment or renovation without significant chemical or physical separation and storage, this department does not recommend disturbing these soils to remove them offsite as a remediation method at this time. ~~The Stamford Health Department concurs with the CTDEP that geofabric or a suitable equivalent may be a more suitable method of remediation, since it is capable of imparting cap stabilization and barrier protection against migration of toxic soil contaminants. The proposal may need to be modified to accommodate the fact that placement of geofabric over the affected areas may require more than eight inches of additional soil cover, for protection and adequate depth for support of vegetative growth.~~

In addition to the methane-monitoring plan, it may be prudent to include provisions for a site management plan that includes periodic site testing; as well as risk communication which includes posted notices of lead safety hazards in the vicinity of low-tide sediment areas, posted notices prohibiting the removal of aquatic livestock for eating, and posted notices prohibiting digging as part of the revised proposal. The Stamford Health Department also recommends including health and safety parameters into work contracts as performance criteria.

Sincerely,



Johnnie A. Lee, M.D., MPH  
Director of Health and Social Services

CC: Tim Curtin, Director of Operations; Robin Stein, Director of Land Use; M. Kraynak, Director of Environmental Health & Inspections; Robert C. Isner, Acting Director WEED - Bureau of Waste Management; Martha Fraenkel, WEED - Bureau of Waste Management; David McKeegan, WEED - Bureau of Waste Management; Thomas F. Maher, VP, Dvirka & Bartilucci; Kenneth P. Wenz, Associate, Dvirka & Bartilucci

My name is Emily Piontek, and I work in Central Appalachia on a variety of energy-sector issues. Particularly pertinent to this body, one aspect of my work involves addressing the problem of high energy burdens faced by low-income households in Virginia. I seek solutions to the issue of unaffordable energy bills through reforms to utility regulation, by promoting utility programs that make energy efficiency upgrades more affordable and accessible for all people, and by advocating for state and federal funding to address both the cost of energy and access to energy assistance and efficiency programs.

Access to affordable energy service is an environmental justice issue that is faced by people throughout the United States. However, in Central Appalachia the problem of energy burdens is particularly acute, as high rural and urban poverty levels are accompanied by low-quality and aging housing stock that predominates in our region. A 2018 study by the Virginia Center for Housing Research at Virginia Tech found that nearly 250,000 households across Central Appalachia were utility cost-burdened alone.<sup>1</sup> The authors of the study also found that roughly 50% of existing housing stock in the region would need "major repairs" in the next two decades. Pre-1980s homes or apartments, including mobile or manufactured housing units, often do not meet modern standards for energy efficiency, and contribute to poor health and financial outcomes for many owners and renters. Yet, home repairs and efficiency upgrades are cost-prohibitive for many.

The federal government could help address unaffordable energy burdens *and* help build wealth throughout Central Appalachia by investing in programs that make owner-occupied and rental homes more energy efficient. Investing in the Weatherization Assistance Program, the Low Income Home Energy Assistance Program, Section 504 (Department of Agriculture Single Family Repairs), and other programs such as those supported by the Federation of Appalachian Housing Enterprises<sup>2</sup> would not only reduce energy burdens and improve overall quality of life for recipients of these assistance programs, but would also generate local wealth, through the creation of construction and energy efficiency jobs related to home energy measures and efficiency upgrades. The American Council for an Energy Efficient Economy estimates that roughly 20 jobs are created by each \$1M invested into such initiatives.<sup>3</sup>

In addition to long-term solutions to energy affordability, this Council should also be aware of an impending crisis regarding electric bill debt: hundreds of thousands of households in Virginia have accrued hundreds of millions of dollars in utility debt over the past 14 months, since a partial moratorium on electric utility disconnections was imposed by Gov. Northam in March 2020. For example, in December the Virginia Department of Housing and Community Development revealed that more than 600,000 customers of the state's sixteen municipal

---

<sup>1</sup>Jones, M. & Spencer, S. (2018). Housing needs and trends in Central Appalachia and Appalachian Alabama. Virginia Center for Housing Research at Virginia Tech. <https://www.fahemembers.com/wp-content/uploads/VCHR-Assessment-of-Housing-Need-and-Trends-and-Central-Appalachia-and-Appalachian-Alabama-August-2018-final-copy-edited-version.pdf>

<sup>2</sup>Fahe public policy positions: Rebuild our prosperity. (2021). <https://fahe.org/fahe-public-policy-positions-rebuild-our-prosperity/>

<sup>3</sup>How does energy efficiency create jobs? American Council for an Energy Efficiency Economy (2020). <https://www.aceee.org/files/pdf/fact-sheet/ee-job-creation.pdf>

utilities had accrued more than \$88M in debts; only a fraction (fewer than 43,000 accounts) had been placed on a repayment plan.<sup>4</sup> These numbers only begin to scratch the surface of the problem, as they don't reflect arrearages of other affected customers of the three investor-owned utilities or the thirteen electric cooperatives in the state.

The utility disconnection moratorium is likely to expire at the end of June 2021, when Gov. Northam has said he will lift the state of emergency. During the pandemic as during normal circumstances, black and brown households in the US *were more likely to be disconnected from utility services* for nonpayment of electric bills than white households were.<sup>5</sup> Related to this crisis, federal funding should be used to forgive utility debts for Covid-related arrearages, and should be directed to the most cash-strapped not-for-profit utilities, like municipal utilities or electric cooperatives, first. Going further, in exchange for covering lost utility revenues with federal aid, the Biden Administration should require those utilities to implement additional disconnection protections, such as: waived late fees, waived reconnection fees, and seasonal or temperature-based disconnection protections over the long term, and not merely during the Covid-19 crisis.

Access to affordable energy is an environmental justice issue, particularly as we transition to a clean energy economy. Ratepayers will bear the burden of this cost, and it is critical that solutions to unaffordable energy bills accompany solutions to the climate crisis itself.

---

<sup>4</sup> Dept. of Housing and Community Development. (December 2020). Report on status of municipal utility customer accounts. March 16, 2020 - December 15, 2020.

<https://www.dhcd.virginia.gov/sites/default/files/Docx/other/utility-customer-data-report-2020.pdf>

<sup>5</sup> Memmott, T., Carley, S., Graff, M., & Konisky, D. M. (2021). Sociodemographic disparities in energy insecurity among low-income households before and during the COVID-19 pandemic. *Nature Energy*, 6(2), 186-193. <https://www.nature.com/articles/s41560-020-00763-9>

WHEJAC PUBLIC MEETING STATEMENT - THURSDAY, MAY 13, 2021

My name is Elizabeth Jones. My husband Anderson and I are farm-owners, retired civil servants and community activists in Chatham, Virginia. I am the Chair of the Pittsylvania County NAACP Environmental Justice Committee. I made a statement at the Department of Environmental Quality virtual public hearing on February 8th of this year. The PCNAACP adopted a resolution to oppose the MVP site.

The Mountain Valley Pipeline LLC is seeking an air quality permit approved by the Department of Environmental Quality for the Lambert Compressor Station to be operated in the Banister District of Pittsylvania County. The existing Transco/Williams Pipeline compressor station site will now have a third gas compressor station which will be located next to our family farm.

The greed for more profits by these fossil fuel corporations is all that matters to them.

But why us? Why in my backyard? Why in Banister District? We're all in the struggle for environmental justice because it is a civil rights issue that's not going away without active participation from everyone. Systemic racism is our enemy.

African Americans live near coal-fired and biomass power plants more than any other demographic group in the United States.

Nearly 68% of African-Americans live or have lived within 30 miles of a coal-fired or biomass power plant.

As a result African-Americans are more likely to have health problems from the emissions these compressor stations and pipelines can cause.

African-Americans want clean air, land and water. We don't like polluters. We're seeking clean energy and climate-friendly choices.

The MVP Lambert gas compressor station will give us emissions of carbon monoxide, nitrogen oxides, volatile organic compounds and potentially hazardous air pollutants such as formaldehyde.

Health concerns about the compressor stations are real. Chronic levels of air pollution increase the rates of respiratory tract infections, such as pneumonia. Asthma and cancer for African Americans may be due to the proximity of power plants. I'm frightened about these poisons because Anderson has asthma and his mother died from asthma.

The NAACP is involved because our struggle for environmental justice needs the attention of our elected and appointed officials. We must keep our community informed about becoming a pollution hot spot. We must all be on the same page.

My husband Anderson was born and raised on the Jones farm. His indigenous heritage is important to us. He has found native-American artifacts in the soil he has plowed.

We want quiet enjoyment for our property. Our daughter and our grandchildren will be living on the farm someday. Our family farm and heritage may mean nothing to many, but it means everything to us. The MVP Lambert Compressor Station has to stop stealing that legacy and heritage from us!

The VA DEQ and the Mountain Valley Pipeline's Lambert Compressor Station must practice outreach to our community in Pittsylvania County VA.

We want the Virginia DEQ to monitor air and water quality at the compressor stations in Pittsylvania County and provide details to the residents. We want outreach and public participation practiced.

The MVP Lambert Compressor Station should not receive air or water permits because the hazards outweigh the benefits. Bad decisions have destroyed our environment, health and legacies.

The preamble of our Constitution starts: "We the people". It doesn't start with we the businesses, or we the land owners, or we the wealthy. It speaks of the people of the United States. And yet our government does not fully represent "the people". It represents instead business, finance, and greed. The lobbyists and campaign donators hold more sway over government decisions than the voice of the people. When and how can we turn the tide in favor of the people? When and how can decisions be made solely for the common good?

