

White House Environmental Justice Advisory Council

Public Meeting Summary

December 6, 2023

Location: Virtual

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Preface

The White House Environmental Justice Advisory Council (WHEJAC) was established by Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, issued on January 27, 2021. Hence, the WHEJAC is a non-discretionary committee that operates under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

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

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

EPA's Office of Environmental Justice and External Civil Rights (OEJECR) 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>. All EPA presentation materials for this meeting are available in the public docket. The public docket is accessible at www.regulations.gov. The public docket number for this meeting is EPA-HQ-OEJECR-2023-0099.

About This Summary

The WHEJAC convened on Zoom, December 6, 2023. This summary covers WHEJAC presentations, discussions, and public comment.

The Federal Register notice for this meeting is at <https://www.federalregister.gov/documents/2023/11/15/2023-25232/white-house-environmental-justice-advisory-council-notification-of-virtual-public-meeting>.

The meeting agenda is at https://www.epa.gov/system/files/documents/2023-12/final_agenda-whejac-december-6-2023-virtual-public-mtg.pdf

See Appendix A for a list of WHEJAC members and their affiliations.

The presentation slides are in Appendix B.

Written public comments are in Appendix C.

Welcome & Opening Remarks

Richard Moore | WHEJAC Co-Chair

Carletta Tilousi | WHEJAC Vice-Chair

Audrie Washington, WHEJAC Designated Federal Officer, explained the format of the meeting.

Richard Moore welcomed attendees to the meeting. He said the environmental justice movement has been occurring for many years and has been called different things, including racial and social justice. Hundreds of people have been involved and set up regional processes to ensure people are consistently involved in decision making on issues that impact them. History is being made throughout the country, he said, due to the work and support from grassroots organizations.

Carletta Tilousi welcomed attendees and thanked WHEJAC members for working to provide the administration with recommendations. She said WHEJAC members and EPA staff have worked hard to do so over the last couple of years, and they take their role very seriously.

WHEJAC Member Introductions

LaTricea Adams, present

Susanna Almanza, not present

Jade Begay, not present

Maria Belen Power, present

Robert Bullard, Ph.D., not present

Catherine Coleman Flowers, not present

Tom Cormons, present

Jerome Foster II, present

Kim Havey, present

Angelo Logan, present

Maria López-Núñez, present

Harold Mitchell, present

Richard Moore, present

Rachel Morello-Frosch, Ph.D., present

Juan Parras, present

Michele Roberts, present

Ruth Santiago, present

Nicky Sheats, Ph.D., present

Peggy Shepard, not present

Carletta Tilousi, present

Viola Waghiyi, not present at roll call

Kyle Whyte, Ph.D., present

Beverly Wright, Ph.D., not present

Miya Yoshitani, present

Opening Remarks: White House Council on Environmental Quality

Brenda Mallory | Chair, CEQ

Dr. Jalonne L. White-Newsome | Federal Chief Environmental Justice Officer, CEQ

Brenda Mallory attended the meeting virtually and thanked the WHEJAC and EPA for their commitment to environmental justice. She said she's honored to be a part of the COP 28 climate change conference in Dubai, where she will be discussing the critical work occurring across the

Biden–Harris administration to advance environmental justice, conservations, climate resilience, and other topics.

Brenda Mallory outlined what the Biden Administration has done since the last WHEJAC public meeting in September. Efforts include the following:

- Released the fifth National Climate Assessment.
- Announced more than \$6 billion in investment to make communities resilient to the impacts of climate change.
- Announced an updated list of Justice40 programs and reached out to communities to let them know about the initiative.
- Announced EPA’s [proposed Lead and Copper Rule Improvements](#).

She said CEQ is seeking public input on the next version of the Environmental Justice Scorecard, which is a government-wide assessment of what the federal government is doing to advance environmental justice.

Jalonne L. White-Newsome said she is honored to serve and the first federal chief environmental justice officer for CEQ. She outlined some recent announcements and initiatives, such as:

- President Biden signed Executive Order (EO) 14096, which authorized federal agencies to develop environmental justice strategic plans to ensure they are prioritizing environmental justice and setting clear and meaningful objectives. CEQ is helping agencies develop these strategic plans and recently issued a strategic plan template for agencies to use.
- CEQ will request recommendations from the WHEJAC that will inform the implementation of EO 14096.
- The White House published a list of Inflation Reduction Act (IRA) programs to advance the Justice40 initiative, which is a critical piece of the environmental justice agenda. The goal is that 40 percent of overall benefits of certain federal investments flow to communities marginalized by underinvestment and overburdened by pollution.
- CEQ sought input on Phase I of the Scorecard that will inform future versions.
- There are several requests for information and funds available to support environmental justice.

Michele Roberts asked if the December 2023 and January 2024 deadline for comments on the EJ Scorecard and the development of a federal environmental justice science, data, and research plan could be extended. Jalonne L. White-Newsome said that might be difficult, and she encouraged people to provide input before the deadline.

Kyle Whyte asked if there has been an effort to identify situations in which a community or tribe is thwarted in efforts to access Justice40 benefits. Jalonne L. White-Newsome said they have been trying to learn of barriers to access the Justice40 funding, and they are trying to educate people about the initiative and to share best practices. She asked members to share any insight they have about barriers to access.

Richard Moore asked if the Thriving Communities Technical Assistance Centers (TCTACs) are seeking input from grassroots organizations regarding decision making and encouraged engaging with EPA to do so.

Michelle Roberts said it would be helpful to have TCTACs that have had success present to the WHEJAC. She said it's hard to understand what services they provide, how they engage, with whom they engage, and the process for accountability.

Jalonne L. White-Newsome asked Audrie Washington to provide notice of TCTAC presentations. She also asked WHEJAC members to share instances where more engagement is needed.

Richard Moore said in some regions, particularly Region 6, there's been a call to develop state strategic plans. In these instances, it's very important to provide transportation and resources for housing.

Ruth Santiago asked what CEQ is doing to ensure they have a strong Ethylene Oxide (EtO) sterilizer rule in process that is supported by the FDA, since EtO emissions come from warehouses as well as stacks, and lots of communities are exposed to the dangerous emissions. Michele Roberts supported this comment, saying the industry has a huge impact. She said EtO is a legacy high-risk challenge that calls for a holistic approach.

Jalonne L. White-Newsome responded that CEQ will be able to review proposed new rules through agency review. She said her team brings up any concerns from WHEJAC and the public.

Presentation of New Charge to the WHEJAC: Executive Order 14096 Implementation

Dr. Jalonne L. White-Newsome | Federal Chief Environmental Justice Officer, White House CEQ

Jalonne L. White-Newsome presented the new charge: Provide advice and recommendations to the CEQ and the White House Environmental Justice Interagency Council (IAC) to inform the Federal government's implementation of EO 14096.

She said the recommendations may be particularly helpful in the areas of:

- Agency strategic planning and assessment.
- Metrics and methodologies for assessing agency progress on environmental justice.
- Available science, knowledge, and data relevant to evaluating disparate health effects, cumulative impacts, historical inequities, systemic barriers, or other actions relevant to Federal activities.
- Addressing the needs of communities facing current and legacy pollution and other hazards.
- Meaningful involvement in Federal activities.
- Other policies or strategies for promoting accountability and fulfillment of statutes that affect the health and environment of communities with environmental justice concerns.

Richard Moore said President Biden had committed to signing an EO on environmental justice within his first 100 days of office. WHEJAC members, however, reached out to the administration and suggested that he not commit to that because there wouldn't be enough time for recommendations. The president did not sign the EO in the first 100 days, and it's clear the administration listened to the recommendations put forth.

LaTricea Adams asked if there is federal oversight of federal funding provided to states. She asked if federal agencies could ensure that the money earmarked for environmental justice, for instance, is being used for that purpose. Jalonne L. White-Newsome said EPA's reach and influence is generally limited to federal initiatives and that she hopes that what they do at the federal level will serve as a model for other levels of government. She believes accountability needs to be at the state level, where some states have an accountability body.

Angelo Logan spoke about gathering information data and community concerns and incorporating meaningful participation. He recommended this engagement be woven into the workgroups' work. Jalonne L. White-Newsome said workgroups can decide the mechanism they will use to respond to the charge.

Tom Cormons asked if CEQ has a general conceptual framework for how long the workgroup will have to work on the charge. Jalonne L. White-Newsome said they must have the final guidance by the Fall, although reluctant to give dates, she suggested an October timeframe. There was some discussion of the public meeting requirements, and it was decided to discuss it further offline.

Nicky Sheats said he hopes this charge allows workgroup members to address cumulative impacts and to analyze and address them through substantive polices that will reduce pollution in environmental justice communities.

Maria López-Núñez said it sounds like the new charge, particularly having metrics that measure how agencies are implementing environmental justice initiatives, overlaps with the WHEJAC Scorecard Workgroup charge. She asked if the Scorecard workgroup recommendations could be used as a foundation for the new charge. She said that sometimes agencies need to be educated on what environmental justice is; some agencies think environmental justice has nothing to do with them even though environmental justice is connected to every agency.

Jalonne L. White-Newsome said CEQ staff have been thinking about how the final guidance connects with the Scorecard recommendations. They are and should be connected. She agreed with Maria López-Núñez's observation that agencies need to be educated about environmental justice and how it relates to their work.

Richard Moore said the group will move on with the charge as stated.

WHEJAC Environmental Justice Scorecard Workgroup Recommendations

Maria López-Núñez | Workgroup Co-Chair

Maria López-Núñez explained the charge initially seemed impossible to meet within the tight timeline. However, she said, they received the Phase 1 Scorecard, held meetings with various agencies, and formulated recommendations in a three-day in-person meeting.

She said that, since the federal agencies with whom they spoke have unique roles and responsibilities, direct comparisons are inappropriate. Agencies expressed concerns about being graded, as the term "scorecard" implies. Consequently, it might be more accurate to describe it as a progress report.

Maria López-Núñez said the group's aim was to identify common denominators, but it was challenging to find consistent definitions, such as when it came to defining "programs" in relation to Justice40 programs. Agencies often struggled with this concept.

To gain insights, Maria López-Núñez said they examined each agency's website to understand their general activities and their involvement with Justice40. She said it was complex to create a comprehensive Scorecard when various bureaus within each department have distinct roles. She said workgroup members believe the Scorecard should serve as an opportunity for government agencies to showcase their work. Therefore, the workgroup recommends agencies clearly articulate their responsibilities and, if applicable, specify the differences among bureaus within their organization. The language used should be straightforward and accessible to the public.

Maria López-Núñez said the Scorecard should be easily understandable to community members, which is ultimately who environmental justice serves. When someone visits the Scorecard, they should be able to grasp what each agency does. Workgroup members recommend making the site more interactive with less text and more hyperlinks and visual elements such as pictures and dashboards.

Community members are interested in understanding how agencies have positively impacted their communities, she said. Workgroup members kept returning to the idea that agency accomplishments should indicate what's changed because of that agencies' work. Agencies should report their contributions to the public in a way that emphasizes these real, concrete impacts on communities as opposed to the number of meetings they held.

Maria López-Núñez said workgroup members are advocating for a shift toward outcome-based metrics. Initially, the environmental justice movement emphasized meaningful engagement and process-oriented aspects. Now 30 years later, she said it is time to focus on actual outcomes.

The workgroup recommendations highlight the need for agencies to provide information that directly benefits the public and makes it easier for them to engage and advocate for themselves.

In response to the charge question 3 regarding what additional metrics could be included, workgroup members suggested the types of information they requested from agencies. These recommendations represent concrete, on-the-ground data that community members are eager to access.

To make the Scorecard more accessible to the average person, workgroup members said they should include features that enable direct interaction with the agencies. Users should be able to

easily access an agency's environmental justice calendar and other relevant resources directly from the Scorecard.

Maria López-Núñez said the workgroup recommends integrating the Scorecard with the Climate and Economic Justice Screening Tool (CEJST) to allow for long-term tracking of progress. This integration could take the form of a CEJST overlay on the Scorecard or vice versa. The Scorecard should incorporate common metrics to track alongside CEJST factors. This alignment would enable the EPA to monitor progress and demonstrate how an agency's efforts contribute to changing CEJST metrics over time, making it a valuable long-term measurement tool. The relationship between the Scorecard and CEJST should be cohesive and complementary and should clearly demonstrate progress toward environmental justice goals. It is important to capture the agency's narrative, sharing their stories, experiences, trials, and errors. When the Scorecard workgroup met with agencies, these insights provided valuable context and humanized the process.

Maria López-Núñez said race, ethnicity, and gender data should be integrated comprehensively. When measuring agency progress on environmental justice, these metrics should be transparent and available for all aspects. This helps evaluate agencies' internal efforts and promotes accountability and diversity within the government.

Maria López-Núñez says it is crucial to share both disappointing and positive developments with the public regarding Justice40 programming as well as the amount of funding allocated to programs. Demonstrating the transformation from a state where certain considerations were absent to their current inclusion helps people understand the impact of Justice40 and why their participation matters. For instance, highlighting that community engagement was not considered in grant applications before but is now considered.

Recognizing that a uniform baseline is impractical across all government agencies, the emphasis should be on showcasing the value that each agency brings to the public, Maria López-Núñez said. Metrics should focus on tangible ways in which the government is working on behalf of the public.

The Scorecard's potential is to serve as a platform where metrics are available, allowing the public to hold agencies accountable. Communities should be seen as partners in this accountability process, and transparency is the first step in achieving it. Making data accessible empowers communities to advocate for improvements, engage with relevant stakeholders, and hold elected officials accountable for addressing disparities. A stronger belief in agencies' effectiveness can lead to increased funding and improved services, which aligns with the promise of a whole-of-government approach.

Richard Moore reminded the council that they would be voting on the recommendations presented today, but noted there may be future recommendations.

LaTricea Adams said she wants to emphasize the importance of accountability in addressing this question, particularly to consider if each agency will establish concrete numerical targets. If an agency fails to meet these goals or thresholds, she asked what recourse is there, and how can EPA address this and ensure that agencies fulfill their intended objectives.

Maria López-Núñez said she believes that question may have been directed more towards the government, but it did arise frequently within their discussions.

Jalonne L. White-Newsome said there is nothing the EPA can do punitively when goals are not met. She said it's important, however, for agencies to have these concrete goals. She said agencies are now talking and asking questions about environmental justice and how they can accomplish goals. Now that agencies have a baseline understanding of their role in environmental justice, she said we need to determine what metrics need to be tracked to measure progress. We are very much at the beginning of creating that baseline, she said, beginning to address what we should be tracking or thinking about. She thanked the workgroup for illuminating these issues. She said she believes agency partners want to do better but sometimes don't know how. Accountability isn't a punitive measure, it's an opportunity to improve.

CEQ's role is to collaborate with agencies, using the IAC as a hub for learning and practical application. CEQ is dedicated to providing a meaningful Scorecard, creating learning opportunities, and guiding agencies in taking actionable steps.

Richard Moore said they must continually emphasize that systemic racism is the underlying issue, while environmental and economic justice are goals.

He also said the WHEJAC observes a significant increase in productivity when our workgroups convene face to face, exemplifying the value of in-person collaboration.

Richard Moore said that when assessing interagency initiatives and their strategic plans, it is essential to address the issue of agency budgets for environmental justice initiatives. Without sufficient resources to support proposed actions, meaningful progress becomes challenging. WHEJAC members should be able to scrutinize strategic plans to ascertain whether they include budgets beyond staff hiring, recognizing that many agencies require additional resources for implementation. The question of environmental justice staffing within agencies is also paramount.

Ruth Santiago said there is a lack of information about the actual funding required of each Department of Defense (DOD) Formerly Used Defense Site, or FUDS. She is concerned about the gap between the allocated funds and the actual site needs. She also wanted to address the timelines for cleaning these sites, considering the prolonged impact on affected communities. Finally, she said, she read there is a proposal for establishing a global military superfund, extending in former military sites beyond U.S. territories, while still working within the framework of DOD's substantial existing budget.

Maria López-Núñez said regarding the DOD, they have a recommendation asking for pending community requests for cleanup, representing the amounts communities are requesting. She said if Ruth Santiago provided specific language for additional recommendations, the workgroup could include them. She said they should also consider addressing the global territories superfund sites within the DOD section.

The WHEJAC unanimously voted to approve the WHEJAC Environmental Justice Scorecard workgroup recommendations.

WHEJAC Climate and Economic Justice Screening Tool (CEJST) Workgroup Recommendations

Dr. Rachel Morello-Frosch | Workgroup Co-Chair

Dr. Nicky Sheats | Workgroup Co-Chair

Nicky Sheats reviewed the workgroup charge and said that this is version 2.0 of the tool. He explained that the workgroup had provided CEQ recommendation last year on the previous version of the tool, and CEQ incorporated some of those recommendations.

He outlined the CEQ revisions to CEJST in response to WHEJAC's August 22 comments. They include the addition of a display of federally recognized Tribal lands and nine additional datasets that show burdens, inclusion of low-income census tracts surrounded by disadvantaged communities, addition of an indicator of historic underinvestment, and enhanced higher education metrics.

Now, he said, the workgroup is making further recommendations and reiterating some of the recommendations they made that were not incorporated in version 2.0.

Rachel Morello-Frosch and Nicky Sheats outlined the recommendations, which included using a cumulative impact metric to identify and designate disadvantaged communities, creating pathways for communities to qualify as disadvantaged without necessarily satisfying the income metric, including a contemporary structural racism indicator, using the CEJST to provide online assessments and visualization of racial/ethnic as well as other demographic disparities in cumulative impact, and integrating metrics of physical and social infrastructure.

Angelo Logan supported the inclusion of carbon management on a recommendation to expand environmental hazard indicators to include fossil fuel infrastructure and concentrated animal feeding operations. He also wanted to recommend rendering facilities as part of animal production facilities.

Kim Havey asked to include other facilities, such as ethanol plants, to be included in expanded environmental hazard indicators.

The WHEJAC voted to approve the WHEJAC Climate and Economic Justice Screening Tool workgroup recommendations with the additions submitted by the council.

Public Comment Period

Marvin Brown, (Earthjustice) thanked the WHEJAC for the letter sent to CEQ about the need to set up stronger ozone and PM2.5 standards. He said the administration has received pressure against the EtO sterilization facility rule and said the rule needs to come out strong and without delay.

Commercial sterilizers that use EtO are extremely dangerous and should be recognized as such. In addition to needing a multi-federal agency approach (including the U.S. Food and Drug Administration) to change sterilization methods, he said we also need the Occupational Safety and Health Administration to protect public health, particularly for those at greatest risk. Reports show that the FDA has been arguing that the EPA's proposal to strengthen these standards will

compromise the medical device industry. People who breathe the air one mile around Sterigenics, which is now closed, are ten times more likely to develop cancer, according to a draft report. He requested that the WHEJAC support stricter regulations regarding ETO sterilizers.

Sarah Bucic, (Alliance of Nurses for Healthy Environments), said she's been a registered nurse for 20 years and is a policy consultant working at the intersection of health and the environment. She said community members should not have to bear the burden of EtO emissions, which can contribute to health problems. EPA's National Toxicology Program and the International Association of Research on Cancer classify EtO as a carcinogen. According to the FDA, approximately 50% of medical devices in the U.S. are sterilized with EtO. She said the same material used to sterilize medical equipment is a danger to people who live and work near these facilities where EtO is emitted. Exposure to the emissions can exacerbate respiratory conditions and create conditions where nurses and patients may require medical treatment.

Sarah Bucic asked the WHEJAC to urge CEQ to stop efforts to weaken the EtO rule, to promote collaboration between FDA and EPA to increase the chance of success on this issue, and to encourage FDA to work to identify alternatives for ETO sterilization. She also asked WHEJAC to encourage CEQ to promote alternatives that the FDA has already approved for the industry. Sterilization can be done correctly without causing health-harming conditions, she said.

Daniel Savery (Earthjustice) said communities across the country are organized and want protection from EtO. He said there are 86 commercial sterilization facilities across the country; there are few states that don't have one of these facilities. He urged WHEJAC to ask CEQ to finalize strong regulations to limit public health harms caused by EtO and to tell the FDA to stop trying to weaken these proposals. He also asked that EtO used on spices be banned.

Kait Morano, (Coastal Equity and Resilience Hub, Georgia Institute of Technology) said the current methodology for CEJST has resulted in some communities being overlooked.

CEJST uses data aggregated at census tract level, which she said creates blind spots by failing to account for the diversity of communities within these statistical areas. These communities, such as those facing gentrification, are left behind yet again. This means smaller overburdened communities can easily get lost in statistics of the broader census tract, especially if that area has grown significantly since the last census. She proposed a critical addition to CEJST framework — a community appeals process. This would allow for the submission of local, quality-checked data, including community-collected environmental data or data on socioeconomic burdens such as assessed property value. This data could be reviewed by experts at the Federal level.

Hays Hyre said she is a mother of three living one mile from an EtO plant run by Sterigenics. People in more than 75 percent of the homes in her area, she said, have developed cancer or neurological conditions; often it is not familial cancer. Her father, who maintains a very healthy lifestyle, has developed cancer and a neurological disorder that causes tremors and neuropathy and he's had to use a cane since his late 60s. The proposed plans will not regulate facilities that use less than one ton of EtO per year. She said every facility, even those with annual EtO usage below this threshold, needs to be monitored. Commercial sterilization policies need to fully protect communities, and the

FDA should not stand in the way of more stringent and protective policies. She said we need to explore alternatives to EtO, have greater monitoring, fence line testing, and stricter policies.

Darya Minovi (Union of Concerned Scientists) urged the WHEJAC and CEQ to ensure the administration finalizes strong regulations to limit the public health harms due to the EtO sterilization process. She said a report found that these facilities are disproportionately located in low-income communities, communities housing people of color, and where individuals speak English as a second language. The proposed rule fails to address impacts on exposure disparities with Latino and Black communities. She said the EPA must require fence line monitoring at these facilities that are often located near schools, workplaces, and homes.

Darya Minovi said EPA needs to rely on the best available science, the [IRIS Risk Assessment](#) from 2016. The complex, confusing nature of air toxics regulation makes it difficult for communities to engage in rulemaking. The risk communication and public participation process varies across rules. She said EPA must consider the disjointed nature of regulation for this toxic air pollutant.

Susan Thomas, (Just Transition Northwest Indiana), said her organization has participated with a cohort of environmental justice organizations across the country to provide the environmental justice framework for a four-part technical science report for the Institute for Energy and Environmental Research. Like the WHEJAC carbon capture workgroup, she said her cohort found that carbon capture and storage (CCS) is not a safe technology. The Midwest hydrogen hub, she said, will host the largest carbon capture hub in the U.S. She said BIPOC and low-income legacy communities are disproportionately affected and that towns on fault lines are at extreme risk from carbon capture pipeline explosions. She asked what the emergency and safety provisions exist for communities surrounding these facilities and said CCS has no place in environmental justice communities. She requested that CCS not be funded by the Justice40 initiative and that there be full transparency regarding CCS risks in the community benefits plan.

Stephen Buckley (International Association for Public Participation, U.S. chapter), said he has worked in five federal agencies' environmental offices and found that public engagement was the weakest link in the planning process. He was at that National Conference on Citizenship recently and they gave a briefing on civic mapping they're doing of all the organizations trying to save democracy and getting the public more involved in the decision making that affects their lives. He said he's encouraged that CEQ had written a blog post about a playbook helping federal agencies do better on environmental justice, including public engagement. He said the playbook discusses how to engage with non-federal entities, as well. He wants EPA to increase public engagement and encouraged people to look at the playbook.

Dave Arndt, M.D. (Maryland Climate Justice Wing) is a member of the Union for Concerned Scientists and a retiree of the National Institutes of Health. He talked about the need to push EPA to work on new rules and ban the use of EtO in all sterilization processes. He said sterilization facilities emit from chimneys and vents. EtO leaks from pumps, valves, and pressure connections in and surrounding ETO facilities, also known as fugitive emissions. The current regulations enforced by EPA do not include fugitive emissions or warehouses (offgassing centers), which can emit far more EtO than the sterilization facilities themselves. Dave Arndt said there have been more than 2,600 studies published in the last five years about the negative effects of EtO. Maryland has four

commercial sterilization facilities and more than 3,400 people live within five miles of these facilities. Three of the four facilities have a higher proportion of people of color near them than the rest of the county they're in. Two of the four facilities are located between Washington, D.C. and Baltimore, and the EPA has identified both as contributing to elevated cancer risk. He said people living in these areas likely don't know of the risk these facilities pose. The EPA has listed two of these facilities as being in the top 23 emitters in the nation. Europe and Australia have banned the use of EtOs in food. He said we should end the sterilization of food immediately. Alternatives are readily available. McCormick Spice in Maryland (one of the nation's largest spice producers) does not use EtO sterilization. He requested that the White House pressure the EPA and FDA to rapidly phase out the use of EtO in all sterilization industries. He said we need a new rule on EtO now.

Theodora Scarato, M.D., Executive Director of the Environmental Health Trust, said U.S. cell tower radiation limit regulations have not changed since 1996 and are up to 100 times looser than limits of numerous countries. They were designed to protect against short-term effects of exposure, not for long-term, cumulative exposure. Her organization sued the Federal Communications Commission (FCC) about these limits and the lack of review, and the court ruled in the organization's favor in 2021. The FCC was ordered to address the scientific evidence of cell tower radiation's impact on the brain, memory, inflammation, the endocrine system, and reproductive organs. Children absorb the radiation deeper into their developing brains and bodies. Studies have also shown the radiation to be harmful to the environment. In Montgomery County, Maryland, school cell towers are often at schools with overwhelmingly low-income and minority groups. It is an environmental justice issue. Theodora Scarato said enforcement of cell tower radiation limits is essentially on the honor system today. There are no registries for 5G cell tower sites, there is no environmental monitoring, no health or environmental surveillance, and no compliance and oversight program. There has been no federal review of the latest science regarding its impact on human health or insects. Theodora Scarato said accountability is needed and calls for health and environmental monitoring, surveillance, and oversight. She wants to have EPA improve regulation of cell phone towers.

Abdiel Colon Maldonado (Comité Diálogo Ambiental) said he is an 18-year-old student from Salinas, a town in Puerto Rico that is impacted by environmental damage from EtO emissions and other pollutants. He said the citizens of Puerto Rico are isolated and treated as second-class citizens, making it extremely hard for Puerto Rico to advocate for environmental justice issues. He said many people there live in poverty and don't speak English. He asked the WHEJAC to protect communities in Puerto Rico from environmental risks.

Pamela Bingham (University of Maryland Center for Community Engagement, Environmental Justice, and Health) said she was speaking as citizen and for her large family that lives throughout Mississippi; she currently lives between Maryland and Virginia. She's an industrial and environmental engineer and has worked in environmental justice since the 1990s. She said we are still in crisis in Jackson; she's been attending funerals throughout the state.

She questioned how to secure accountability from federal agencies, particularly for the massive amount of funding going to state agencies in states that don't even see people like her. She lived five minutes from a power plant and near a leaking underground storage tank. She said they sprayed DDT in their neighborhoods to combat mosquitos before they realized decades later that it

was a carcinogen. Over 50 years, they've seen leukemia in her Jackson neighborhood again and again. She understands, personally and professionally, what cumulative impact means. What happens to Black people in Jackson, Mississippi is accepted. She asked what they could do to help people resolve the health impacts of adverse environmental impacts in their communities and said we need to do better about accountability in addressing pollution that causes health harm for environmental justice communities, particularly people of color.

Pamela Bingham also commented on the CEJST, which she said overlooks many disadvantaged communities and it does not account for overburdening by race. Census tracts can make some communities completely invisible and therefore ineligible for the disadvantaged designation. CEJST was recently used to categorize states in a solar grant competition. Virginia and Maryland were prohibited from the highest funding category because CEJST said they didn't have a high enough proportion of disadvantaged communities. She asked that CEJST be fixed to ensure all disadvantaged communities are captured and that federal agencies work collaboratively on the health aspects of environmental justice and cumulative impacts. She also suggested that an appeals project be added to the CEJST process.

Urszula Tanouye represents the community group Stop Sterigenics in Willowbrook, Illinois. In 2018, the community realized their vulnerability to an EtO sterilization plant located just outside their community. Their local risk factors were updated based on this exposure. As a result, they received health and risk evaluations, including a cancer study and pediatric environmental health study. They were provided seminars to inform community members about the risks of EtO exposure, and their legislators were involved in enforcing facility-run testing. She said these services should be available to all communities at risk of EtO exposure, but often they are not, particularly in disadvantaged communities. She said the EPA will vote on an updated rule on EtO sterilizers. She requested inclusion of storage warehouses in the rule, a requirement for fence-line monitoring at all warehouses and facilities, and an expedited timeline to pass more stringent regulations around EtO. She asked WHEJAC to promote a multi-federal agency approach to protect public health by supporting strong sterilizer rules with necessary tools for accountability.