A landowner has no rights to his own property as a pipeline claims eminent domain over his property, even though the gas will not be used in this country. Rather, it will be liquified and shipped overseas. How does the profit from that fracked gas supersede his property rights? When and how can we regain our property rights?

Four small schools and two day cares in a poor rural area will be subjected to the environmental damages of a factory built in close proximity. This insulation factory will be a source of nine different categories of air pollution. The children will suffer the brunt of this pollution. When and how can we protect our most valuable resource?

In the battle over internet neutrality, during the public comment period, broadband companies funded a campaign that generated millions of fake comments. This created a false impression of grassroots opposition to net neutrality. The same companies hired by broadband to generate public comments have also been involved in more than 100 other advocacy campaigns. Millions more of fake public comments have probably been placed on public record. When and how will the true voices of the people be heard?

According to a 1908 Supreme Court ruling, many indigenous tribes have a reserved right to water sufficient to fulfill the purposes of their reservations. This means that many tribes have water rights senior to those of non-indigenous users. Yet when Indigenous People demonstrate to protect their water (and the right to clean water for all people) they are arrested, attacked by dogs, and tear gassed, and sprayed with water in freezing weather. When and how will their right to demonstrate be upheld?

These are the stories I have heard from the people who experienced them. If I, as a single retiree, can hear and see, when and how will our representatives see and hear us, the people.

Please ask President Biden to investigate the Federal Energy Regulatory Commission's abuse of eminent domain, to keep the treaties with our indigenous peoples, to listen to the whole population, and to uphold the common good.

Deni Elliott

Greenbrier River Watershed Association

SAYMA Earth Justice Committee

WV Environmental Council

Intact, biodiverse forests are critical to solving the climate crisis, protecting communities from the worst impacts of climate change such as flooding and supporting healthy communities and thriving rural economies. The forests of the Southern US are our nation's most diverse, but least protected.

The South is the world's largest wood producing region with a rate of forest destruction from logging estimated to be four times that of South American rainforests. In addition to widespread forest destruction, wood processing mills are major sources of pollution. These impacts are concentrated in the Coastal Plain region of the South, with disproportionate impacts to low income and communities of color, including specifically across the rural Black Belt.

In the last several years these rural communities have come under increased assault by the rapid growth of the wood pellet industry. Europe is subsidizing the conversion of coal plants to burn wood pellets. They claim it is green and renewable, ignoring scientific evidence that burning wood pellets for electricity is dirtier than coal and gas and will make climate change worse not better. Without enough wood in the EU to supply its own needs, the forests of the Southern US have become the global target for this industry. The South is currently exporting more wood pellets to Europe than any other country in the world. 22 wood pellet mills have already been built and a dozen more are planned, adding to the forest destruction and pollution in communities already overburdened with both. Scientific and community concerns about the climate, health AND economic impacts are being ignored at every level of government.

We understand that big greens, national organizations and Southern forest landowners are actively being engaged by this Administration on these issues. The voices of communities impacted in the South are absent. We want to help the Administration close that gap and live up to its commitment of making sure that impacts to environmental justice communities are addressed. Below are a list of topics we want to discuss:

1- Permitting and Health Impacts: The permitting process for wood pellet mills is ineffective in protecting community health or addressing cumulative, disproportionate impacts on EJ communities. Wood pellet mills are permitted under the minor source category though there is a well documented pattern of mills violating air permit limits. Government agencies at the state level are failing to address the cumulative impacts of air pollution in Environmental Justice Communities. Public opposition is being ignored. What oversight role does EPA have and why is USDA promoting biomass without any acknowledgement of these disproportionate impacts?

2- Climate Change Impacts: Biomass is not a climate solution. Burning wood pellets to generate electricity releases more CO<sub>2</sub> than coal. Governments around the world erroneously count biomass as "carbon neutral" despite scientific evidence to the contrary. Biomass will make climate change worse, not better. Carbon emissions from industrial scale logging are not being transparently reported. This perpetuates the false notion that logging and wood products are climate solutions. Where is EPA on this issue and why is USDA promoting biomass as a climate solution? How can the EPA ensure that these emissions are adequately and

transparently reported? What can the Administration do to address these issues at a global level?

3- Forestry Impacts: Widespread and unregulated clearcutting forests, including wetland forests, is tearing apart our communities' natural flood control system at a time when flooding linked to climate change is getting worse. Flooding is not only displacing people, but causes the contamination of drinking water and mold. Subsidized tree planting perpetuates the establishment of monocultures vs restoring native ecosystems. What can be done at an administrative level to restrict the exemption of forestry from the Clean Water Act and protect wetland forests in the Coastal Plain? What can be done to ensure that subsidies for replanting are being used to restore ecosystems vs establish plantations for commercial production?

4- Economic Development and Just Transition: Agencies at the state and local levels are wrongly characterizing the wood pellet/wood products industry as providing green jobs/renewable energy jobs. This industry is restricting other types of economic development, such as outdoor recreation, that could be creating more jobs and more tax revenue for rural communities without the ecological destruction and air pollution. How can resources available for "build back better" and the Administration's America the Beautiful plan be used to ensure healthy jobs vs jobs that perpetuate pollution and ecological destruction and how can rural communities access these funds? Why does the President's America the Beautiful Plan state that private landowners are helping protect forests and create thriving healthy rural economies, when that is not our experience?

5- Land Inequity: Land Ownership patterns across the South perpetuate and reinforce inequity. There is not an equitable distribution of public lands in the Southern Coastal Plain/Black Belt and a long-history of discriminatory practices and policies have significantly restricted Native American and Black ownership of private land throughout the region. This has operated to restrict these communities' access to nature and associated health and economic opportunities. Major investments in strategic land acquisition will be necessary to address these inequities and advance a just transition in the forest economy. How will the Administration's America the Beautiful Plan address this issue and how can we engage in its development and implementation?

Intact, biodiverse forests are critical to solving the climate crisis, protecting communities from the worst impacts of climate change such as flooding and supporting healthy communities and thriving rural economies. The forests of the Southern US are our nation's most diverse, but least protected.

The South is the world's largest wood producing region with a rate of forest destruction from logging estimated to be four times that of South American rainforests. In addition to widespread forest destruction, wood processing mills are major sources of pollution. These impacts are concentrated in the Coastal Plain region of the South, with disproportionate impacts to low income and communities of color, including specifically across the rural Black Belt.

In the last several years these rural communities have come under increased assault by the rapid growth of the wood pellet industry. Europe is subsidizing the conversion of coal plants to burn wood pellets. They claim it is green and renewable, ignoring scientific evidence that burning wood pellets for electricity is dirtier than coal and gas and will make climate change worse not better. Without enough wood in the EU to supply its own needs, the forests of the Southern US have become the global target for this industry. The South is currently exporting more wood pellets to Europe than any other country in the world. 22 wood pellet mills have already been built and a dozen more are planned, adding to the forest destruction and pollution in communities already overburdened with both. Scientific and community concerns about the climate, health AND economic impacts are being ignored at every level of government.

We understand that big greens, national organizations and Southern forest landowners are actively being engaged by this Administration on these issues. The voices of communities impacted in the South are absent. We want to help the Administration close that gap and live up to its commitment of making sure that impacts to environmental justice communities are addressed. Below are a list of topics we want to discuss:

1- Permitting and Health Impacts: The permitting process for wood pellet mills is ineffective in protecting community health or addressing cumulative, disproportionate impacts on EJ communities. Wood pellet mills are permitted under the minor source category though there is a well documented pattern of mills violating air permit limits. Government agencies at the state level are failing to address the cumulative impacts of air pollution in Environmental Justice Communities. Public opposition is being ignored. What oversight role does EPA have and why is USDA promoting biomass without any acknowledgement of these disproportionate impacts?

2- Climate Change Impacts: Biomass is not a climate solution. Burning wood pellets to generate electricity releases more CO<sub>2</sub> than coal. Governments around the world erroneously count biomass as "carbon neutral" despite scientific evidence to the contrary. Biomass will make climate change worse, not better. Carbon emissions from industrial scale logging are not being transparently reported. This perpetuates the false notion that logging and wood products are climate solutions. Where is EPA on this issue and why is USDA promoting biomass as a climate solution? How can the EPA ensure that these emissions are adequately and

transparently reported? What can the Administration do to address these issues at a global level?

3- Forestry Impacts: Widespread and unregulated clearcutting forests, including wetland forests, is tearing apart our communities' natural flood control system at a time when flooding linked to climate change is getting worse. Flooding is not only displacing people, but causes the contamination of drinking water and mold. Subsidized tree planting perpetuates the establishment of monocultures vs restoring native ecosystems. What can be done at an administrative level to restrict the exemption of forestry from the Clean Water Act and protect wetland forests in the Coastal Plain? What can be done to ensure that subsidies for replanting are being used to restore ecosystems vs establish plantations for commercial production?

4- Economic Development and Just Transition: Agencies at the state and local levels are wrongly characterizing the wood pellet/wood products industry as providing green jobs/renewable energy jobs. This industry is restricting other types of economic development, such as outdoor recreation, that could be creating more jobs and more tax revenue for rural communities without the ecological destruction and air pollution. How can resources available for "build back better" and the Administration's America the Beautiful plan be used to ensure healthy jobs vs jobs that perpetuate pollution and ecological destruction and how can rural communities access these funds? Why does the President's America the Beautiful Plan state that private landowners are helping protect forests and create thriving healthy rural economies, when that is not our experience?

5- Land Inequity: Land Ownership patterns across the South perpetuate and reinforce inequity. There is not an equitable distribution of public lands in the Southern Coastal Plain/Black Belt and a long-history of discriminatory practices and policies have significantly restricted Native American and Black ownership of private land throughout the region. This has operated to restrict these communities' access to nature and associated health and economic opportunities. Major investments in strategic land acquisition will be necessary to address these inequities and advance a just transition in the forest economy. How will the Administration's America the Beautiful Plan address this issue and how can we engage in its development and implementation?



FOR IMMEDIATE RELEASE  
May 13, 2021

CONTACT: Paul Vetter  
(614) 406-4968

**STATEMENT**  
**E-Waste Recycling Leaders Call on Biden Administration  
to Ratify Basel Convention**

*Treaty ratification key to comprehensive strategy for circular economy, responsible recycling*

The [Coalition for American Electronics Recycling \(CAER\)](#), the voice of the emerging e-waste recycling industry, today called on the Biden Administration to ratify the Basel Convention to ensure electronic scrap and other wastes are responsibly reused or recycled.

CAER members are committed to processing e-waste to high standards for protecting the environment and workers. Yet despite our efforts, e-waste exports from American homes and businesses continue to be exported to developing countries where these toxic materials are processed in primitive conditions that lack safeguards to support sustainability and safety. Because the U.S. has not ratified, exports of hazardous e-waste, plastics and other waste become criminal trafficking once they are on their way to developing countries that have signed onto the Convention.

The U.S. is the only developed nation that has not ratified the Convention. Only eight United Nations countries have not ratified: East Timor, Granada, Haiti, San Marino, South Sudan, Fiji, Solomon Islands and the U.S.

By ratifying the Basel Convention, the U.S. will:

- Enact a key part of a comprehensive set of policies needed to drive the circular economy to achieve net-zero emissions, a key goal for the Biden Administration. By supporting responsible domestic reuse and recycling, the Basel Convention will reduce the need for resource-intensive virgin materials and thus reduce emissions.
- Promote environmental justice in developing countries.
- Ensure U.S. e-waste is responsibly recycled in the U.S. with safeguards for the environment and workers while creating up to 42,000 jobs.
- Have a seat at the table where the global movement of post-consumer resources are discussed and governing regulations and standards are agreed upon
- Promote growth of U.S. recycling operations because it will allow the import of e-waste into the U.S. for responsible recycling, which will also ensure the scrap materials are processed at higher environmental and worker safety standards than are used in developing countries.

Together with passage of the [Secure E-waste Export and Recycling Act \(SEERA\)](#), ratification of the Basel Convention will ensure the U.S. has the policy foundation needed to ensure we join with other developed countries to ensure hazardous wastes are responsibly managed. SEERA and Basel ratification will also increase the amount of domestically produced waste that will be responsibly recycled in the U.S., promoting economic growth and job creation.

**About CAER**

CAER members believe electronics recycling should be performed securely and sustainably to protect the environment and national security while strengthening the American economy. CAER includes more than 130

-###

companies and supporting members operating more than 300 facilities in 37 states as well as Puerto Rico and the District of Columbia.

May 24, 2021

Cecilia R. Martinez, PhD  
Senior Director for Environmental Justice  
Council on Environmental Quality (CEQ)  
730 Jackson Pl, NW  
Washington, D.C. 20506  
RE: Executive Order 14008 – Justice40 Initiative

Dear Dr. Martinez:

On behalf of the American Thoracic Society (ATS), thank you for the opportunity to provide comments on the Biden Administration’s Justice40 Initiative. The ATS is a 16,000-member scientific multi-disciplinary organization focused on the prevention, treatment, and cure of pulmonary, critical care, and sleep-related diseases through research, education, and patient advocacy. We applaud the Administration’s commitment to ensuring that 40% of climate and environment-related investment is distributed to disadvantaged communities through the Justice40 Initiative. Our lungs are especially susceptible to the toxic effects of multiple climate-associated pollutants in the air we breathe. Disadvantaged communities (i.e. environmental justice (EJ) communities) are more likely to be exposed to higher levels of air pollutants, more likely to suffer the adverse health impacts of climate change, and less likely to recover from such damages<sup>1,2</sup>. Targeted interventions aimed at reducing air pollution and greenhouse gas emissions while engaging and empowering EJ communities can efficiently reduce emissions, improve equity, and mitigate the harmful health impacts of climate change.

Given the ATS’s expertise in environmental, occupational, and population health, we have provided concrete recommendations on how to maximize societal benefits and emissions reductions with this initiative. We have identified three primary focus areas to improve environmental justice in climate mitigation, which are detailed in the subsequent sections below:

1. *Targeted Reduction of Environmental Health Disparities and Greenhouse Gas Emissions.*
2. *Community Self-Determination.*
3. *Environmental Justice Measurement Tools.*

***Focus Area 1 - Targeted Reduction of Environmental Health Disparities and Greenhouse Gas Emissions***

The ATS recommends that the Justice40 Initiative is implemented in a manner that provides EJ communities with the ability to choose where to spend community-directed investments made as part of

LYNN M. SCHNAPP, MD, ATSF  
PRESIDENT

GREGORY P. DOWNEY, MD, ATSF  
PRESIDENT-ELECT

JUAN C. CLEEDON, MD, DRPH, ATSF  
IMMEDIATE PAST PRESIDENT

M. PATRICIA RIVERA, MD, ATSF  
VICE PRESIDENT

IRINA PETRACHE, MD, ATSF  
SECRETARY-TREASURER

KAREN J. COLLISHAW, MPP, CAE  
CHIEF EXECUTIVE OFFICER



*We help the world breathe®*

1150 18th Street, N.W., Suite 300  
Washington, D.C. 20036 U.S.

**ATS 2022** International Conference



the Justice40 Initiative. Investments in GHG mitigation efforts that result in reductions in other environmental exposures like air pollution should be prioritized for implementation in EJ communities. Similarly, investments in climate-resiliency measures should be prioritized for these communities. Interventions should be designed in a manner that follows implementation science methods, which prioritize continuous quality improvements, community engagement, and trans-disciplinary cooperation. The approach we recommend is detailed below:

- A. **Perform formal needs assessments in EJ communities.** Models like PRECEDE-PROCEED<sup>3</sup> provide a structured approach for needs identification and implementation of evidence-based health-promoting interventions. A needs assessment team should include trained methodologists, state environmental protection agency representatives, technical experts for infrastructural assessments, and community stakeholders. To strive towards equal partnership, participatory action research models should be employed, which requires dedicated support to empower community stakeholders with basic research tools and leadership skills. By equipping stakeholders with these skills, we move towards leveling the government-community power dynamic and have a more equitable partnership when moving forward to define and prioritize community needs. This team will engage with community residents with questions regarding where they see their community’s greatest needs and how best to implement interventions while ensuring community self-determination. Support for organizations like WE ACT can help to achieve this goal of community stakeholder representation in environmental needs assessments<sup>4</sup>.
- B. **Invest in transportation infrastructure to reduce transportation-associated emissions and air pollution.** Mitigation of mobile pollution sources is critical to reducing harmful exposures to air pollution and GHG emissions<sup>5</sup>. Investments in green public transportation, such as those outlined in the Clean Transit for America Plan<sup>6</sup>, will help minimize exposure to harmful traffic-related pollutants. Existing federal transportation spending should prioritize funding and deployment of clean transportation vehicles to EJ communities. This should include mass transportation and other municipal vehicle fleets, such as municipal waste disposal vehicles. Additional investment in transit and non-motor transportation alternatives through building of biking and walking lanes and trails in EJ communities is also encouraged.
- C. **Invest in community infrastructure to increase climate resiliency and improve air quality.** The ATS supports grey to green infrastructure initiatives based on evidence supporting respiratory health benefits associated with increased community greenness<sup>7,8</sup>. Investments in green infrastructure are critical to establishing climate-resilient communities as green infrastructure can reduce flooding risk and pollution burdens<sup>9</sup>. Investments can be made in green waterways, parks, planting of non-allergenic trees, and community renewable energy projects with built-in electricity bill reduction mechanisms.

LYNN N. SCHNAPP, MD, ATSF  
PRESIDENT

GREGORY P. DOWNEY, MD, ATSF  
PRESIDENT-ELECT

JUAN C. CELEDON, MD, DRPH, ATSF  
IMMEDIATE PAST PRESIDENT

M. PATRICIA RIVERA, MD, ATSF  
VICE PRESIDENT

IRINA PETRACHE, MD, ATSF  
SECRETARY-TREASURER

KAREN J. COLLISHAW, MPP, CAE  
CHIEF EXECUTIVE OFFICER



*We help the world breathe®*

1150 18th Street, N.W., Suite 300  
Washington, D.C. 20036 U.S.