Ean Tafoya is the Colorado state director of Green Latinos. He was interested in how his region is doing on the Environmental Justice Scorecard as it relates to TCTACs. He also wants to ensure interagency coordination is taking place in his region. He said he doesn't see transparency on how many meetings occur or who is involved with them, which he says would be an interesting part of the Scorecard. He's working on a project to take maps and layer in what grants may apply to specific issues and then facilitate community information sessions to urge people to apply for appropriate funding.

Regarding EtO, he said they've talked to the U.S. Department of Health and Human Services and the FDA to see if they can identify safe alternatives. He said they also need to provide information on where these products are stored.

Yolanda Spinks said she was speaking on behalf of Memphis Community Against Pollution, a community-based organization pursuing environmental justice for Black communities in southwest Memphis to prevent environmental racism. She said in late 2022, they learned that a sterilizer was in their community and releasing EtO into the air. They've been successful in holding these facilities

accountable. The facility has also announced they are moving in 2024. However, they still have concerns about fence-line monitoring.

She says the cancer rate in southwest Memphis is four times the national rate due to industrial polluters like sterilization facilities. She said they demand fence-line monitoring and a notification system directly linked to fence-line monitors that provides real-time updates for citizens to ensure they know when the air is safe to breathe. They're also requesting an implementation time of only 90 days.

Celeste Flores is co-chair of Clean Power Lake County. She said Waukegan, Illinois is comprised of immigrants and low-income residents and is considered an environmental justice community. They have a retired coal plant with active coal ash ponds on their lakefront and five Superfund sites. In 2018, they heard about two EtO facilities in Lake County. Celeste Flores says the health department reports that one in three children in Waukegan have asthma or asthma symptoms, which is above the national average. She requested the WHEJAC to urge the White House to make sure the sterilizing rule they're working on is the strongest one and that it includes air monitoring and fence-line monitoring. She said EPA has known for a long time that EtO is a class one carcinogen, and the WHEJAC needs to keep advocating for us.

Felipe Augirrea (Comite Pro Uno) said he lives and works in Maywood, California, an environmental justice community bordering Los Angeles. They have two EtO sterilization facilities in the city of Vernon operated by Sterigenics; one facility is 900 feet from an elementary school. He said they are worried about the children and their exposure. EtO is a carcinogen that changes the DNA of your body and causes cancer. He said they need the EPA and WHEJAC to have all of the agencies speak to one another and work together to address this problem and to clean the air in their communities. He asked WHEJAC to regulate the facilities in their communities as well as the many warehouses, many of which they don't know about. He also asked for fence-line monitoring.

Jane Williams (California Communities Against Toxics) commented on two topics related to a whole-of-government approach to reducing pollution in our nation's most highly impacted communities. She said it's important that we not abandon efforts to reduce the most toxic pollutants present in many environmental justice communities such as EtO or lead. She said the White House has the particulate matter (PM) standard before it, and it needs to be as protective as possible. The standards need to force industries to make investment in air pollution control equipment.

She said the EtO sterilizer rule is being opposed by the FDA. EtO is the most powerful carcinogen that we currently regulate besides dioxin. There are 78 sterilization facilities covered by this rule, the majority are impacting Justice40 census tracts. We need to release the new rule as quickly as possible, and with the strongest protections available.

Andrea Vidaurre (People's Collective for Environmental Justice) said she wanted to raise awareness of the freight transportation system in Southern California. She said at the beginning of the Biden Administration, the president stated he would protect environmental justice, and they believe this should include environmental justice communities impacted by freight, particularly the administration's emphasis on zero emissions and creating a more sustainable goods movement

system. EPA is finalizing the phase III greenhouse gas emissions rule on trucks, which regulates heavy-duty trucks across the U.S. She said she lives in an area that has half a million trucks supporting the global supply chain. The draft rule is dangerously weak, she said, and would lock us into diesel- and fossil fuel-powered shipping and freight systems for the next couple decades. She urged the WHEJAC to write a letter on the EPA phase III rule.

Mari Rose Taruc, energy director of California Environmental Justice Alliance (CAJA), commented on a letter they sent to the Department of Treasury, connected to a letter to the Department of Energy (DOE) about their concerns about hydrogen. She said CAJA is made up of the 10 biggest environmental justice groups in California. Last year was particularly difficult, with the fossil fuel industry's aggressive campaign to get hydrogen bills and projects passed and built in California. In October, when DOE announced its \$1.2 billion dollars funding for hydrogen infrastructure development in California, CAJA submitted a letter vehemently opposing the state's approach to attaining this funding. California's application process cuts out input from low-income communities of color who are already overburdened by pollution. Companies are fighting to get hundreds of billions of federal funding through the [45V tax credit](#). CAJA is encouraging the WHEJAC to coordinate strong hydrogen rules that protect environmental justice communities. She also asked to encourage the Department of Treasury to meet with CAJA on the tax credit rules for hydrogen.

Sheila Serna is climate science and policy director at Rio Grande National Studies Center in Texas. Her community is 96 percent Hispanic and has a 22 percent poverty rate. They are facing health threats from an EtO commercial sterilizer. While the Texas Commission on Environmental Quality (TCEQ) is still denying EtO's danger, their community no longer thinks of EtO as a theoretical risk, based on two cancer cluster studies that showed heightened prevalence of cancers related to EtO exposure near the sterilizer.

Sheila Serna said they have done extensive community engagement in response to the negligence of the TCEQ, and the community is frustrated. She asked that the WHEJAC support their grassroots efforts to require that these sterilizers have a shorter compliance window when the rule comes out. She said the sterilizer in Laredo has been operating for 18 years and uses 2.5 million pounds of EtO per year. Area families deserve to not have to wait any longer for meaningful reductions.

She also requested that the rule include fence-line air monitoring. She said the community used community funds that could have been used for purposes other than for testing to prove the harmful impact of the sterilizer.

Mary Capello is an attorney in Laredo, Texas, which has one of the largest facilities that uses EtO to sterilize medical equipment. She talked about the effect the facility had on her son, who was diagnosed with acute promyelocytic leukemia six days after his 31st birthday and later passed away. After college, he took several jobs in the fitness industry. Despite his healthy lifestyle, he struggled with fatigue and unidentified symptoms and spent five years looking for an accurate diagnosis. She didn't know he'd been exposed to carcinogens during his childhood. When he was diagnosed with leukemia, he wanted to create a foundation to raise awareness of the disease and create prevention strategies to help community members facing similar exposure. In his honor, Mary Capello asked the WHEJAC to create a process whereby companies are held accountable for transparency and safety. She said there must be the highest standards for oversight and monitoring

for compliance within the most efficient timeframe and that the reports and their findings be shared with the public.

Rosemary Ahtuanguaruak (Grandmothers Growing Goodness) said it's important to bring the voices of tribal communities and environmental justice communities forward. She said they should not be sacrificed, as their communities historically have been. She said the government needs to look at substances and facilities that are affecting the life, health, and safety of our people. The decision-making process for allocation of funding for infrastructure and development projects should be carefully reconsidered because the current process is not effective. The decision-making process should not ask who should bear the brunt of these risks. She thanked the WHEJAC for their work and said they bring hope to our communities as they also raise these questions in our communities.

Shawn Mulford said he comes from Diné People in the Southwest region, where they have a sacred holy mountain that's being impacted by legacy nitrogen, phosphorus, and other pollutants in reclaimed wastewater. The resort on this mountain is the first ski resort using reclaimed wastewater for snowmaking. He said they've expressed concerns to federal agencies about the use of this water on their holy lands and the nutrient loading that's occurring to the soil and vegetation, which is often used for their medicine plants. He said the U.S. Forest Service, which is under the U.S. Department of Agriculture, is not willing to institute a monitoring system on this mountain. He said the U.S. Forest Service doesn't know what Justice40 is and suggests federal agencies be educated about it.

He recommends that federal agencies use the best available science and asked the WHEJAC to support their position that the U.S. Forest Service should institute a monitoring program on the holy mountain and sacred places, areas that require special attention. He said they would like to have the Traditional Ecological Knowledge included in federal agencies' decision making.

Tricia Cortez is the executive director of the Rio Grande International Study Center, which is a co-founder of the Clean Air Laredo Coalition formed in 2021. Last fall they were a plaintiff in the Earthjustice lawsuit against the EPA to upgrade their rule against EtO and asked the WHEJAC to request the strongest rule possible. She said she wanted to make four requests of the EPA:

1. Shorten the ruling implementation phase from 1.5 years to 6 months.
2. Require fence-line air quality monitoring by a trusted third party and require that facilities pay for it.
3. Fund and facilitate the creation of a user-friendly online portal that enables people to access and understand the fence-line air data.
4. Require all sterilizer companies monitor fugitive and offgassing emissions.

Tricia Cortez said the Laredo plant is allowed to use 2.5 million pounds of EtO every year, making them the greatest user of EtO in the nation. A few years ago, her children, seven and nine years old, went to school at a school in the top three percentile of the most toxic campus in the nation. Two cancer cluster studies showed statistically significant rates of breast cancer, acute lymphocytic leukemia, and Hodgkin's lymphoma as compared to the rest of the state. One third of Laredoans don't have access to health insurance or medical care, about a quarter live in poverty, the vast

majority are Hispanic, and they live on the border. She urged the WHEJAC to ensure the EPA takes bold actions to hold companies accountable.

Business Meeting

The WHEJAC voted to create an ad hoc work group led by Angelo Logan and assisted by Nicky Sheats to draft a letter to EPA on behalf of the WHEJAC supporting public comments they received requesting a strong Phase 3 greenhouse gas freight transportation pollution rule for heavy-duty trucks. The letter would need to be voted on and accepted by the full WHEJAC at a public meeting.

WHEJAC voted to support sending an email to CEQ asking them to promote the cooperation and coordination of federal agencies on a stronger EtO rule that several public commenters requested.

Vi Waghiyi recommended that the WHEJAC have a legacy military toxins workgroup. After a brief discussion between EPA staff and WHEJAC members, it was decided that Vi Waghiyi, Michele Roberts, and Richard Moore will meet informally with CEQ to discuss possible workgroup charges, which would need to be presented at a public meeting.

WHEJAC and the National Environmental Justice Advisory Council will hold public meetings in the spring.

Closing Remarks and Adjourn

Richard Moore | WHEJAC Co-Chair

Carletta Tilousi | WHEJAC Vice-Chair

Dr. Jalonnie L. White-Newsome | Federal Chief Environmental Justice Officer, White House Council on Environmental Quality

Audrie Washington | WHEJAC Designated Federal Officer, U.S. Environmental Protection Agency

Several WHEJAC members commended the group's work and said many of the public comments resonate with comments members hear in their communities. Carletta Tilousi said it alarming to hear about the challenges community members face, and it underscores the significant work ahead for WHEJAC.

Appendix A. WHEJAC Members

LaTricea Adams | Black Millennials for Flint

Susanna Almanza | People Organized in Defense of Earth and Her Resources

Jade Begay | NDN Collective

Maria Belen Power | GreenRoots

Robert Bullard, Ph.D. | Texas Southern University

Catherine Coleman Flowers | Center for Rural Enterprise and Environmental Justice

Tom Cormons | Appalachian Voices

Jerome Foster II | Waic Up

Kim Havey | City of Minneapolis

Angelo Logan | East Yard Communities for Environmental Justice

Maria López-Núñez | Ironbound Community Corporation

Harold Mitchell | ReGenesis

Richard Moore | Los Jardines Institute

Rachel Morello-Frosch, Ph.D. | University of California, Berkeley

Juan Parras | Texas Environmental Justice Advocacy Services

Michele Roberts | Environmental Justice and Health Alliance for Chemical Policy Reform

Ruth Santiago | Latino Climate Action Network

Nicky Sheats, Ph.D. | Kean University

Peggy Shepard | WE ACT for Environmental Justice

Carletta Tilousi | Havasupai Tribe

Viola Waghiyi | Alaska Community Action on Toxics

Kyle Whyte, Ph.D. | University of Michigan

Beverly Wright, Ph.D. | Deep South Center for Environmental Justice

Miya Yoshitani | Asian Pacific Environmental Network



WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**Virtual Public Meeting
December 6, 2023**

REMINDERS

Written comments can be submitted until December 20, 2023, to whejac@epa.gov



Meeting attendees are in listen/view mode only



Attendees who pre-registered for public comment will be given access to speak as time allows

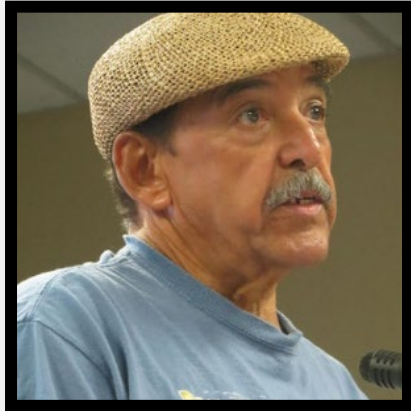


The chat feature will not be available in this virtual meeting



If you do not get a chance to speak during the allotted time, please submit your comments in writing

Introductions and Opening Remarks



Audrie Washington
Designated Federal Officer
U.S. Environmental Protection Agency



Richard Moore, WHEJAC Co-Chair
Los Jardines Institute

Peggy Shepard, WHEJAC Co-Chair
WE ACT for Environmental Justice

Catherine Coleman Flowers, WHEJAC Vice-Chair
Center for Rural Enterprise and Environmental Justice

Carletta Tilousi, WHEJAC Vice-Chair
Havasupai Tribe

WHEJAC MEMBERS FROM THE MIDWEST



Kyle Whyte, PhD
George Willis Pack Professor
Environment and Sustainability
University of Michigan



Kim Havey
Director, Division of Sustainability
City of Minneapolis

WHEJAC MEMBERS FROM THE WEST



Viola Waghiyi

Environmental Health & Justice Program Director
Alaska Community Action on Toxics

Rachel Morello-Frosch, PhD

Professor, University of California, Berkeley



Miya Yoshitani

Senior Strategist
Asian Pacific Environmental Network



Angelo Logan

East Yard Communities for Environmental Justice

WHEJAC MEMBERS FROM THE SOUTHEAST



Harold Mitchell

Founder
ReGenesis



LaTricea Adams

Founder, CEO & President
Black Millennials for Flint



Beverly Wright, PhD

Founder and Executive Director
Deep South Center for Environmental Justice



Tom Cormons

Executive Director
Appalachian Voices

WHEJAC MEMBERS FROM THE SOUTHWEST



Susana Almanza

Director, People Organized in Defense
of Earth and Her Resources

Jade Begay

Climate Justice Campaign Director
NDN Collective



Robert Bullard, PhD

Professor, Department of Urban Planning &
Environmental Policy, Texas Southern University

Juan Parras

Founder and Executive Director
Texas Environmental Justice Advocacy Services

WHEJAC MEMBERS FROM THE NORTHEAST



Maria Belen Power

Associate Executive Director
GreenRoots

Jerome Foster II

Co-Founder & Co-Executive Director
Waic Up

Nicky Sheats, PhD

Director, Center for the Urban Environment
John S. Watson Institute for Urban Policy and
Research, Kean University

Maria López-Núñez

Deputy Director, Organizing and Advocacy
Ironbound Community Corporation

Michele Roberts

Co-Coordinator
Environmental Justice and Health Alliance
for Chemical Policy Reform

WHEJAC MEMBER FROM PUERTO RICO



Ruth Santiago

Attorney,

Comité Diálogo Ambiental and

El Puente Latino Climate Action Network

Opening Remarks



Brenda Mallory
Council on Environmental Quality
Chair

Opening Remarks



Dr. Jalonne L. White-Newsome
Council on Environmental Quality
Federal Chief Environmental Justice Officer



White House Council on Environmental Quality Opening Remarks and Updates

Wednesday, December 6, 2023

White House Environmental Justice Advisory Council
Virtual Public Meeting



White House Environmental Justice Advisory Council



Section 221. “There is hereby established, within the Environmental Protection Agency, the White House Environmental Justice Advisory Council, which shall advise the White House Environmental Justice Interagency Council and the Chair of [CEQ]. . .”