ATS 2022 International Conference

- D. **Invest in residential and school infrastructure to increase climate resiliency and energy efficiency.** Investment in programs like the Green & Healthy Homes Initiative<sup>10</sup> will reduce indoor exposures to toxic pollutants, increase residential climate resiliency, and increase energy efficiency through home retrofits. For example, replacement of residential fuel oil heating with electric heating would reduce indoor pollution exposure and GHG emissions. Similar retrofitting needs to occur in schools where indoor air quality improvements would benefit numerous children.
- E. **Invest in environmental hazard monitoring systems to improve monitoring in underrepresented areas.** Increase the density of air quality monitors in EJ communities, modelling this program after California’s Community Air Protection Program<sup>11</sup> that actively engages EJ communities to determine placement of such monitors. Investments in additional air quality monitoring applications in rural and minoritized areas with linkage to community-engaged environmental health researchers are also critical.
- F. **Agencies should provide formal breakdowns of where investments are made to ensure adequate allocation to EJ communities.** Breakdowns of investments can be used to ensure that funding is appropriately and efficiently allocated to communities with the highest need. Tools such as a redesigned EJSCREEN (described in more detail in *Focus Area 3*) can be used to perform quality improvement (QI) analyses to assess the effectiveness of interventions in EJ communities. The QI process should involve community stakeholders to provide qualitative input regarding implemented interventions, and these participants should be compensated for their time and contributions.

**Focus Area 2 – Community Self-Determination**

The ATS believes that EJ community stakeholder engagement is essential for the successful planning and implementation of environmental health and climate mitigation interventions. Particular attention is required for low-income communities, communities of color, immigrant communities, and Tribal communities, where disproportionate environmental health burdens reside. Our recommendations align with those outlined in the Center for American Progress and Tishman Environment and Design Center Justice40 Recommendations<sup>12</sup>. The strategy for achieving this vision of community self-determination of climate and environmental health interventions is outlined below:

- A. **Partner with existing community development corporations and other organizations to facilitate stakeholder-directed investments in EJ communities.** We recommend that the Justice40 Initiative community engagement strategies are modeled after successfully implemented programs that enhance community self-determination by generating menus of evidence-based interventions, activities, and outcomes that serve as the backbone for further action. Examples can be found in the California Air Resources Board Community Air Protection Program<sup>11</sup>, the New York Delivery System

L'INN M. SCHNAPP, MD, ATSF  
PRESIDENT

GREGORY P. DOWNEY, MD, ATSF  
PRESIDENT-ELECT

JUAN C. CELEDON, MD, DRPH, ATSF  
IMMEDIATE PAST PRESIDENT

M.PATRICIA RIVERA, MD, ATSF  
VICE PRESIDENT

IRINA PETRACHE, MD, ATSF  
SECRETARY-TREASURER

KAREN J. COLLISHAW, MPP, CAE  
CHIEF EXECUTIVE OFFICER



*We help the world breathe*<sup>®</sup>  
PULMONARY • CRITICAL CARE • SLEEP

1150 18th Street, N.W., Suite 300  
Washington, D.C. 20036 U.S.  
T. 202-296-9770 F. 202-296-9776 | thoracic.org

**ATS 2022** International Conference  
San Francisco, CA May 2022

Reform Incentive Payment (DSRIP) Program<sup>13</sup>, and the National Alliance of Community Economic Development Association (NACEDA). Investments facilitating citizen science initiatives can also benefit EJ communities by increasing awareness of environmental health hazards and providing residents with specific health-promoting actions. Examples include Smell Pittsburgh and Public Lab<sup>14,15</sup>.

- B. **Allow communities to prioritize evidence-based interventions that both reduce GHG emissions and decrease environmental disparities based on local needs and priorities.** Community representatives and community-based organizations should be involved in and compensated for their participation in deciding which interventions to implement in their communities. Information about interventions should include approaches, necessary inputs, community engagement requirements, and follow-up, enabling communities to select strategies addressing areas of greatest need. Types of interventions are provided in *Focus Area 1*.
  
- C. **Invest in local training of environmental assessors and environmental health professionals with mechanisms for communities to request environmental health assessments and support.** Community environmental health networks, staffed by sanitarians, environmental scientists, health professionals, building assessors, and other experts; should be established in EJ communities in order to perform comprehensive environmental health assessments. A tiered approach to environmental health assessments should be undertaken such that individuals with complex, multiple, or severe environmental exposure-related disease have access to skilled clinicians with expertise in environmental and occupational health. Implementation of these networks should involve allocation of funding to train local community members to work in these roles. EJ communities should have the ability to request environmental health assessments using similar mechanisms to The National Institute for Occupational Safety and Health (NIOSH) Health Hazards Evaluation (HHE)<sup>16</sup>. Funding could be directed through Area Health Education Centers (AHEC)<sup>17</sup>, public health sanitation departments, and local university healthcare-related departments in the form of apprenticeships and scholarships to train environmental health workers. Community environmental health evaluations and interventions could be modeled after previous successfully implemented programs like the New York State Healthy Neighborhoods Program, which was associated with substantial reductions in asthma-related hospitalizations and cost-savings<sup>18</sup>. By providing investment, professional expertise, and local training opportunities to EJ communities for these programs, we anticipate that there will be substantial cost-savings due to reduced healthcare utilization, improved workplace productivity, and increased economic opportunities for EJ community residents. Grant funding should be allocated to perform implementation research studies and outcomes assessments of the efficacy of community interventions.
  
- D. **Develop open communication avenues between EJ communities and policymakers.** EJ community representation at local, state, and federal government levels is essential to ensuring equitable policy

LYNN M. SCHNAPP, MD, ATSF  
PRESIDENT

GREGORY P. DOWNEY, MD, ATSF  
PRESIDENT-ELECT

JUAN C. CELEDON, MD, DRPH, ATSF  
IMMEDIATE PAST PRESIDENT

M. PATRICIA RIBEIRA, MD, ATSF  
VICE PRESIDENT

IRINA PETRACHE, MD, ATSF  
SECRETARY-TREASURER

KAREN J. COLLISHAW, MPP, CAE  
CHIEF EXECUTIVE OFFICER



*We help the world breathe®*  
PULMONARY • CRITICAL CARE • SLEEP

1150 18th Street, N.W., Suite 300  
Washington, D.C. 20036 U.S.  
T. 202-296-9770 F. 202-196-9776 | thoracic.org

**ATS 2022 International Conference**  
San Francisco, CA      May 2022



implementation across the country. This will enable future reductions in environmental health disparities and climate change-related damages in EJ communities. These communication avenues can be developed in conjunction with the Office of Public Participation (OPP) at the Federal Energy Regulatory Commission (FERC), which will allow communities impacted by energy-related infrastructure to participate and potentially intervene in FERC proceedings<sup>19</sup>. Our vision would broaden the scope of the proposed OPP to extend beyond FERC-regulated infrastructure projects, enabling the fair representation of EJ communities against private industrial interests. Examples of this type of program can be found with the Canadian Energy Regulator Participant Funding Program (PFP)<sup>20</sup> and the Pennsylvania State Office of Consumer Advocate<sup>21</sup>.

**Focus Area 3 - Environmental Justice Measurement Tools**

The ATS recognizes that the successful implementation of the Justice40 Initiative depends on the accurate identification of EJ communities and appropriate metrics to evaluate progress. This will require the development of a comprehensive tool that incorporates demographic, socioeconomic, environmental, health, and other indicators. Such a tool should be developed with a thorough understanding of the strengths and weaknesses of previously developed EJ screening tools. The approach to developing this comprehensive tool is outlined below:

- A. **Establish a committee of experts and community representatives to critique the strengths and drawbacks of current tools.** This committee would be tasked with critiquing existing EJ and neighborhood disadvantage tools and developing a new version of the EJSCREEN tool. Tools to evaluate include the current version of the EJSCREEN<sup>22</sup>, the CalEnviroScreen<sup>23</sup>, the Area Deprivation Index (ADI)<sup>24</sup>, and the CDC/ATSDR Social Vulnerability Index (SVI)<sup>25</sup>. Tools from other countries can also be evaluated and used as models for development. Specific attention should focus on evaluating different approaches for defining geographic boundaries of communities as units of analysis (i.e., by neighborhood, census tract, or county-level). Critical analysis of the validity and reliability of various operational definitions, screening, and confirmation tools for determining what constitutes a “disadvantaged” or EJ community is required.
- B. **Develop a multi-faceted EJSCREEN tool that can be used in different scenarios.** A comprehensive EJ screening tool is essential to the successful implementation of the Justice40 Initiative as it will enable identification of communities with the highest level of need and clear metrics for evaluating the success of implemented interventions. Indicators that can be considered when developing this new tool are outlined in Table 1. The tool that is developed should have multiple facets that allow for the specific evaluation of demographic, socioeconomic, environmental, and health contributors to EJ scores. This will enable targeted quality improvement of interventions implemented under the Justice40 Initiative.

LYNN M. SCHNAPP, MD, ATSF  
PRESIDENT

GREGORY P. DOWNEY, MD, ATSF  
PRESIDENT-ELECT

JUAN C. CELEDON, MD, DRPH, ATSF  
IMMEDIATE PAST PRESIDENT

M. PATRICIA RIVERA, MD, ATSF  
VICE PRESIDENT

IRINA PETRACHE, MD, ATSF  
SECRETARY-TREASURER

KAREN J. COLLISHAW, MPP, CAE  
CHIEF EXECUTIVE OFFICER



*We help the world breathe*  
PULMONARY • CRITICAL CARE • SLEEP

1150 18th Street, N.W., Suite 300  
Washington, D.C. 20036 U.S.  
T. 202-296-9770 F. 202-296-9776 | thoracic.org

**ATS 2022 International Conference**  
San Francisco, CA May 2022



C. Conduct real-world scientific evaluations of the predictive performance of this tool. The tool should be evaluated for its ability to identify communities that experience the greatest burden of environmental disparities. Such a tool needs to be able to capture the diversity of exposures and experiences that exist across the country. It is imperative that this tool be assessed in a range of different communities, including low-income, minoritized, high-immigrant populations, and Tribal communities.