Presentation Overview

1. Recent Announcements

- Strategic Planning to Advance Environmental Justice
- Request for Information: Environmental Justice Scorecard
- Inflation Reduction Act Programs Advancing the Justice40 Initiative
- Request for Information: Support the Development of a Federal Environmental Justice Science, Data, and Research Plan

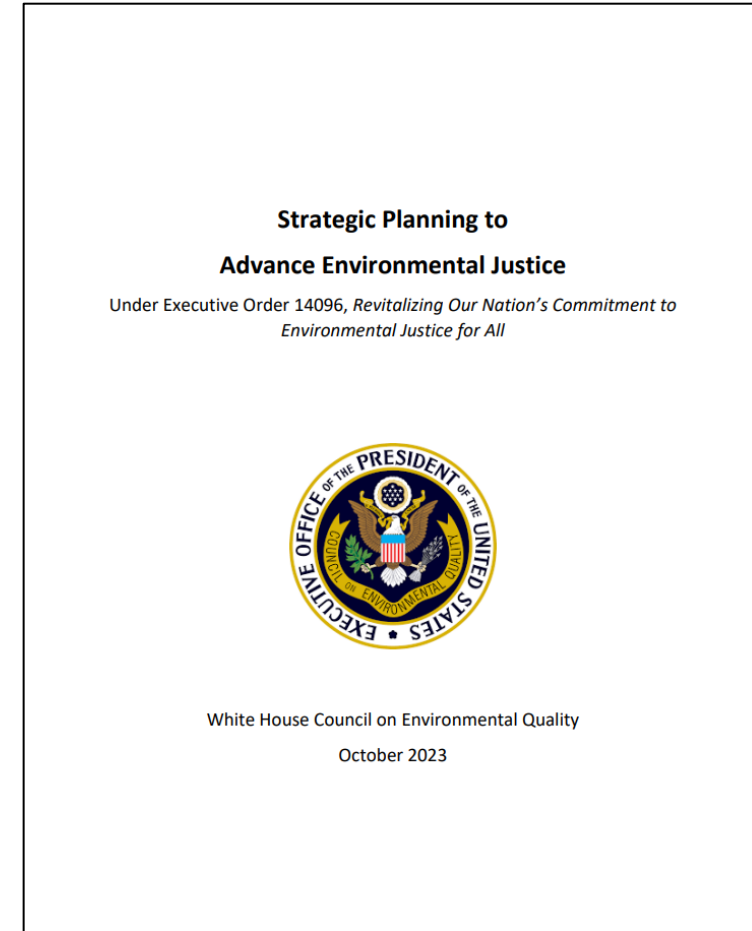
2. White House Campaign for Environmental Justice

3. Stay in Touch!



Recent Announcements: *Strategic Planning to Advance Environmental Justice*

- White House Environmental Justice Advisory Council's recommendations (May 2021)
- Recommendations of the U.S. Government Accountability Office (GAO)
- Consultation with the White House Environmental Justice Interagency Council (IAC)





NOVEMBER 03, 2023

A New Environmental Justice Playbook for Federal Agencies



› CEQ

› NEWS & UPDATES

› BLOGS

By Dr. Jalonne L. White-Newsome, Federal Chief Environmental Justice Officer

When President Biden signed Executive Order (E.O.) 14096 on [*Revitalizing Our Nation's Commitment to Environmental Justice for All*](#), he called on the federal government to bring clean energy and healthy environments to all, and to recognize, undo, and mitigate harms to those who have suffered from pollution and the cumulative impacts of other environmental burdens like climate change.



www.whitehouse.gov/ceq/news-updates/2023/11/03/a-new-environmental-justice-playbook-for-federal-agencies

Recent Announcements: *Justice40 Covered Programs*

- 74 Inflation Reduction Act Programs are Justice40 covered programs, totaling over \$118 billion in federal funding
- 518 Justice40 covered programs across 19 federal agencies



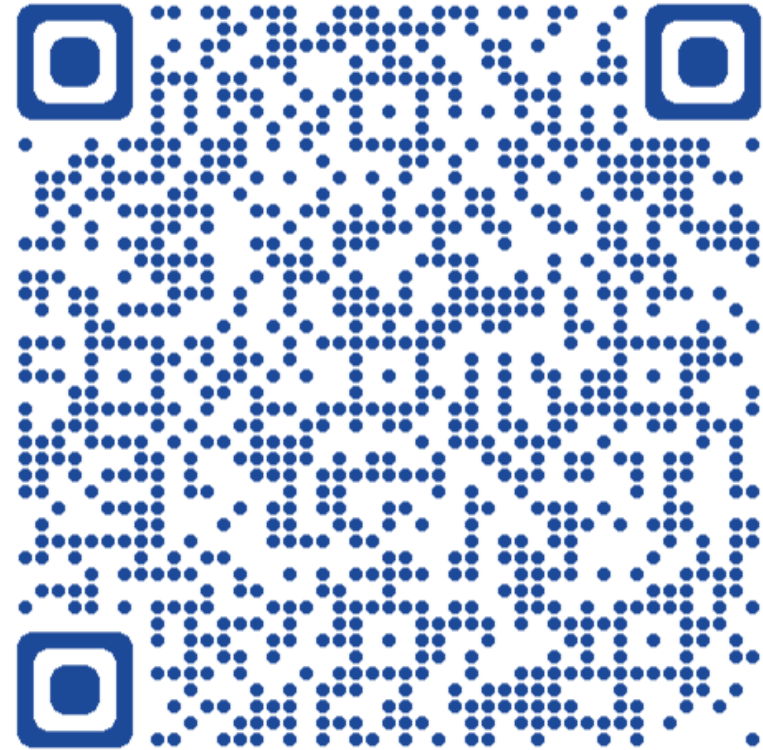
**For more info on the
Justice40 Initiative**



www.whitehouse.gov/environmentaljustice/justice40

Recent Announcements: *Request for Information on the Environmental Justice Scorecard*

- **Request for Information (RFI)** on the Environmental Justice Scorecard
- **Deadline:** January 19, 2024

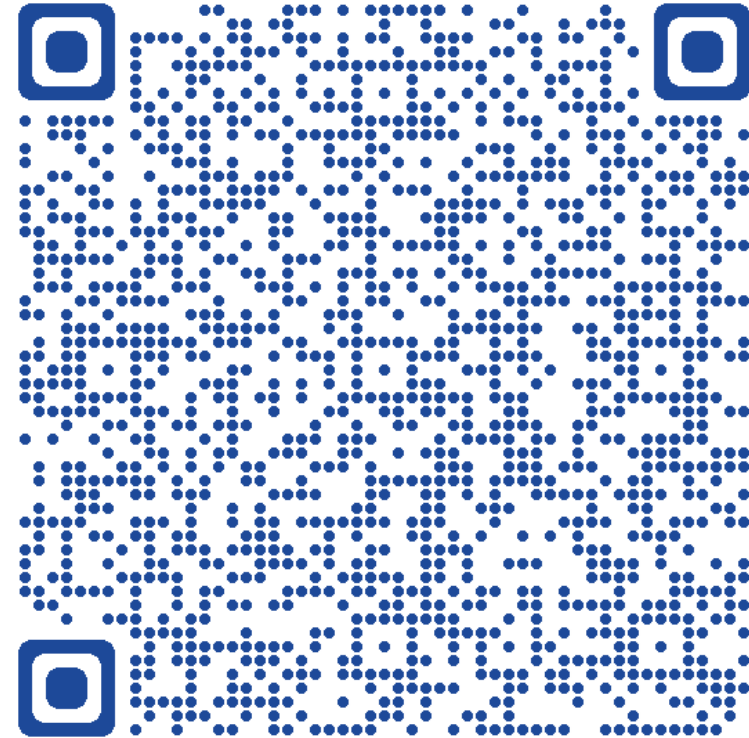


**For more info on the
EJ Scorecard RFI**



Recent Announcements: *National Science and Technology Council EJ Subcommittee Request for Information*

- **Request for Information (RFI)** to Support the Development of a Federal Environmental Justice Science, Data, and Research Plan
- **Deadline:** December 12, 2023



**For more info on the
National Science and
Technology Council RFI**



www.federalregister.gov/documents/2023/10/13/2023-22527/request-for-information-to-support-the-development-of-a-federal-environmental-justice-science-data

Recent Announcements: *Community Change Grants Program*



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Inflation Reduction Act

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[Advancing Environmental Justice](#)

[Delivering Cleaner Air](#)

[Tackling Climate Pollution](#)

Inflation Reduction Act Community Change Grants Program

NOW OPEN!

EPA's new [Environmental and Climate Justice](#) Community Change Grants program (Community Change Grants) has announced a Notice of Funding Opportunity for approximately \$2 billion dollars in [Inflation Reduction Act](#) funds in environmental and climate justice activities to benefit disadvantaged communities through projects that reduce pollution, increase community climate resilience, and build community capacity to address environmental and climate justice challenges. These place-based investments will be focused on community-driven initiatives to



www.epa.gov/inflation-reduction-act/inflation-reduction-act-community-change-grants-program

White House Campaign for Environmental Justice



CEQ Chair Brenda Mallory at a White House Campaign for Environmental Justice in Chicago, Illinois in August.



Let's stay connected!
whitehouse.gov/environmentaljustice



Sign up for CEQ's EJ Connector
<https://tinyurl.com/EJ-Connector>
or
Email ej@ceq.eop.gov to sign up!

**PRESENTATION OF NEW CHARGE
TO THE WHEJAC**

EXECUTIVE ORDER 14096 IMPLEMENTATION

Dr. Jalonne White-Newsome

Federal Chief Environmental Justice Officer

White House Council on Environmental Quality

Executive Order 14096: *Revitalizing Our Nation's Commitment to Environmental Justice for All*



President Biden signing EO 14096



Presentation of New Charge to the WHEJAC on Executive Order 14096 Implementation

Provide advice and recommendations to the Council on Environmental Quality (CEQ) and the White House Environmental Justice Interagency Council (IAC) to inform the Federal government's implementation of Executive Order 14096.

Recommendations can address any aspect of implementation of Executive Order 14096, but may be particularly helpful in the areas of:

- 1) Agency strategic planning and assessment;
- 2) Metrics and methodologies for assessing agency progress on environmental justice; *(continued next slide)*



Presentation of New Charge to the WHEJAC on Executive Order 14096 Implementation (*continued*)

- 3) Available science, knowledge, and data relevant to evaluating disparate health effects, cumulative impacts, historical inequities, systemic barriers, or other actions relevant to Federal activities;
- 4) Addressing the needs of communities facing current and legacy pollution and other hazards;
- 5) Meaningful involvement in Federal activities; and
- 6) Other policies or strategies for promoting accountability and fulfillment of statutes that affect the health and environment of communities with environmental justice concerns.



**WHEJAC ENVIRONMENTAL JUSTICE
SCORECARD WORKGROUP
RECOMMENDATIONS**

Presenter:

Maria López-Núñez

Workgroup Co-Chair,

Ironbound Community Corporation

EJ SCORECARD WORKGROUP MEMBERS



Peggy Shepard
Co-Chair



Maria López-Núñez
Co-Chair



Beverly Wright



Harold Mitchell



LaTricea Adams



Rachel Morello-Frosch



Yukyan Lam



Michele Roberts



Miya Yoshitani



Robert Bullard



Jerome Foster II



Manuel Salgado

EJ SCORECARD CHARGE

1. What additional qualitative and/or quantitative metrics could federal agencies include in the Phase Two Scorecard, or future versions of the Environmental Justice Scorecard, to reflect the needs and priorities of communities that face environmental injustices?
2. Based on evaluating the Phase One Scorecard, how can the Environmental Justice Scorecard data be presented in a way that is most useful for environmental justice stakeholders?
3. Based on evaluating the Phase One Scorecard, what approach should be taken on reporting out Justice40 Initiative metrics? (i.e., alongside metrics that agencies are providing on environmental justice or separately)



THE PROCESS

- **Reviewed Phase I Scorecard**
- **Held In-Person Workgroup Meeting in Washington, DC November 1-3, 2023**
- **Met with Federal Agencies:**
 - US Army Corps of Engineers
 - Department of Interior
 - Department of Energy
 - Environmental Protection Agency
 - US Department of Agriculture
 - Housing and Urban Development
 - Department of Transportation



**PHASE I
SCORECARD**

- **CEQ requested the same information from each federal agency**
- **Grouped by these sections:**
 - Justice40 Initiative
 - Environmental and Civil Rights Protection
 - Institutionalizing Environmental Justice
 - Highlights

AGENCIES THAT HAVE SCORECARDS



[AmeriCorps](#)



[Appalachian Regional Commission](#)



[Delta Regional Authority](#)



[Denali Commission](#)



[Department of Agriculture](#)



[Department of Commerce](#)



[Department of Defense](#)



[Department of Education](#)



[Department of Energy](#)



[Department of Health & Human Services](#)



[Department of Homeland Security](#)



[Department of Justice](#)



[Department of Labor](#)



[Department of Transportation](#)



[Department of the Interior](#)



[Environmental Protection Agency](#)



[General Services Administration](#)



[Housing and Urban Development](#)



[National Aeronautics and Space Administration](#)



[National Science Foundation](#)



[Small Business Administration](#)



[Tennessee Valley Authority](#)



[U.S. Army Corps of Engineers](#)



[Veterans Affairs](#)

SCORECARD EXAMPLE

[Scorecard](#) > U.S. Army Corps of Engineers



U.S. Army Corps of Engineers

441 G ST NW
Washington, DC 20314
[\(202\) 761-0010](tel:(202)761-0010)
usace.army.mil

This page provides information on how **the U.S. Army Corps of Engineers (USACE)** is working to advance environmental justice for communities across America. It is part of Phase One of the Biden-Harris Administration's Environmental Justice Scorecard.