Table 1: Current indicators in EJSscreen and recommendations for indicators to include in future iterations.

Current Indicators		Recommended Indicators to Consider	
Demographic & Socioeconomic	Environmental	Demographic & Socioeconomic	Environmental
<ul style="list-style-type: none"> <li>• % people of color</li> <li>• % less than high school education</li> <li>• Linguistic isolation</li> <li>• % &lt;5 years old</li> <li>• % &gt;65 years old</li> <li>• % low income</li> <li>• % with less than high school education</li> </ul>	<ul style="list-style-type: none"> <li>• National Scale Air Toxics Assessment Air Toxics Cancer Risk; Respiratory Hazard Index; and Diesel PM (DPM)</li> <li>• PM<sub>2.5</sub> and ozone levels</li> <li>• Lead paint indicator</li> <li>• Traffic proximity and volume</li> <li>• Proximity to risk management plan sites</li> <li>• Proximity to waste treatment storage and disposal facilities</li> <li>• Proximity to national priorities list sites</li> <li>• Wastewater discharge indicator</li> </ul>	<ul style="list-style-type: none"> <li>• Sensitive population indicators based on community prevalence of global and national environment- and climate-attributed diseases<sup>26</sup></li> <li>• % immigrants</li> <li>• % home ownership vs rentals vs owned units with leased land (mobile homes)</li> <li>• % employment</li> <li>• % with low assets or savings</li> <li>• % with income worry</li> <li>• % experiencing residential crowding</li> <li>• % dependents (&lt;16 or &gt;65 years of age)</li> <li>• Metrics to evaluate the impact of structural racism on communities → Dissimilarity Index<sup>27</sup>, GINI Index<sup>28</sup>, Redlining Maps<sup>29</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Other airborne pollutants (nitrates, carbon monoxide, sulfur dioxide, ultrafine particulate matter)</li> <li>• Proximity to large industrial polluters</li> <li>• % green space (Normalized difference vegetation index/ NDVI)</li> <li>• Regional pesticide use</li> <li>• % home fuel oil heating sources</li> <li>• % with exposure to radiation or heavy metals in public water supply</li> <li>• Exposure to allergy-inducing infestations (cockroaches, mites, rodents, etc)</li> <li>• Proximity to legacy waste disposal sites</li> <li>• Considered as “fence-line” communities and others affected by local area sources of pollution</li> </ul>

**Conclusions:**

Environmental health disparities contribute to inequitably increased health burdens in EJ communities while also leading to large, poorly recognized contributions to GHG emissions and climate change. Targeted, community-directed interventions aimed at reducing environmental health hazards

L'INN M. SCHNAPP, MD, ATSF  
PRESIDENT

GREGORY P. DOWNEY, MD, ATSF  
PRESIDENT-ELECT

JUAN C. CELEDON, MD, DRPH, ATSF  
IMMEDIATE PAST PRESIDENT

M.PATRICIA RIVERA, MD, ATSF  
VICE PRESIDENT

IRINA PETRACHE, MD, ATSF  
SECRETARY-TREASURER

KAREN J. COLLISHAW, MPP, CAE  
CHIEF EXECUTIVE OFFICER



We help the world breathe®  
PULMONARY • CRITICAL CARE • SLEEP

1150 18th Street, N.W., Suite 300  
Washington, D.C. 20036 U.S.  
T. 202-296-9770 F. 202-296-9776 | thoracic.org

ATS 2022 International Conference  
San Francisco, CA May 2022



# American Thoracic Society

American Journal of Respiratory  
and Critical Care Medicine®

American Journal of Respiratory  
Cell and Molecular Biology®

Annals of the American  
Thoracic Society®

ATS Scholar™  
Open Access

offer a powerful and efficient opportunity to both improve health and mitigate the harmful impacts of climate change.

Sincerely,

ATS Environmental Health Policy Committee  
ATS Health Equality and Diversity Committee

LINN M. SCHNAPP, MD, ATSF  
PRESIDENT

GREGORY P. DOWNEY, MD, ATSF  
PRESIDENT-ELECT

JUAN C. CELEDON, MD, DRPH, ATSF  
IMMEDIATE PAST PRESIDENT

M. PATRICIA RIVERA, MD, ATSF  
VICE PRESIDENT

IRINA PETRACHE, MD, ATSF  
SECRETARY-TREASURER

KAREN J. COLLISHAW, MPP, CAE  
CHIEF EXECUTIVE OFFICER



*We help the world breathe®*  
PULMONARY • CRITICAL CARE • SLEEP

1150 18th Street, N.W., Suite 300  
Washington, D.C. 20036 U.S.  
T. 202-296-9770 F. 202-296-9776 | thoracic.org

**ATS 2022** International Conference  
San Francisco, CA May 2022

## APPENDIX C- POWERPOINT PRESENTATION

*The White House Environmental Justice Advisory Council (WHEJAC) Public Meeting,  
May 13, 2021*

 Meeting attendees are in listen/ view mode only

 Attendees who pre-registered for public comment will be given access to speak

 The chat feature will not be available in this webinar

 There is no opportunity for attendees to speak outside of the public comment period, if you would like to submit a comment in writing for the record please visit: [whejac@epa.gov](mailto:whejac@epa.gov)

Meeting Agenda: <https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council>



1

*Meeting Agenda*

1:00 p.m. - 1:30 p.m. WELCOME, INTRODUCTIONS, & OPENING REMARKS

1:30 p.m. - 2:20 p.m. WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION

2:20 p.m. - 3:10 p.m. WHEJAC E.O. 12898 REVISION WORKGROUP UPDATE & DISCUSSION

3:10 p.m. - 3:25 p.m. BREAK

3:25 p.m. - 3:35 p.m. GREETINGS & REMARKS

3:35 p.m. - 4:15 p.m. WHEJAC CLIMATE & ECONOMIC JUSTICE SCREENING TOOL WORKGROUP UPDATE & DISCUSSION

4:15 p.m. - 5:15 p.m. PUBLIC COMMENT PERIOD

5:15 p.m. - 5:55 p.m. WHEJAC BUSINESS MEETING REFLECTION & CONVERSATION

5:55 p.m. - 6:00 p.m. CLOSING REMARKS & ADJOURN

2

1

## WELCOME, INTRODUCTONS & OPENING REMARKS

- o **Karen L. Martin, Designated Federal Officer** – U.S. Environmental Protection Agency
- o **Cecilia Martinez, PhD, Senior Director for Environmental Justice** – Council on Environmental Quality



3

## WELCOME, INTRODUCTONS & OPENING REMARKS

- o **Richard Moore, White House Environmental Justice Council Co-Chair** – Los Jardines Institute
- o **Peggy Shepard, White House Environmental Justice Council Co-Chair** – WE ACT for Environmental Justice
- o **Catherine Coleman Flowers, White House Environmental Justice Council Vice Chair** – Center for Rural Enterprise and Environmental Justice
- o **Carletta Tilousi, White House Environmental Justice Council Vice Chair** – Havasupai Tribal Council



4

2

WELCOME, INTRODUCTONS & OPENING REMARKS

**West:**

- o **Angelo Logan** - *Moving Forward Network*
- o **Rachel Morello-Frosch, PhD** - *Department of Environmental Science, Policy and Management University of California, Berkeley*
- o **Viola Waghiyi** - *Alaska Community Action on Toxics*
- o **Miya Yoshitani** - *Asian Pacific Environmental Network*



5

WELCOME, INTRODUCTONS & OPENING REMARKS

**Midwest:**

- o **Kim Havey (He/Him), LEED AP, AICP** - *City of Minneapolis, Divison of Sustainability*
- o **Kyle Whyte, PhD** - *Environment and Sustainability, University of Michigan*
- o **Hli Xyooj** - *Advancement of Hmong Americans*



6

WELCOME, INTRODUCTONS & OPENING REMARKS

**Southeast:**

- o **LaTricea Adams** - *Black Millennials for Flint*
- o **Tom Cormons** - *Appalachian Voices*
- o **Harold Mitchell** – *ReGenesis*
- o **Beverly Wright, PhD** - *Deep South Center for Environmental Justice*



7

WELCOME, INTRODUCTONS & OPENING REMARKS

**Southwest:**

- o **Susana Almanza** - *People Organized in Defense of Earth and Her Resources*
- o **Jade Begay** - *NDN Collective*
- o **Robert Bullard, PhD** - *Department of Urban Planning & Environmental Policy Texas Southern University*
- o **Juan Parras** - *Texas Environmental Justice Advocacy Services*



8

WELCOME, INTRODUCTIONS & OPENING REMARKS

**Northeast:**

- o **Maria Belen Power** - GreenRoots
- o **Andrea Delgado** - United Farm Workers Foundation
- o **Jerome Foster II** - One Million of Us
- o **Maria Lopez-Nuñez** - Organizing and Advocacy, Ironbound Community Corporation
- o **Michele Roberts** - Environmental Justice and Health Alliance for Chemical Policy Reform
- o **Nicky Sheats, PhD** - John S. Watson Institute for Urban Policy and Research, Kean University

**Puerto Rico:**

- o **Ruth Santiago** - Comité Dialogo Ambiental and El Puente, Latino Climate Action Network



9

WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION

**Speakers:**

- **Peggy Shepard, Workgroup Chair**
- **Dr. Beverly Wright**
- **Ruth Santiago**



10

## WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION: Question 2

Workgroup Members: Kim Havey, Maria Lopez-Nuñez, , Maria Belen Power and Miya Yoshitani

Key components that require further development for effective implementation of Justice40 and require WHEJAC input are:

- 2) What are the key elements that are important in developing definitions of "investment benefits"?
  - a. Are there examples of definitions from federal or state legislation that would be helpful to review?