About the U.S. Army Corps of Engineers (USACE)

USACE Civil Works Mission is to serve the public by providing the Nation with quality and responsive management of the Nation's water resources through: Support of commercial navigation; restoration, protection and management of aquatic ecosystems; flood risk management; and providing engineering and technical services in an environmentally sustainable, economic, and technically sound manner with a focus on public safety and collaborative partnerships.

Justice40 Initiative

As part of President Biden's [Justice40 Initiative](#), the federal government is working toward the goal that 40 percent of the overall benefits of certain federal investments reach disadvantaged communities that are marginalized and overburdened by pollution and underinvestment. In particular, the President's Justice40 Initiative applies to federal investments that address climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure.

This Phase One Scorecard provides an update on initial progress made by **the U.S. Army Corps of Engineers (USACE)** in implementing the Justice40 Initiative. Future versions of the Environmental Justice Scorecard will provide additional information and updates on the benefits of Justice40 covered programs.

Phase One Scorecard metrics and highlights in Fiscal Year 2022 include:

- **11** Justice40 covered program(s)
- **Over \$1 billion** in funding made available from Justice40 covered programs¹
 - The Continuing Authority Program (CAP) studies focus on disadvantaged communities, such as Stump Creek, a project providing flood mitigation in the small, disadvantaged community in Arkansas.
 - The Cano Martin Pena Ecosystem Restoration project in Puerto Rico includes work to re-establish tidal connections, increase biodiversity, and improve mangrove habitat.
 - The Jefferson County Shore Protection, TX study focuses on a project for ecosystem restoration in the low-income, disadvantaged community of Port Arthur, Texas by restoring and sustaining 6,000 acres of marsh habitat in 6 restoration units located in the J.D. Murphree Wildlife Management Area. This effort is expected to enhance access to nature, fishing and wildlife viewing opportunities for residents of Port Arthur.

SCORECARD EXAMPLE

Environmental and Civil Rights Protection

Federal agencies are advancing environmental justice by carrying out their responsibilities under the law to identify and address disproportionate and adverse public health and environmental, climate-related, and cumulative impacts on communities with environmental justice concerns. Agencies are working to ensure that all communities experience the protection of our country's bedrock environmental laws. The following information reflects some of the environmental and civil rights work **the U.S. Army Corps of Engineers (USACE)** has done from January 2021 to September 2022.

For more information, please visit [USACE's Environmental Justice Overview](#).

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires federal agencies to consider and disclose the environmental, health, and community impacts of certain decisions or actions before taking them. Environmental reviews help ensure the public is informed about potential actions, and give communities an opportunity to participate in the government's decision-making process. Environmental reviews also ensure that federal agencies consider ways to protect and enhance public health and the environment, and advance environmental justice in their decision-making. The following information highlights some work **the U.S. Army Corps of Engineers (USACE)** has done from January 2021 to September 2022.

Phase One Scorecard metrics and highlights include:

- USACE conducts multiple USACE training classes for NEPA practitioners with a strong focus on environmental justice, and conducts regulatory overview training that focuses on ensuring appropriate consideration of environmental justice issues during NEPA document preparation for Department of the Army Permit applications. Additionally, the USACE Chief of Engineers issued a memo in August 2021 to field commanders regarding preparation of NEPA documents by the Corps Regulatory Program, and the Assistant Secretary of the Army for Civil Works issued a March 2022 memo providing interim implementation guidance for environmental justice and the Justice40 Initiative.

Institutionalizing Environmental Justice

Since the start of the Biden-Harris Administration, federal agencies have been working to embed environmental justice into all aspects of their work, including by implementing [Executive Order 12898](#) and [Executive Order 14008](#). The following information shares some of the work **the U.S. Army Corps of Engineers (USACE)** has done from January 2021 to September 2022 to institutionalize environmental justice.

Phase One Scorecard metrics and highlights include:

- **Approximately 10** tool(s) or resources to advance environmental justice
- **Approximately 56** staff that work on environmental justice, either in a full- or part-time capacity
- **Approximately 31** internal training(s) for staff on environmental justice
- **3** new or strengthened internal working group(s), steering committee(s), council(s) on environmental justice

EJ SCORECARD WORKGROUP'S MAIN OBSERVATIONS FROM “PHASE I” SCORECARD AND AGENCY MEETINGS



While Phase I Scorecard conveys some progress on environmental justice, it overall fails to convey tangible outcomes that would be meaningful to the public.



Progress is also hard to interpret due to lack of baseline information and the presentation of numbers without denominators.



The format of Phase I Scorecard is not user-friendly (not visual, missing links to other relevant sites, hard to navigate).



The uniformity across agencies imposed by the Phase I Scorecard is an obstacle to agencies presenting the best information to reflect their progress. All agencies expressed a desire to present data more tailored to their individual mission and operations.

EJ SCORECARD WORKGROUP'S APPROACH TO INFORM "PHASE 2" OF THE EJ SCORECARD

1. Develop general recommendations for CEQ to apply to all agencies and for the scorecard presentation overall.
2. For Charge 3 on what additional qualitative and quantitative metrics should be included, develop both general recommendations for all agencies, as well as specific metric recommendations for CEQ to direct to each individual agency.

CHARGE QUESTION I

How can the Environmental Justice Scorecard data be presented in a way that is most useful for environmental justice stakeholders?

RECOMMENDATIONS TO CHARGE I

- Improve the Scorecard to prioritize clarity and facilitate public engagement.
- The Scorecard should track progress on environmental justice, not only Justice40. It should report on progress that matters to the general public.
- Improve Scorecard website design and website content for easier access.
 - The Scorecard should be designed with the spectrum of stakeholders in mind – including digestible, summary dashboard views *and* granular data that can be accessed and downloaded.
 - The Scorecard should include visualizations, e.g., map interfaces incorporating the CEJST layers and graphs to show progress over time.
 - The Scorecard should include a narrative progress report from each agency.

CHARGE QUESTION 2

What approach should be taken on reporting out Justice40 Initiative metrics?

RECOMMENDATIONS TO CHARGE 2

- Agencies' reports on Justice40 progress should include equity evaluations that analyze J40 funding flows and benefits by race/ethnicity.
- Scorecard should include progress on short-term *and* long-term outcomes. Short-term outcomes alone (e.g., engagement, new staffing) do not address tangible, material changes of concern to the public.
- Clearly present “before” J40 programming and “after” J40 programming scenarios.

CHARGE QUESTION 3

What additional qualitative and/or quantitative metrics could federal agencies include in the Phase Two Scorecard, or future versions of the Environmental Justice Scorecard, to reflect the needs and priorities of communities that face environmental injustices?

RECOMMENDATIONS TO CHARGE 3

- For each agency, Scorecard metrics should be tailored to its mission and capture progress and long-term outcomes. This should include measures employed by each agency to address past harms.
 - Example of qualitative data requested from FEMA: agency's plan to address environmental injustice associated with its National Flood Insurance Program; agency's actions to ensure documentation status is not a barrier to receiving disaster relief and resources.
 - Example of quantitative/spatial data requested from DOT: agency's investments in micro-transit and their proximity to communities with limited access to transportation; data regarding the presence of pipelines near DACs, the types of materials being transported, and the numbers of pipeline accidents, incidents, and failures.
- Scorecard should include a demographic breakdown of agency staffing, promotions, and leadership within each agency.
- For each agency, Scorecard should list all J40 programs, the amount of funding allocated to these programs, and the proportion of total program spending that it constitutes.

**CLIMATE AND ECONOMIC JUSTICE
SCREENING TOOL (CEJST) 2.0
WORKGROUP'S RECOMMENDATIONS**

Presenters:

Dr. Rachel Morello-Frosch | Workgroup Co-Chair

Dr. Nicky Sheats | Workgroup Co-Chair

CEJST CHARGE

Provide advice and recommendations to the WHEJAC to inform future versions of the Climate and Economic Justice Screening Tool (CEJST) and ensure that the tool continues to accurately identify disadvantaged communities. The recommendations and advice should focus on identifying:

- 1) Relevant datasets that are publicly available, nationally consistent, and available at the census tract level, which could be considered for incorporation into the tool;
- 2) Potential improvements to the methodology, including to better reflect cumulative burdens in the tool;
- 3) Potential approaches for improving linguistic outreach; IV. Potential ways to enhance the usability of the tool; and
- 4) Any other possible strategies that would support updates and further implementation.

This tool has been updated. The 1.0 version of the tool was released on Nov 22, 2022.

Explore the map

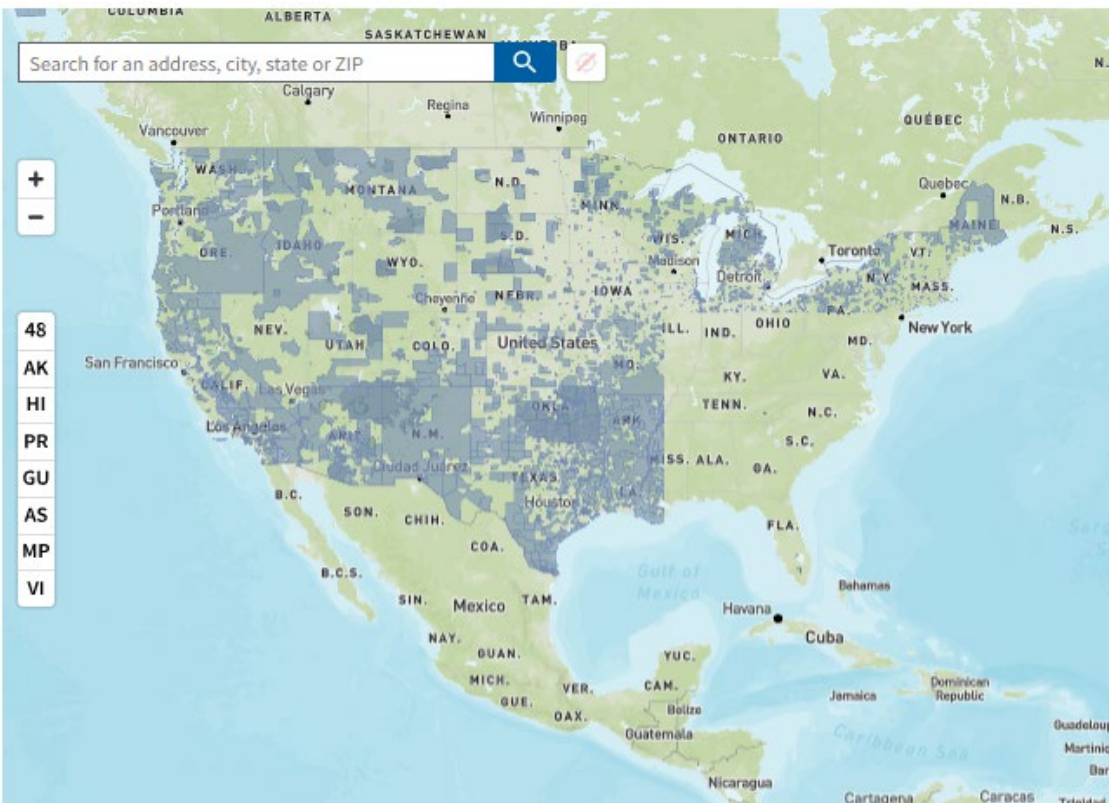
Share data sources with CEQ

Census tracts that are overburdened and underserved are highlighted as being disadvantaged on the map. Federally Recognized Tribes, including Alaska Native Villages, are also considered disadvantaged communities.

Zooming in and selecting shows information about each census tract.

Get the data

Download the data with documentation and shapefile from the [downloads](#) page.



How to use the map:

Zoom in +, search 🔍, or locate yourself 📍 and select to see information about any census tract.

Things to know:

The tool uses census tracts. Census tracts are a small unit of geography. They generally have populations of between 1,200 - 8,000 people.

Communities that are disadvantaged live in tracts that experience burdens. These tracts are highlighted on the map.

The tool ranks most of the burdens using percentiles

VERSION
2.0



CEJST Workgroup Members



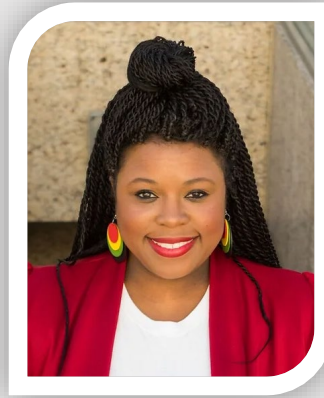
**Dr. Rachel
Morello-Frosch**
Co-Chair



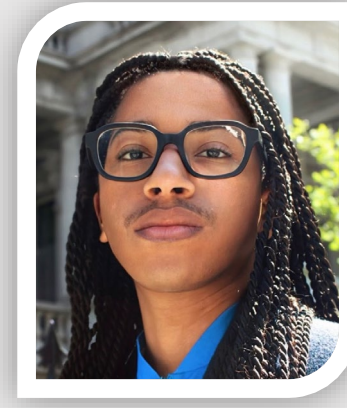
Dr. Nicky Sheats
Co-Chair



Vi Waghiyi



LaTricea Adams



Jerome Foster II



Michele Roberts



Jade Begay



Tom Cormons



Juan Parras

CEQ Revisions to CEJST in response to WHEJAC's comments from August 2022

- Added a display of federally-recognized Tribal lands
- Added nine additional datasets that show burdens
- Included low-income census tracts surrounded by disadvantaged communities
- Added missing income data
- Added an indicator for “historic underinvestment” based on digitized redlining maps created by the federal government’s Homeowners’ Loan Corporation (HOLC) between 1935 and 1940
- Enhanced higher education metrics (subtracting student data before calculating)
- Added data for U.S. territories
- Added display of racial/ethnic demographic data for informational purposes
- Improved user interface
- Made the CEJST available in Spanish

**CEJST WORKGROUP RECOMMENDATIONS
FOR VERSION 2.0**

Recommendations

#1) Use a cumulative impacts metric to identify and designate disadvantaged communities.

- Transcend the yes/no approach currently embedded in the CEJST
- Adapt validated and peer-reviewed approaches used in states such as California, New Jersey, and Michigan.
- Cumulative impacts metrics should combine environmental and social vulnerability indicators into a single score that compares across:
 - Nationally
 - Within each of the 10 EPA regions
- CEJST could designate DAC threshold (e.g., 75th percentile) based on the national percentile OR the percentile within a census tract's U.S. EPA region

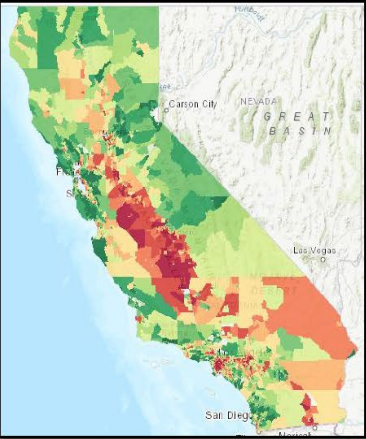
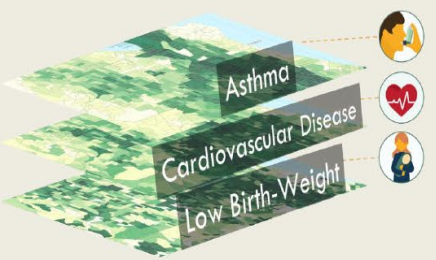
CalEnviroScreen
 Mapping
 Disadvantaged
 Communities for
 California Climate
 Investment Funds

CalEnviroScreen Model

Pollution Burden



Population Characteristics



Recommendations

#2) Create pathways for communities to qualify as disadvantaged without necessarily satisfying the income metric

- CEJST prevents communities from qualifying as disadvantaged if below the 65th percentile “low income” (defined as the percent of a census tract's population in households where household income is at or below 200% of the federal poverty level).
- Eliminates those census tracts that may be affected by multiple environmental hazards.

Recommendations

#3) Include a contemporary structural racism indicator

- Version 1.0 includes a measure of historical redlining.
- Original HOLC maps from the 1930s focused on a subset of cities and do not include:
 - Communities that did not exist or were not mapped/graded in the wake of the of the Great Depression by the Homeowner's Loan corporation in the 1930s.
- CEJST can complement the redlining measure with a contemporary, and more inclusive measure of structural inequality:
 - E.g., The Index of Concentration at the Extremes measures the extent to which a census tract's residents are concentrated into groups at the extremes of wealth/income deprivation and privilege by income and/or race.

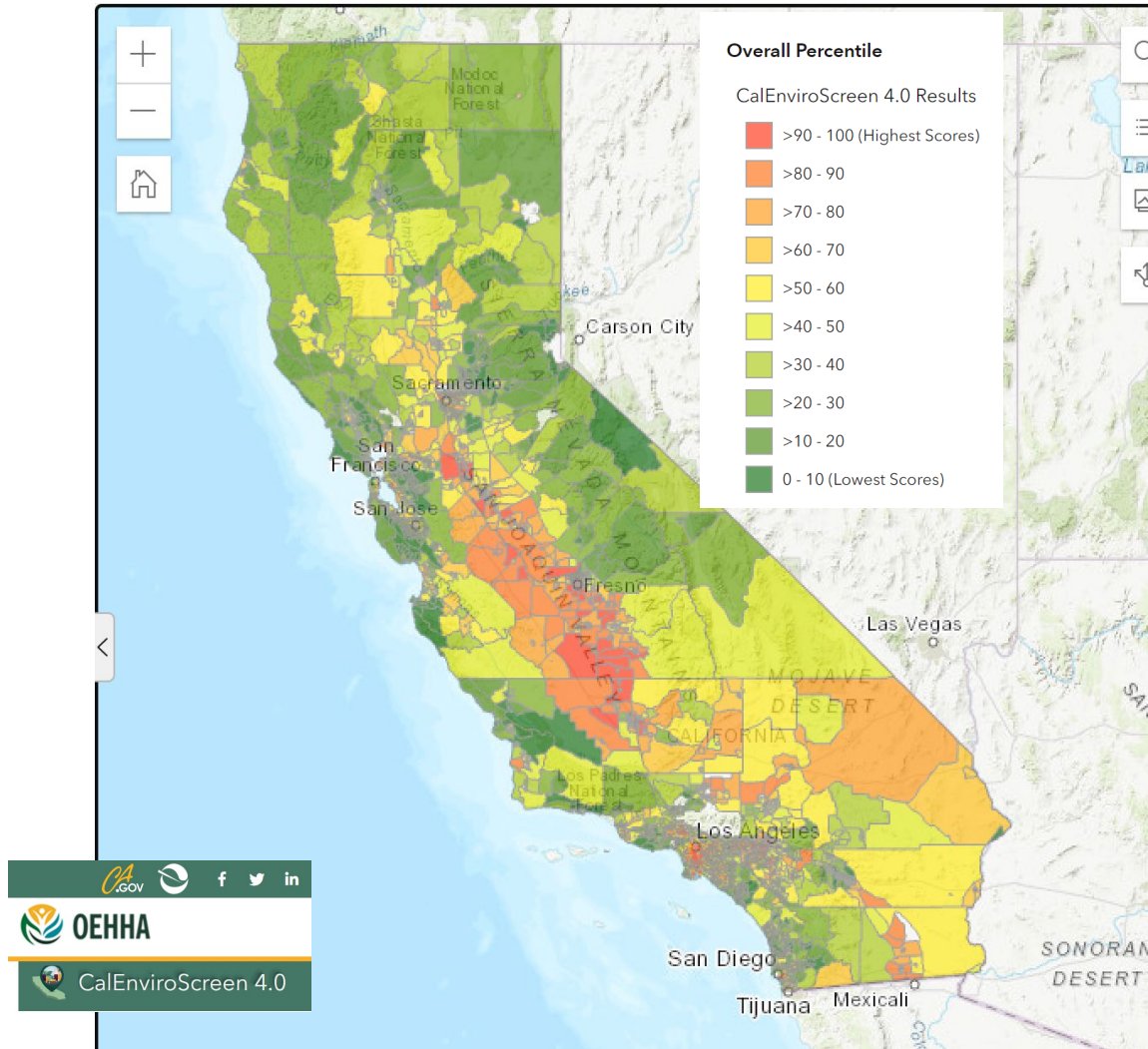
Recommendations

#4) Use CEJST to provide online assessments and visualizations of racial/ethnic as well as other demographic disparities in cumulative impacts.

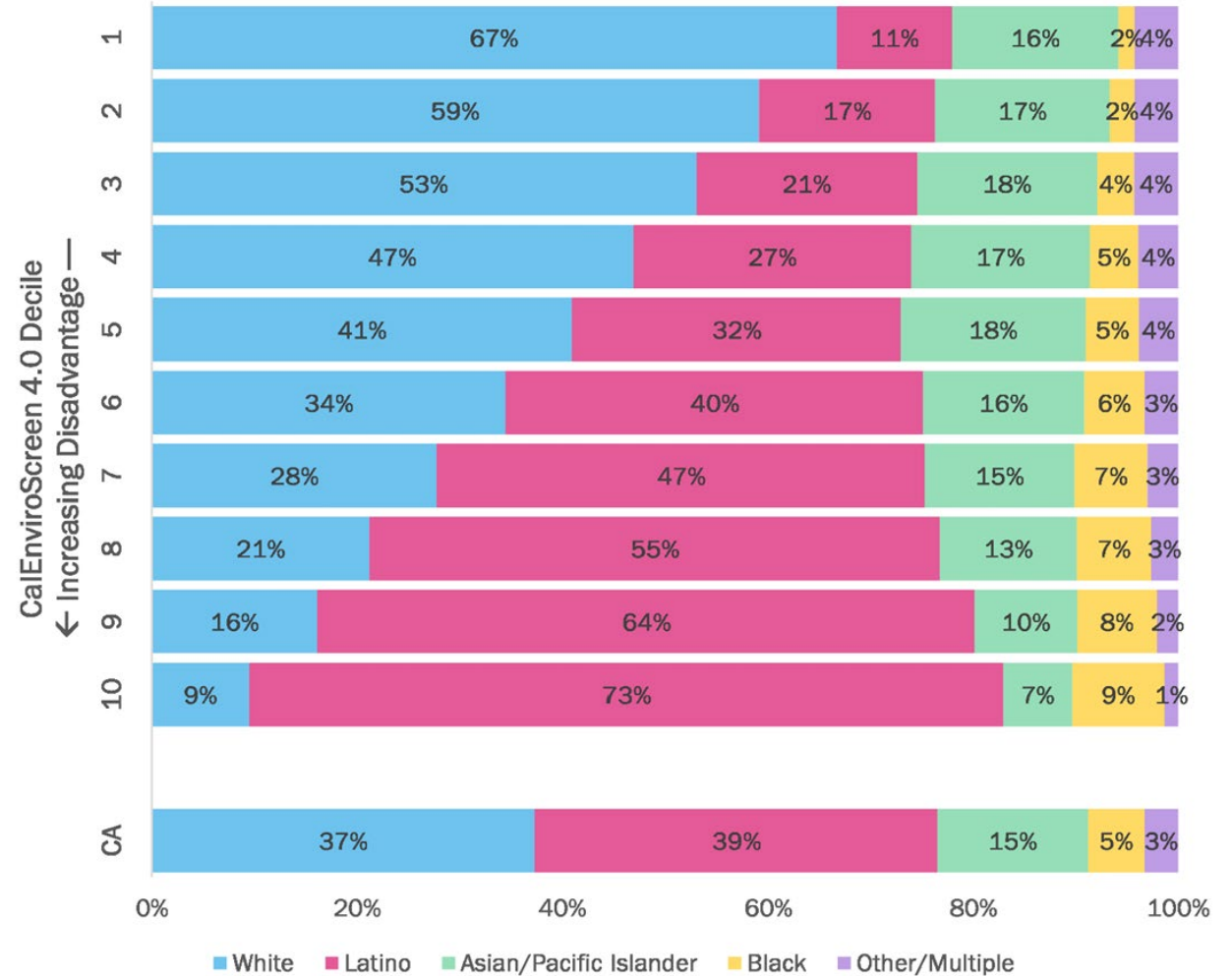
- CEJST should inform the Scorecard with online, temporal equity evaluations by race/ethnicity and others measures of socioeconomic status of:
 - Evaluation and projections of impacts of regulatory decision-making
 - Investment flows
 - Justice40 benefits

CalEnviroScreen

Mapping Disadvantaged Communities for CA Climate Investment Funds



Racial Makeup of Each Decile of CalEnviroScreen 4.0 Score



(Source: <https://arcg.is/1uXPnz>)

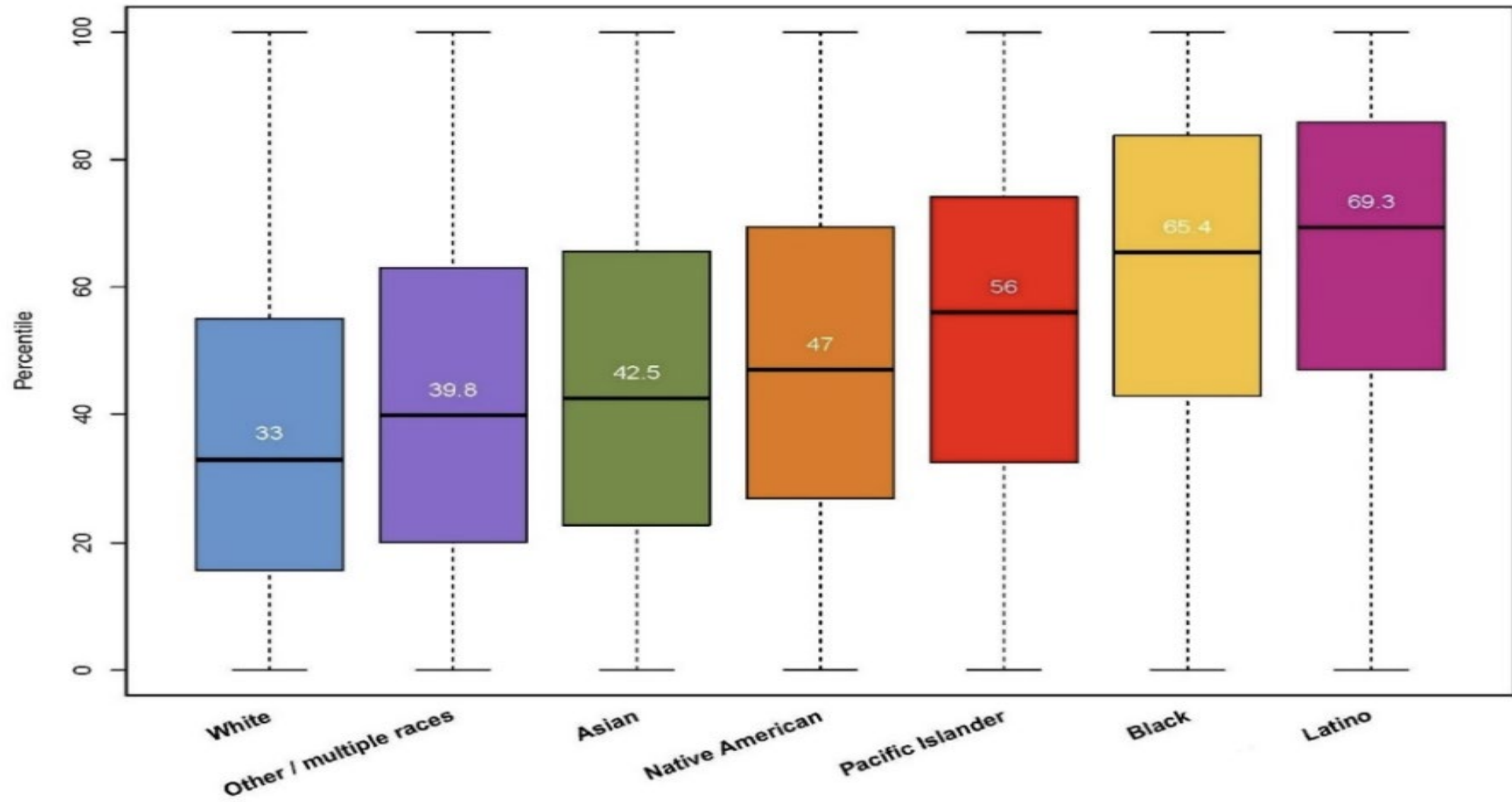
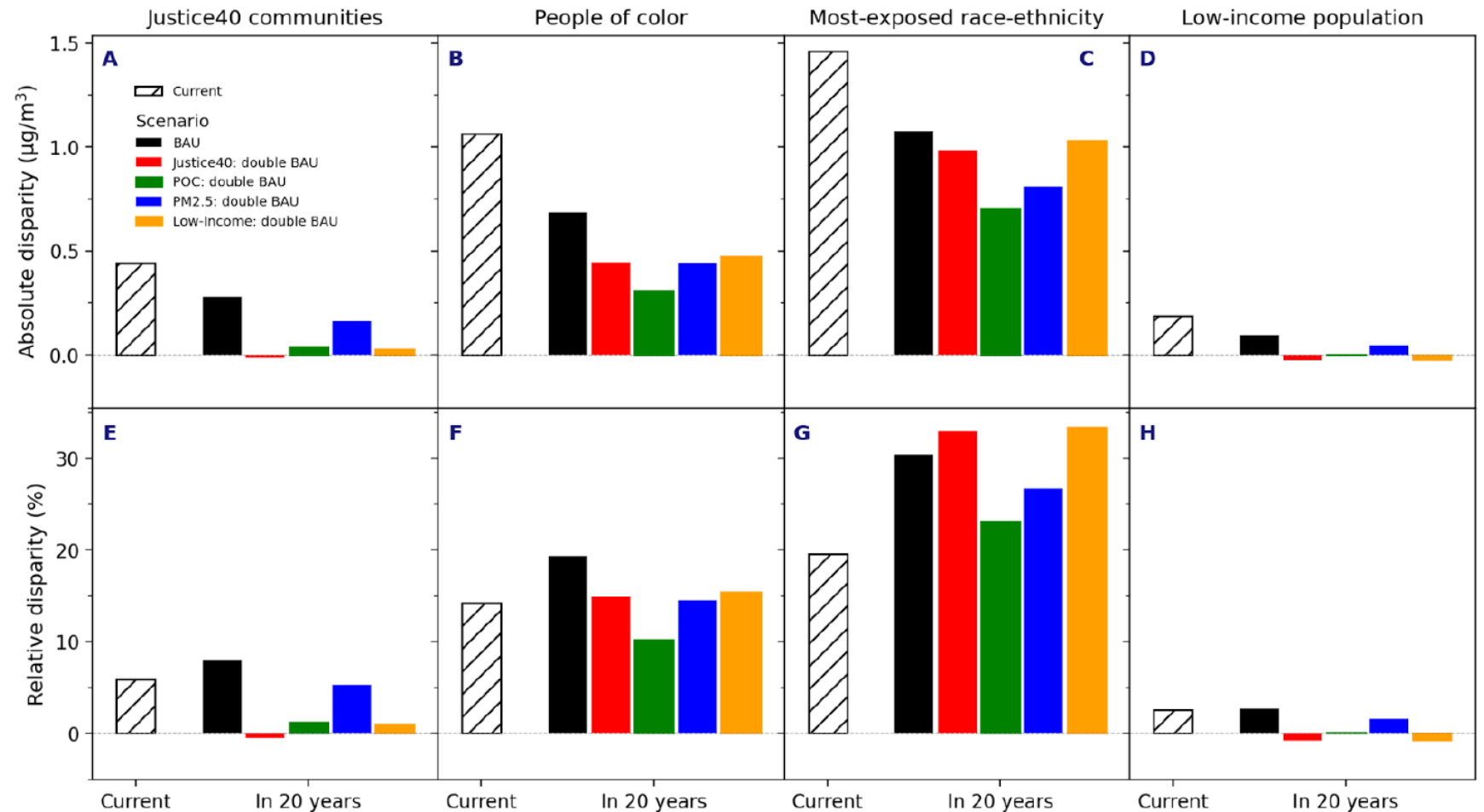