11

WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION: Question 2

### Recommendations for the Definition of Investment Benefits

**Recommendation:** Direct Investments in Geography: Investments in defined frontline geographies (by census tract or other designations based on EJ criteria such as Minneapolis Green Zones ).

**Recommendation:** Direct Investments in People: Investments that benefits to Black, Indigenous, Latinx, Asian, Pacific Islander, GLBTQ, People of Color, and Immigrants to improve health and economic opportunities.

**Recommendation:** Indirect and direct Investment in Community: Investment which support local communities, community-based organizations, community ownership, cooperatives, small-business, community job training and local ownership tracks, etc.

**Recommendation:** External Direct Investment benefits: Investments that are outside EJ communities but provide essential services to EJ such as water and sanitation.

**Recommendation:** All Investments: Must do no harm to EJ Communities

**Recommendation:** 100% of investments must do no harm to Environmental Justice communities. We want 100% Justice; it would be unreasonable to have any climate investment working against historically harmed communities. To that end we acknowledge the Justice40 to be the floor not the ceiling, 40% should not be seen as a cap but as a starting point.

12

**Guiding Principles: Program criteria to maximize federal investment benefits and avoid harm in EJ communities**

**Recommendation:** 100% of investments must do no harm to Environmental Justice communities. We want 100% Justice; it would be unreasonable to have any climate investment working against historically harmed communities. To that end we acknowledge the Justice40 to be the floor not the ceiling, 40% should not be seen as a cap but as a starting point.

**Recommendation:** Just recovery to support community-driven recovery and mid- to long-term rebuilding and implementation projects with improvements that further equitable mechanisms for adaptation, recovery, and rebuilding.

**Recommendation:** For investments to be considered truly beneficial, process and implementation are key. All investments should incorporate a community driven, community-controlled approach so that communities most directly impacted benefit as intended.

13

**WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION: Question 1**

**Workgroup Members:** LaTricea Adams, Dr. Robert Bullard, Tom Cormons, Andrea Delgado, Jerome Foster II, Dr. Beverly Wright, Peggy Shepard, Ruth Santiago, Harold Mitchell

*EO 14008 Sec. 223. Justice40 Initiative. (a) Within 120 days of the date of this order, the Chair of the Council on Environmental Quality, the Director of the Office of Management and Budget, and the National Climate Advisor, in consultation with the Advisory Council, shall jointly publish recommendations on how certain Federal investments might be made toward a goal that 40 percent of the overall benefits flow to disadvantaged communities. The recommendations shall focus on investments in the areas of clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development; the remediation and reduction of legacy pollution; and the development of critical clean water infrastructure. The recommendations shall reflect existing authorities the agencies may possess for achieving the 40-percent goal as well as recommendations on any legislation needed to achieve the 40-percent goal.*

Key components that require further development for effective implementation of Justice40 and require WHEJAC input are:

- 1) Identifying the programs and policies federal (investments) in that can be included in Justice40.
  - a) Existing programs that EJ communities have found critical and important to serving their needs.
    - i. What components of these programs are most effective?
    - ii. What components present challenges to EJ communities?
  - b) Ideas for potential new programs that would meet a gap in EJ needs

14

## 26 - U.S. Government Institutions Mentioned in the Recommendations

The White House	Cabinet Secretaries
Broader Executive branch	Appalachian Regional Commission and Economic Development Administration
U.S. Department of Energy	National Telecommunications and Information Administration Broadband Programs
U.S. Department of Commerce	U.S. Congress
U. S. Department of Housing and Urban Development	U.S. Department of the Interior;
U.S. Department of Agriculture	Pesticide National Synthesis Project
U.S. Department of Health & Human Services	U.S. Geological Survey
Agency: Tennessee Valley Authority	U.S. Department of Education
U.S. Department of Transportation	U.S. Department of Defense
U.S. Environmental Protection Agency	U.S. Department of Health and Human Services
U.S. Department of Homeland Security - FEMA	White House Initiative on HBCUs and MSIs
Health Resources and Services Administration (HRSA)	U.S. Department of Commerce – Small Business Administration
National Institute of Environmental Health Sciences	
U.S. Department of Labor	

15

### CLEAN ENERGY & ENERGY EFFICIENCY

- Grant programs for community solar projects in cities and rural communities
- Community resilience projects including, including sustainable and regenerative agriculture, clean water infrastructure and broadband installation
- Ensuring access to affordable clean energy
- Prohibit FEMA funding for going to permanent fossil fuel generation and infrastructure
- Require public input and hearings for investments in disaster recovery efforts to ensure impacted communities have a voice in how funds are spent.
- Tennessee Valley Authority should set an ambitious goal of transitioning to clean energy by 2030
- Expand Department of Energy low-income programs by Enacting the Affordable Solar Energy for Our Communities Act ([116th Congress H.R. 8165](#)) to create new DOE low-income solar programs to ensure DOE programs are reaching the most disadvantaged communities.
- Federal Renewable Energy Investment Tax Credit Revisions. Extend a 30% renewable energy tax credit for 10 years, and to ensure that the benefits of clean energy reach disadvantaged communities, and service organizations

16

#### CLEAN TRANSIT & TRANSPORTATION INVESTMENT

- Invest in transit hubs to catalyze economic and small business development in commercial corridors.
- Electrify Fleets of School Buses and Sanitation Trucks and Other Public Vehicles
- We should invest in transportation hubs because the communities that are most impacted by the lack of access to transportation are the low-income, people of color, and elderly communities.
- School buses and sanitation trucks are some of the dirtiest vehicles that travel throughout EJ communities spewing diesel exhaust and fine particulates which contribute to poor air quality.

17

#### SAFE, AFFORDABLE & SUSTAINABLE HOUSING

- HUD should establish a voluntary community relocation program that provides replacement housing cost to residents whose homes were built with HUD funds on toxic sites, such as former waste dumps.
- Expand project eligibility criteria of the Clean Water State Revolving Fund (CWSRF) to include homes, residences, schools, and childcare facilities.
- Expand Low Income Home Energy Assistance Program (LIHEAP) to Support Cooling as Well as Heating
- Develop guidance and policy for governors requiring them to certify relief assistance and funds received during major declared disasters and emergencies are spent in an equitable and nondiscriminatory way
- Establish a sustainable communication office for communities that have been so egregiously neglected by government and impacted by racist public policy, environmental pollution and climate change. Example Union Town, AL

18

#### TRAINING & WORKFORCE DEVELOPMENT

- Increase funding for the NIEHS Environmental Career Worker Training Program.
- Access to basic sanitation supplies and handwashing facilities for all agricultural workers.
- Increase funding for the Partnerships for Opportunity and Workforce and Economic Revitalization (POWER) and Assistance to Coal Communities (ACC) programs.
- Expand funding for existing training programs as well as union apprenticeship and pre-apprenticeship programs.
- Reduce or eliminate matching requirements for broadband construction projects in environmental justice coal-impacted communities.
- Support workers in Coal-Impacted Communities. Workers affected by coal closures need targeted workforce development and training programs, in addition to investment in broader economic development strategies that spur quality job creation.
- Expand funding for and give priority to training programs that pay the trainees.
- Develop a frontlines climate corps to support youth leadership development and training of underemployed workers.
- Establish heat illness safeguards for all outdoor workers that don't have the luxury to work in climate-controlled spaces.
- Require full and nationwide reporting of pesticide usage on school sites and child day care facilities.
- Identify climate justice education as an essential component of K-12 curriculum in the district. Schools for Climate Action's website offers free resolution templates for teachers, students and allies to draft a school board resolution calling for a climate justice curriculum.

19

#### REMEDiation & REDUCTION OF LEGACY POLLUTION

- Establish a program requiring the reduction of permitted emissions of hazardous air pollution to prevent the exceedance of EPA's cancer and non-cancer risk guidelines.
- Conduct civil rights compliance reviews under Title VI of the Civil Rights Act of states with delegated environmental authorities.
- Establish a policy for disaster recovery dollars to fund healthy land restoration in environmental justice communities.
- Invest in educating the public about environmental justice and the impacts of environmental racism.
- Fund the implementation of programs and policies in the bill by Sen. Booker and Rep. Haaland – The Environmental Justice Legacy Pollution Clean-up Act.
- Mandate new air quality monitoring in frontline and fence line communities
- Support HUD to expand the Lead Education and Lead Abatement Program
- Ensure continued funding for black lung benefits.
- Decontamination of Vieques and Culebra.
- Expand Medicare/Medicaid for lifetime access for individuals from frontline communities directly impacted by environmental racism and injustice (i.e. the Flint Water Crisis)
- Develop an air monitoring network that includes the detection of PM 2.5 in areas where a DOT-funded transportation project, a fossil-fired power plant, or PM 2.5 major emitting facility is located within three miles of a residential area.

20

#### DEVELOPMENT OF CRITICAL CLEAN WATER INFRASTRUCTURE

- Lead Water Pipe Infrastructure Replacement
- Create a federal low-income water and sewer bill assistance program. This program will assist low-income customers with paying their water and sewer bills.
- Ensure that environmental justice communities are tested for lead water pipe infrastructure and replace those pipes where necessary to protect the most vulnerable (children and pregnant women) from lead exposure.
- Permanently institutionalize water and wastewater affordability programs. In addition to investment in water and wastewater infrastructure, it is also essential to ensure that households can afford to access these services.
- Lead service line replacement should be an integral part of a long-term solution, including periodic benchmarks for all water systems to achieve regardless of water testing results.
- Develop a robust and (public) transparent national database and GIS map(s) to centralize and locate lead testing data for schools, cities/municipalities, and states.

21

#### CLIMATE MITIGATION & RESILIENCY

- Invest Justice 40 funds to designate the South Coast Aquifer in Puerto Rico as a sole source public water resource and decontaminate the aquifer.
- Modernize temporary labor camp standards/farm labor camp standards to mitigate the risks that climate change, extreme weather events and pandemics pose on migrant and seasonal farmworkers and their families.
- Support funding for frontline/EJ communities to organize, convene and develop climate action plans that address climate resilience, communication and prioritize potential climate impacts.

22

#### INTERSECTIONAL RECOMMENDATIONS COMMUNITY AND UNIVERSITY PARTNERSHIPS

- Develop guidance and directives for Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), Tribal Colleges and Universities (TCUs) and Asian American and Pacific Islander Serving Institutions (AAPISIs) to support communities addressing legacy pollution problems and challenges.
- Invest in Community & Migrant Health Centers which serve migrant and seasonal farmworkers across the U.S.
- The Administration should leverage its discretion and resources to ensure that undocumented individuals and families are not left out or ineligible to benefit from EJ40 investments.
- Improve health equity by mandating that NIH support community-academic partnerships in all relevant research centers and in grant programs
- Carry out the nation-to-nation consultative duties of the U.S. to federally-recognized Tribes in the identification, planning, and implementation of infrastructure investments and projects, consistent with the January 21, 2021, *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships and Best Practices on Consultation*.
- Funding for infrastructure projects, such as grants, should be multi-year, providing support for Tribes to build long term capacity, stability, consistency, and a strong foundation.
- Federal agencies must consider the self-determination of non-federally-recognized Indigenous peoples and grassroots organizations, community organizations, and entrepreneurship in infrastructure development

23

WHEJAC JUSTICE40 WORKGROUP UPDATE & DISCUSSION: Question 3

Key components that require further development for effective implementation of Justice40 and require WHEJAC input are:

3) What are the key elements that should be included in defining “disadvantaged communities?”

a. Are there examples of definitions from federal or state legislation that would be helpful to review?

24

**Recommendation: Underserved communities include:**

- Majority minority communities
- High rate of health disparities
- Non-attainment of clean air and water standards
- Formerly redlined
- Food insecurity and child nutrition levels
- Children receiving school lunch program
- Income and % of households on supplementary income benefits
- Numbers of superfund, waste, landfills and toxic facilities
- Low education attainment and low high school graduation rates
- High maternal and infant mortality rates
- High asthma rates and deaths
- Poorly maintained stock of housing
- Lack of grocery stores, proliferation of (cent stores and fast-food outlets)

25

WHEJAC E.O. 12898 WORKGROUP UPDATE & DISCUSSION

**Speakers:**

- **Richard Moore, Workgroup Co-Chair**
- **Carletta Tilousi, Workgroup Co-Chair**
- **Kyle Whyte, PhD**



26

## **WHEJAC E.O. 12898 WORKGROUP UPDATE & DISCUSSION:**

**Workgroup Members:** Richard Moore, Carletta Tilousi, Susana Almanza, Angelo Logan, Juan Parras, Kyle Whyte, Hli Xyooj

### **Executive Order 14008 Sec. 220**

*(h) The Interagency Council shall, within 120 days of the date of this order, submit to the President, through the National Climate Advisor, a set of recommendations for further updating Executive Order 12898.*

- 1) What sections of Executive Order 12898 should be revised?
- 2) What components should be added to Executive Order 12898
- 3) What components should be removed from Executive Order 12898?

27

### **The addition of entire section on definitions that are more inclusive**

#### ***“environmental justice” 201 (B)***

*Just treatment + full protection (201(G)(i))*

#### ***“environmental justice community” (201 (c))***

*Emphasizing geographic location and risk of experiencing higher or more adverse human health or environmental outcomes*

28

### **Culture and justice treatment**

201 (G) (iv) improvement in human health and environmental outcomes in communities disproportionately impacted by environmental and health hazards, including the improvement of environmental outcomes that protect cultural practices, the maintenance and restoration of cultural heritage, and the cultural bases of human health.

29

### **The addition of the concepts of culture:**

#### **In the definition of "environmental justice"**

Example "(ii) equitable access to any Federal agency action, including decision-making processes, actions, resources, and benefits, to ensure healthy and sustainable environments for all people to live, learn, work, worship, recreate, and practice their cultures";

#### **Sec 301 - Agency Responsibilities:**

Example "(ii) equitable access to decision-making processes, actions, resources, and benefits to build and ensure healthy, culturally vibrant, sustainable, and resilient environments for all people to live, learn, work, worship, play and practice their cultures";

#### **Sec 501 - Consumption Patterns and Cultural Practices:**

Example "Federal agencies must communicate to the public the risks of subsistence consumption and culture practices"

30

### **The concept of “meaningful participation” (201 (I))**

- Definition of **“meaningful participation”** concerns influence and decision-making, technical assistance, cultural and linguistic considerations, access, and capacity building.
- The definition of meaningful participation works throughout the recommendations document

31

### **Civil Rights and Systemic Racism (301)**

- **Systematic racism, health and the environment**
- **Civil Rights enforcement**
- **National Environmental Policy Act (NEPA) enforcement**

32

### **Expanded and detailed strategic plan criteria (304)**

- Timetables, reports, meaningful participation
- Reduce, prevent, eliminate pollution, legacy pollution and cumulative impacts
- (304) (e) plans to coordinate with states, county, and other units of government, including a clear statement describing how each Federal agency can support the development, implementation, and evaluation of environmental justice strategies for those units of government. Federal agency strategic plans must directly address what courses of action, including in connection with federal funding, will be taken to address environmental justice issues at state, county, or local levels of government;
- (304) (i) in the initial plan, not later than one (1) year after the effective date of this Order, a plan to convene an environmental justice advisory committee pursuant to the Federal Advisory Committee Act or an equivalent body to provide ongoing expertise, input and review of agency strategic plans.

33

### **Signing Statement and Policy Statement (101):**

- Policy statement
- The significance of a signing statement as a public record
- Signing statement's expression of the spirit of E.O.

34

## GREETINGS AND REMARKS

- **Cecilia Martinez, PhD, Senior Director for Environmental Justice** – Council on Environmental Quality
- **Deb Haaland, Secretary**– United States Department of the Interior



35



**Deb Haaland**  
*Secretary*  
United States Department of the Interior

A portrait of Deb Haaland is shown in a circular frame with a blue and white border. To the right of the portrait is a dark red rounded rectangular box containing her name and title. The seal of the United States Department of the Interior is in the top right corner of the slide.

36

## WHEJAC CLIMATE JUSTICE SCREENING TOOL WORKGROUP UPDATE & DISCUSSION

### Speakers:

- **Catherine Coleman Flowers, Workgroup Chair**
- **Jade Begay**
- **Nicky Sheats, PhD**

37

## WHEJAC CLIMATE JUSTICE SCREENING TOOL WORKGROUP UPDATE & DISCUSSION:

**Workgroup Members:** Dr. Rachel Morello-Frosch, Michele Roberts, Catherine Flowers, Dr. Nicky Sheats, Viola Waghiyi, Jade Begay, Andrea Delgado

Executive Order 14008 requires the creation of a Climate and Economic Justice Screening Tool, to be established by July 2021. At this time, a phased approach for implementation is being considered to ensure a continuous process of improvement for a robust, effective, valid, and responsive tool. Therefore, the goal is to establish a base Climate and Economic Justice Screening Tool in July in compliance of EO 14008, and to establish a plan for building up the Screening Tool with benchmark dates for completion of the phases of development

- 1) What should be the goal and purpose of the Climate and Economic Justice Screening Tool?
  - a. What is the target user(s) for the tool?
  - b. For what purpose would EJ communities and other target users need/use the tool?
  - c. Are there other existing tools (other than CalEnviroScreen) used by state and local governments, or other entities that are effective and should be reviewed for consideration in development of the Climate and Economic Justice Screening Tool?
- 2) What indicators/data should, if possible, be included in the Climate and Economic Justice Screening Tool in the July 2021 release?
  - a. Are there indicators in the current EPA EJSCREEN that are useful and, if possible, should be included in the Climate and Economic Justice Screening Tool?
  - b. Are there indicators in the current EPA EJSCREEN that are not useful and should not be considered in the Climate and Economic Justice Screening Tool?