Figure 1. CalEnviroScreen 4.0 Score by Racial or Ethnic Group.

Why race-specific approaches are essential for reducing disparities

Absolute and Relative PM2.5 disparities changes in 20 years for alternative doubling emission-reduction with rebound scenarios



Reiteration of August 2022 Recommendations

#5) Integrate metrics of physical and social infrastructure

- Transportation
- Digital Infrastructure
- Affordable Housing
- Clean Energy Infrastructure/Access
- Plumbing and Sewage Infrastructure

Recommendations

#6) Include metrics of perinatal and maternal health outcomes

- Continue collaborations with HHS to acquire tract-level data on perinatal and maternal health outcomes, such as:
 - Severe maternal morbidities
 - Preterm birth
 - Low birth weight
 - Small for gestational age births

Recommendations

#7) Expand environmental hazard indicators to include fossil fuel infrastructure and concentrated animal feeding operations (CAFOs)

- Oil and gas wells
- Petroleum production and refining sites
- Crude oil railways
- Petroleum product terminals
- Large animal production facilities

Recommendations

#8) Add indicators of drinking water quality and sanitation

#9) Enhance the climate change vulnerability category

- Heat island risks, lack of green space
- Flooding threats to hazardous sites
- More

Toxic Tides-Sea-level rise Flooding Threats to hazardous sites California



PRESS RELEASE

As Rising Seas Threaten Hazardous Sites, California's Socially Vulnerable Communities Face Highest Risks: Study

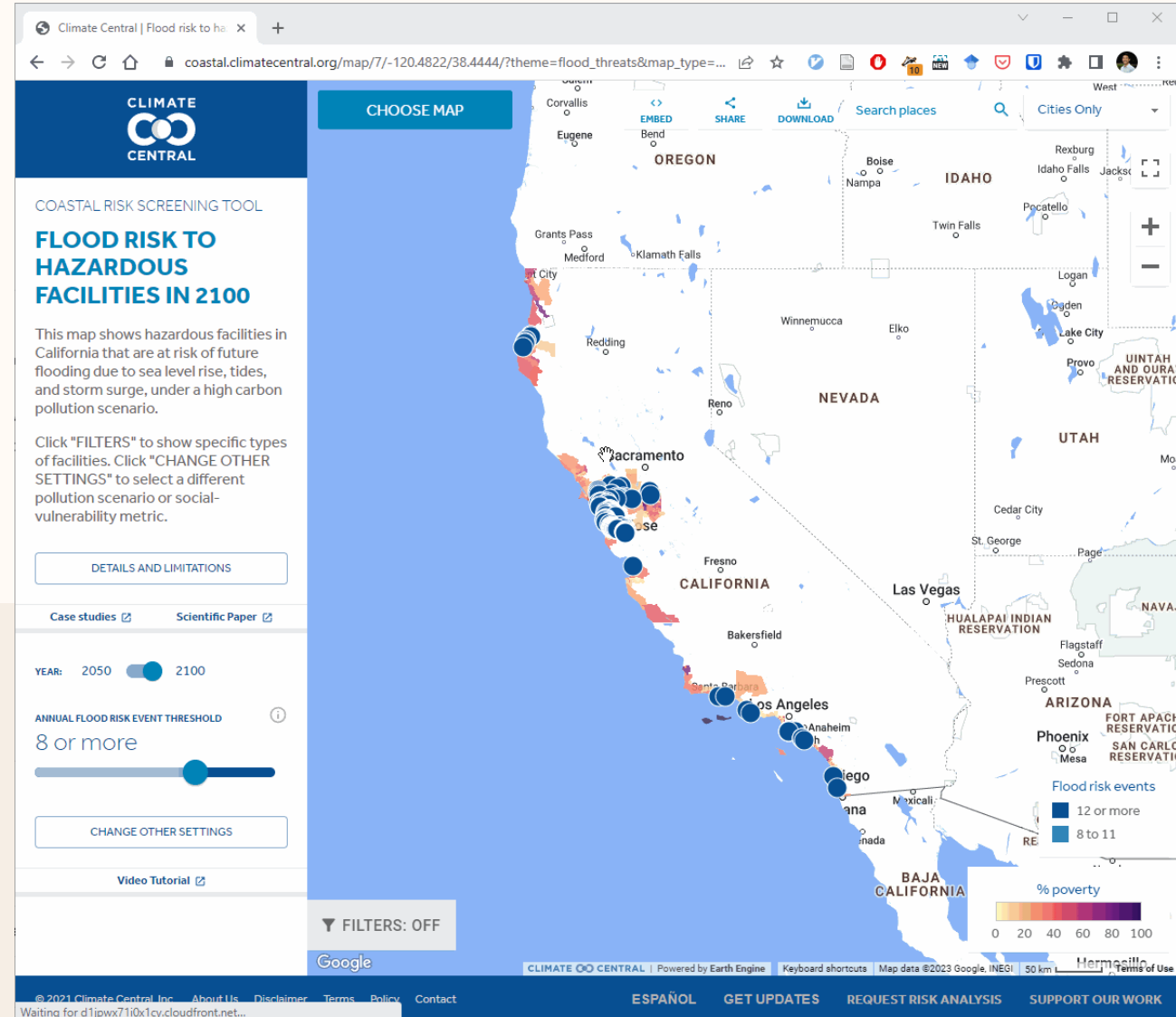
People of color are more likely to live near sites at risk of releasing toxic chemicals during coastal floods

Los Angeles – May 2, 2023 – As climate change increases coastal flood risks at hundreds of hazardous sites in California, the potential exposure to flood-related contamination falls disproportionately on socially vulnerable and marginalized communities, according to a [study released today in Environmental Science & Technology](#). Authored by researchers from the University of California, Los Angeles and Berkeley, and Climate Central, the study's findings are also visualized in [publicly available, interactive maps by facility](#) and [by county](#), which overlay indicators of residents' social vulnerability near as many as 423 sites expected to be at risk of coastal flooding by 2100.

The study includes refineries, industrial facilities, sewage treatment plants, clean-up sites and other facilities that store or use hazardous material that can be released during and after coastal floods, either directly into

EN

ES



Recommendations

#10) Integrate measures of sensitive populations and receptors

- K-12 Schools
- Prisons and Jails
- Hospitals

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Explore the map

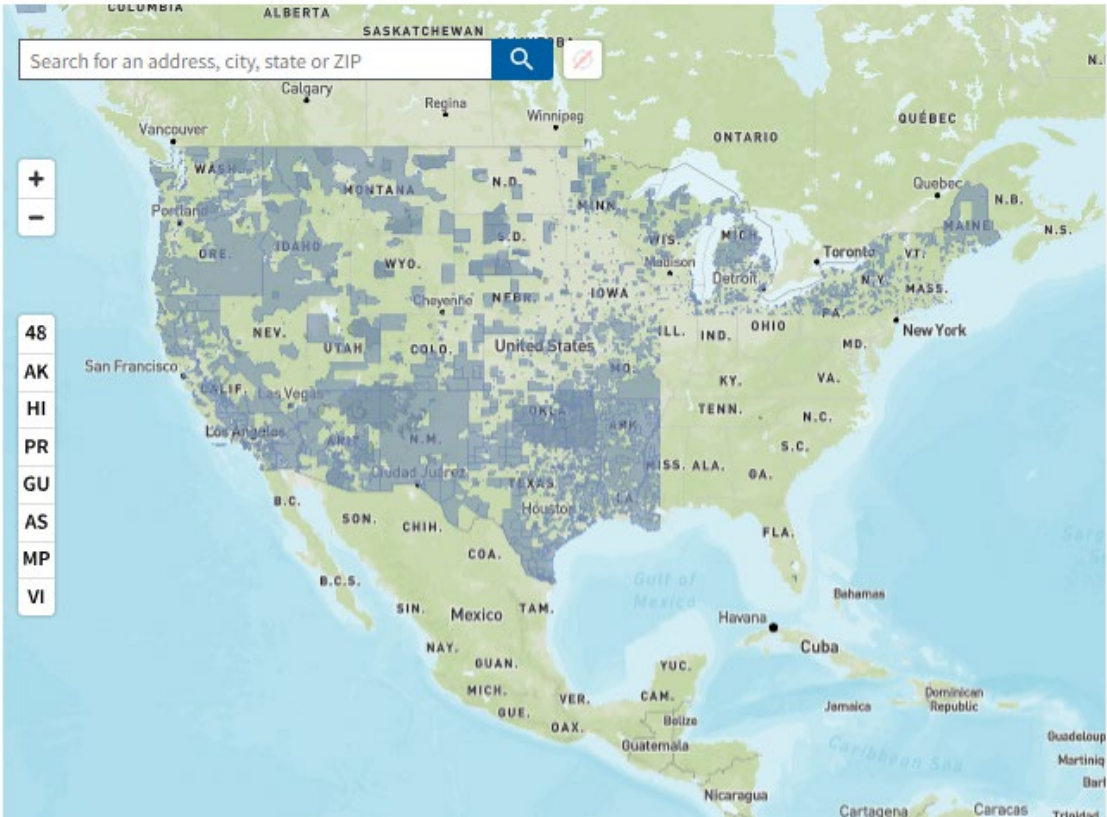
Share data sources with CEJ

Census tracts that are overburdened and underserved are highlighted as being disadvantaged on the map. Federally Recognized Tribes, including Alaska Native Villages, are also considered disadvantaged communities.



Zooming in and selecting shows information about each census tract.

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How to use the map:

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Things to know:

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The tool ranks most of the burdens using percentiles



VERSION
2.0



BREAK

15:00

Start

Stop

Reset

mins: 15

secs: 0

type: None



Breaktime for PowerPoint by Flow Simulation Ltd.

Pin controls when stopped

PUBLIC COMMENT PERIOD

- Attendees who pre-registered for public comment will be given access to speak as time allows.
- Each commenter has three minutes to speak.
- **For the benefit of interpreters, please speak *clearly* and *slowly*.**
- If you do not get a chance to speak during the allotted time, please submit your comments in writing.
- Comments will help the WHEJAC form better recommendations to CEQ/IAC.



**WRITTEN COMMENTS CAN BE SUBMITTED
THROUGH December 20, 2023
IN THREE WAYS:**

1

Use the webform at:

www.epa.gov/environmentaljustice/forms/white-house-environmental-justice-advisory-council-whejac-public-comment

2

Search Docket ID Number "EPA-HQ-OEJECR-2023-0099" and Submit comment at: <http://www.regulations.gov>

3

Send in an email to: whejac@epa.gov

BREAK

15:00

Start Stop Reset mins: 15
 secs: 0
 type: None

 Breaktime for PowerPoint by Flow Simulation Ltd. Pin controls when stopped

BUSINESS MEETING

CLOSING REMARKS & ADJOURN

- Richard Moore, WHEJAC Co-Chair
- Carletta Tilousi, WHEJAC Vice-Chair
- Dr. Jalonne L. White-Newsome,
Federal Chief Environmental Justice Officer
- Audrie Washington, Designated Federal Officer



**FAREWELL & GOOD LUCK,
MATT!**

Verbal & Written Comments

White House
Environmental Justice
Advisory Council
Public Meeting

December 6, 2023
Virtual

NORTHEAST

Maine, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont,
New Jersey, New York, Puerto Rico, and U.S Virgin Islands

MID-ATLANTIC

Virginia, West Virginia, Pennsylvania, Maryland, Delaware, and DC

Darya Minovi

Name of Organization or Community: Union of Concerned Scientists

City and State: Washington, DC

Region: Mid-Atlantic

Topic: Ways that the WHEJAC could recommend advancing environmental justice through a whole-government approach.