38

**WHEJAC CLIMATE JUSTICE SCREENING TOOL WORKGROUP UPDATE & DISCUSSION:**

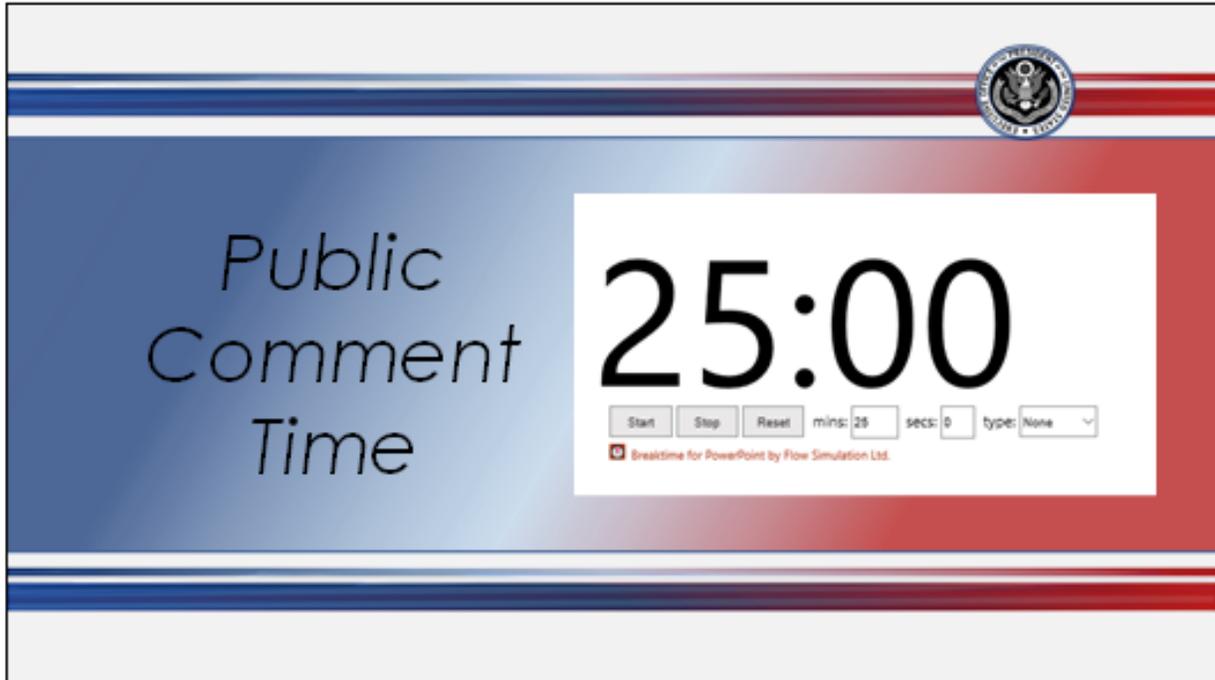
The goal and purpose of the Climate and Economic Justice Screening Tool	Indicators/data should be included in the Climate and Economic Justice Screening Tool
<ul style="list-style-type: none"> <li>• Holding industries, institutions, agencies, governments and people accountable</li> <li>• Identifying areas of need for specific communities and directing resources/programming accordingly (for example: directing resources &amp; benefits under Justice40)</li> <li>• Preventing further damage in disadvantaged or overburdened communities</li> <li>• Prioritizing resources</li> <li>• Informing policy changes</li> <li>• Evaluating the effects of regulatory and policy interventions (tracking progress toward EJ goals)</li> <li>• Helping communities advocate for themselves (similar to "holding people accountable" but broader than that)</li> <li>• Data on the permitting process that will allow communities to meaningfully participate</li> <li>• Data on permits, what is being allowed, what kind of emissions</li> <li>• Data on emissions</li> <li>• What do we need?</li> <li>• Pollution and Emission Indicators</li> <li>• Healthy and Equity Indicators</li> <li>• Process Indicators</li> <li>• Economic Indicators</li> <li>• Performance metrics</li> <li>• Funding</li> <li>• Accountability for Process</li> </ul>	<ul style="list-style-type: none"> <li>• Exposure Burdens</li> <li>• Proximity to Potential Hazards</li> <li>• Sensitive Populations</li> <li>• Demographic/SES factors</li> <li>• Energy</li> <li>• Economic Development/Investment</li> <li>• Climate Vulnerability</li> <li>• Infrastructure</li> </ul>

39

## Public Comment

- *Members of the public will be given three **(3) minutes to present** comments to the WHEJAC.*
- Submit written comments to: [whejac@epa.gov](mailto:whejac@epa.gov)

40



The slide features a blue background on the left with the text "Public Comment Time" in a white, sans-serif font. On the right, a white rectangular area contains a large digital timer showing "25:00". Below the timer are controls: "Start", "Stop", "Reset", "mins: 25", "secs: 0", and "type: None". A small red logo and text "Breaktime for PowerPoint by Flow Simulation Ltd." are at the bottom of the timer area. The slide is framed by a blue and red border with a circular seal in the top right corner.

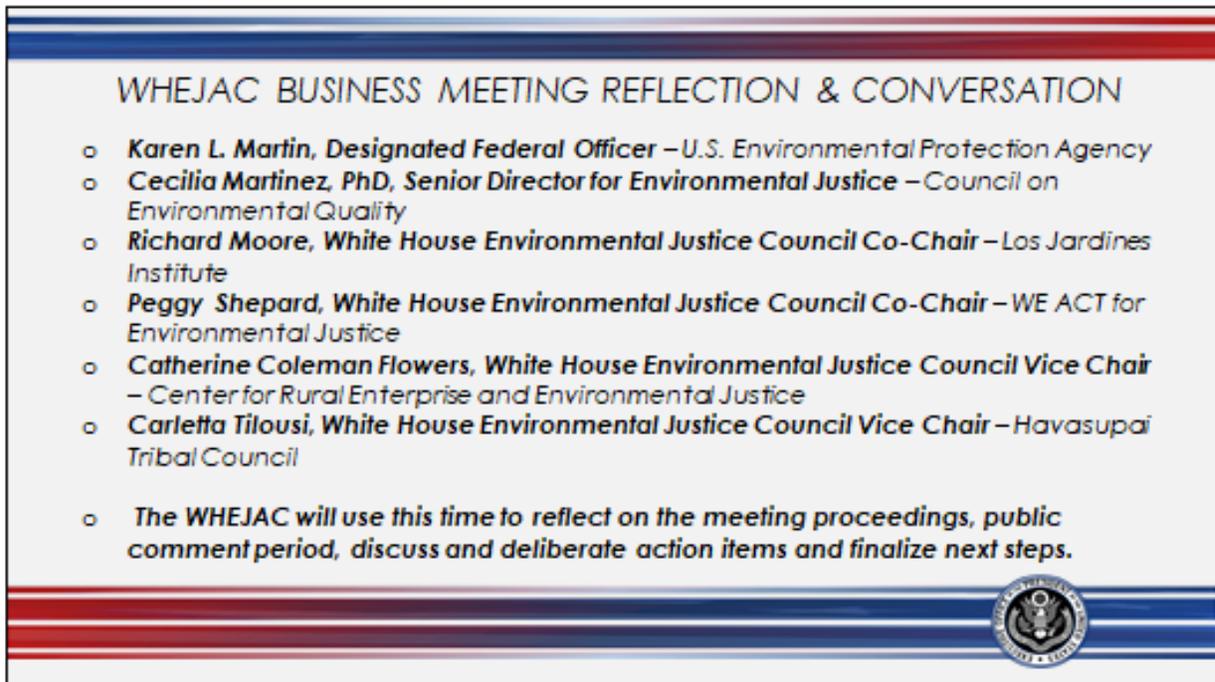
Public  
Comment  
Time

25:00

Start Stop Reset mins: 25 secs: 0 type: None

Breaktime for PowerPoint by Flow Simulation Ltd.

41



The slide has a white background with a blue and red border. At the top, the title "WHEJAC BUSINESS MEETING REFLECTION & CONVERSATION" is centered. Below it is a bulleted list of seven items, each starting with a name and title. The last item is a general statement about the meeting's purpose. A circular seal is located in the bottom right corner.

WHEJAC BUSINESS MEETING REFLECTION & CONVERSATION

- o **Karen L. Martin, Designated Federal Officer** – U.S. Environmental Protection Agency
- o **Cecilia Martinez, PhD, Senior Director for Environmental Justice** – Council on Environmental Quality
- o **Richard Moore, White House Environmental Justice Council Co-Chair** – Los Jardines Institute
- o **Peggy Shepard, White House Environmental Justice Council Co-Chair** – WE ACT for Environmental Justice
- o **Catherine Coleman Flowers, White House Environmental Justice Council Vice Chair** – Center for Rural Enterprise and Environmental Justice
- o **Carletta Tilousi, White House Environmental Justice Council Vice Chair** – Havasupai Tribal Council
- o **The WHEJAC will use this time to reflect on the meeting proceedings, public comment period, discuss and deliberate action items and finalize next steps.**

42

## CLOSING REMARKS & ADJOURN

- **Karen L. Martin, Designated Federal Officer** – U.S. Environmental Protection Agency
- **Richard Moore, White House Environmental Justice Council Co-Chair** – Los Jardines Institute
- **Peggy Shepard, White House Environmental Justice Council Co-Chair** – WE ACT for Environmental Justice



I, Richard Moore, Co-Chair of the White House Environmental Justice Advisory Council, certify that this is the final meeting summary for the public meeting held on May 13, 2021, and it accurately reflects the discussions and decisions of the meeting.



August 12, 2021

---

Richard Moore

---

Date

I, Peggy Shepard, Co-Chair of the White House Environmental Justice Advisory Council, certify that this is the final meeting summary for the public meeting held on May 13, 2021, and it accurately reflects the discussions and decisions of the meeting.



August 12, 2021

---

Peggy Shepard

---

Date