Brief description:

EPA recently undertook a process to review and revise emissions standards for facilities that emit ethylene oxide, or EtO, a cancer-causing gas used in chemical production and to sterilize medical equipment. I'm here today to urge WHEJAC and CEQ to ensure that this administration finalizes strong regulations to limit the public health harms of ethylene oxide from sterilization processes.

EtO like many hazardous air pollutants, is an environmental justice issue. Earlier this year, UCS published an analysis that found that commercial sterilization facilities are disproportionately located near people of color, people with low income, and people that do not speak English as a first language. We found that the cancer risks attributable to air toxics were significantly greater in communities with these facilities, and that these risks were highest in communities of color. We also found that sterilization facilities that are co-located and those that have violated the Clean Air Act are disproportionately located near people of color.

While we support EPA's efforts to reduce the health harms from EtO, we must ensure that the benefits afforded under this rule are equitably distributed. EPA's environmental justice analysis in the proposed rule failed to adequately address impacts on exposure disparities across racial and ethnic groups, with Latine and Black populations not seeing the same decline in exposure risks as other population subgroups.

In addition to implementing measures to ensure equitable reductions in exposure, EPA must require fence-line monitoring at these facilities that are too often situated near schools, workplaces, and homes, and must regulate sterilization emissions from all sources, including offsite warehouses. The agency must also continue to rely on the best available science – namely, the 2016 IRIS risk assessment on the carcinogenicity of EtO exposure. While EPA has reaffirmed the rigor of this assessment, which determined that EtO is a human carcinogen, the chemical industry has continued to try to undermine the assessment and weaken the cancer risk value that these regulations depend on. It is critical that EPA is supported in its decision to rely on this risk assessment.

Finally, it is important to note the complex, confusing, and convoluted nature of air toxics regulation that can make it difficult for people that live near these facilities to engage in rulemaking. EPA proposed updated NESHAPs for several different source categories that emit EtO around the same time, yet the risk communication and public participation process varied significantly across each rule. Particularly as there is a government-wide effort to improve public participation processes in rulemaking, it is important to consider the disjointed nature of regulation of this one toxic air pollutant.

I hope WHEJAC and CEQ can continue to advise agencies like EPA and FDA in adequately regulating this toxic chemical and ensure that the public and worker health benefits in the final commercial sterilizer rule are equitably distributed, particularly among those most impacted. Thank you.

Link to UCS report:

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.ucsusa.org%2Fresources%2Finvisible-threat-inequitable-impact&data=05%7C01%7Cwhejac%40epa.gov%7C3d4a24b073794c48d89d08dbf6a786a3%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C638374971594771960%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQljoiv2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C2000%7C%7C%7C&sdata=EhouTg%2FJh3qjejWEeg18OIWWIBj9pyhgUHhoZOsDBtk%3D&reserved=0>

Ugbaad Kosar

Name of Organization or Community: Carbon180

City and State: Washington, DC

Topic: Carbon Management Brief description about your recommendation relevant to your selection above:

We have attached a pdf to the email listed above that contains 3 overarching recommendations for Carbon Management.

Recommendation 1: Scaling carbon removal is urgent, but speed should not be our only priority.

Recommendation 2: WHEJAC should continue providing guidance on existing and forecasted CDR projects.

Recommendation 3: A just carbon industry is possible. To this end, WHEJAC and the Working Group should consider the following recommendations when framing an equitable carbon removal landscape.

SOUTHEAST

Kentucky, Tennessee, North Carolina, South Carolina,
Georgia, Alabama, Mississippi, and Florida

Will Charouhis

I'm Will Charouhis. I'm a 17-year-old high school student from Miami, Florida.

My city sits at sea-level. With the third largest school district in the US, we have more students facing the impacts of climate change than anywhere else in America.

My home and my school are expected to be uninhabitable, before I reach the age of most of us in this room. So I have an interest in halting climate change.

Ten years ago, news reports seemed to limit the effects of global warming to just pockets in America. But our collective experience this year has changed all that.

We've just come off the hottest 3 months since global records began in 1880.

And that ominous heat, experienced this summer by Americans on back roads and big cities alike, has brought the reality of climate collapse, and the imperative of carbon management, to center stage. We cannot halt climate collapse without capturing the carbon we've already emitted out of the atmosphere.

The good news is that nature has already given us a magical process to do this. It's called photosynthesis. And scientists at the Salk Institute for Biological Studies and U.C. Berkeley, as well as at countless other institutions, are researching ways to amplify that process and increase carbon sequestration.

Our Inflation Reduction Act provides funding for direct air capture and permanent storage. But those are expensive solutions, and they are hard to scale. Meanwhile, plants have been perfecting the art of pulling carbon from our atmosphere for more than 3 billion years.

The science shows us that plants can be genetically manipulated to store more carbon in longer roots. And longer roots will make crops more resistant to flooding and drought, and will allow us to address our growing food insecurity.

The problem is money. Plant biology has never been a well-funded field of research. I urge the White House Environmental Justice Advisory Council to leverage its position and seek funding to amplify nature-based carbon mitigation strategies. By putting funds to work to make plants better at doing what they already do, we can save the world.

Tammie Tucker

Name of Organization or Community: speaking as a concerned citizen and member of floodplain management workforce

City and State: Federal Dam, MN

Region: Southeast

Topic: Ways that the WHEJAC could recommend advancing environmental justice through a whole-government approach.

Brief description:

A number of executive orders issued in the past 3 years have highlighted the important of Federal agencies providing meaningful engagement opportunities to communities experiencing EJ issues. As engagement increases with these communities, the Federal government needs to ensure these EJ communities are not becoming overburdened or experiencing engagement fatigue. For Federal initiatives like Justice40 established in EO 14008 or requiring Federal agencies to develop EJ Strategic Plans as established in EO 14096, opportunities for interagency collaboration in engagement of EJ communities should be considered to reduce the burden on these communities as much as possible while collecting their very valuable input and feedback on Federal initiatives. Agencies with some overlapping goals could have joint engagement efforts. All Federal agencies' documentation on engagement with these communities should be shared across the Federal government. A database could potentially be developed to store this data and be categorized and tagged for easier use by multiple Federal agencies. No one living in these communities wants to express the same concern or feedback over and over. Document and share it more widely so it can be heard by more of the Federal government.

GREAT LAKES

Wisconsin, Illinois, Indiana, Ohio, Michigan, and Minnesota

Dionna Brown

Name of Organization or Community: Black Millennials for Flint

City and State: Flint, MI

Topic: Climate and Economic Justice Screening Tool

Dear Members of the White House Environmental Justice Advisory Council

As the Youth Environmental Justice Programs National Director and a dedicated Second Year Master's of Sociology and Certificate of Public Health Candidate, I appreciate the opportunity to provide insights on the Climate and Economic Justice Screening Tool (CEJST). I find this tool to be a valuable resource for visualizing critical indicators of environmental, economic, and racial injustices. It serves as an essential instrument for accounting for the impact of historic disinvestment, particularly through the evaluation of "historic underinvestment" in census tracts with historically high barriers to accessing home loans, shedding light on the persistent legacy of redlining practices.

While CEJST undoubtedly offers valuable information to assess community resilience, I would like to draw attention to the need for additional considerations, specifically pertaining to vulnerable subpopulations, particularly youth and adolescents. As a significant segment of our communities, these groups often face unique challenges that warrant specific attention in the assessment of environmental justice. Therefore, I recommend expanding the tool to include key breakdowns related to youth, schools, and child development centers, as well as assessing playground access.

In many instances, the inclusion of these factors can provide a more comprehensive understanding of the environmental justice landscape. Evaluating the proximity of schools and child development centers to areas with environmental challenges is crucial, as it directly impacts the health and well-being of our youth. Additionally, assessing playground access is essential, as it contributes significantly to the overall quality of life for children, ensuring they have safe and healthy spaces for recreation and socialization.

Now, considering the unique context of Flint, Michigan, where I was born and raised, I would like to emphasize the importance of incorporating recommendations related to youth, schools, and playground access into the CEJST. In communities like Flint, which have experienced environmental challenges and disparities, understanding the specific vulnerabilities of youth becomes paramount. By implementing these recommendations, the CEJST can play a pivotal role in not only identifying areas that require targeted interventions but also in fostering a more inclusive and equitable approach to environmental justice.

In conclusion, I commend the efforts invested in the development of the Climate and Economic Justice Screening Tool. My suggestions for expanding the tool to include considerations for youth, schools, and playground access aim to enhance its effectiveness and relevance, ensuring that no segment of the population is left unaccounted for in the pursuit of environmental justice.

Thank you for considering my input, and I look forward to witnessing the positive impact of CEJST on promoting climate and economic justice.

Group Comment – Great Lakes

Dear Audrie Washington,

The hydrogen hub selection process has lacked transparency and community input from those who deserve to be heard most - the frontline environmental justice (EJ) communities historically and consistently forced to bear the burden of living in industrial sacrifice zones.

As EJ communities affected by the MachH2 hub projects - Indiana, Illinois, and Michigan, we are also particularly concerned about the consequences of the hydrogen hub and the water-intensive hydrogen production process on our Great Lakes watershed, the collective drinking water supply for more than 30 million people.

We ask you to slow down the hydrogen hubs process and ensure public participation, transparency, and inclusivity of communities at every step by implementing the following requests:

- Conduct a meaningful public process where Midwest EJ communities, labor representatives, and science and public health professionals can analyze the details of these proposed projects and potential threats to our communities' health, well-being, and welfare. This process must also include full representation of these parties in the DOE's Community Benefits Plan (CBP).
- Provide full public disclosure of all information about what is planned for this hub, including, but not limited to, the selection process (who is selected and why), feedstocks, energy sources (production and transportation), end uses, and climate impacts (including the indirect warming impact of hydrogen leaks and the full impact of gas leaks, both using a 20-year warming potential), so that the costs, benefits, and effects can be evaluated independently.
- Delay proposed MachH2 hydrogen hub projects, including BP's CCS pipeline project in Indiana, which presents piping, injecting, and storing millions of tons of carbon dioxide across communities in Benton, Newton, Lake, Pulaski, White, and Jasper Counties.
- Above all, since the majority of the hubs, including MachH2, rely on hydrogen produced from dirty, costly, and climate-devastating fossil fuels, invest in a just and equitable transition from fossil fuels to wind and solar energy and energy efficiency that does not depend on fossil fuel schemes, and prohibit the diversion of existing low-carbon electricity to produce hydrogen.

It is time for our communities to be at the forefront of the decision-making process and receive the benefits of transitioning to a renewable, regenerative economy. Please do your due diligence and support our request today to act in accordance with the climate crisis and protect our Great Lakes communities!

Sincerely,

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masdelattre63@gmail.com

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Jennifer Dimitroff
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Sincerely,
Sean O'Connor
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Jessica Berger

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Richard Stuckey
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rjstuckey@aol.com

Kayla Shannon

Name of Organization or Community: Black Millennials for Flint

City and State: Grand Blanc, Michigan

Topic: Other

Brief description:

Greetings, Members of the White House Environmental Justice Advisory Council, My name is Kayla Shannon, a member of the Youth EJ Griots for Black Millennials 4 Flint and a proud advocate for the city of Flint, Michigan. I am writing to express my wholehearted support for the establishment of the White House Environmental Justice Advisory Council (WHEJAC), as outlined in response to Executive Order 14008 "Tackling the Climate Crisis at Home and Abroad." As a senior at Spelman College deeply invested in environmental justice issues, I believe this initiative is a crucial step towards addressing the complex challenges posed by climate change. I also want to underscore the transformative impact of incorporating community perspectives into environmental policy-making based on my experience at the local level.

During my time working in the city of Flint, I have had the opportunity to engage in a community-driven public health initiative with the Flint Public Health Youth Academy. We worked closely with local residents, activists, and governmental representatives to address concerns impacting our community, including local pollution. The success of our endeavors was rooted in the collaborative approach we took, ensuring that the voices of the community were not only heard but also actively incorporated into the decision-making process. This experience highlighted the invaluable role that community perspectives should play in shaping environmental policies. It is with this firsthand knowledge that I commend the establishment of WHEJAC and its collaboration with the EPA's National Environmental Justice Advisory Council (NEJAC) and advocate for the incorporation of diverse voices at the table, especially those of historically marginalized communities. I appreciate the commitment demonstrated by the EPA in supporting WHEJAC and maintaining the consistent management of NEJAC.

Thank you for your dedication to environmental justice, and I look forward to the positive impacts of WHEJAC in addressing the climate crisis and advancing equity.

Leanna Goose

Name of Organization or Community: Honor the Earth

City and State: Federal Dam, MN

Region: Great Lakes

Topic: Examples of environmental hazards of particular concern for Indigenous Peoples and Tribal Nations related to Federal activities that may affect sacred sites and areas of cultural significance, cultural or other traditions or practices, subsistence, and wa...

Brief description about your recommendation relevant to your selection above:

It is crucial to establish a policy that prohibits any polluting projects on or near reservations without obtaining free prior and informed consent. This is the only way to ensure environmental justice for Indigenous Nations. The federal government has a significant investment in mining activities in Minnesota, which could have a detrimental impact on wild rice or manoomin. Losing this critical resource is not an option. Therefore, it is essential to have a standard in place that goes beyond mere consultation. Consent must be obtained, or no polluting projects should be allowed to further marginalize already vulnerable communities.

GREAT PLAINS

Iowa, North Dakota, South Dakota, Nebraska, Kansas, and Missouri

ROCKY MOUNTAINS

Utah, Colorado, Wyoming, Montana, and Idaho

Augusta Catherin-Sauer

Name of Organization or Community: Northern Plains Resource Council

City and State: Billings, MT

Topic: Carbon Management

Brief description:

Dear members of WHEJAC,

Thank you for the opportunity to submit comments on carbon management. Currently there is a proposal for a dangerous carbon sequestration project on private and public land in Carter County, Montana. The Bureau of Land Management should deny the operator, Denbury's application for a Right-of-Way (ROW) permit.

We are writing today to ask that WHEJAC provide recommendations for improving federal policy regarding pipeline safety, in particular CO2 development. CCS technology relies on industrial pipelines to transport and bury CO2, which typically includes other gasses and contaminants. The CO2 has been known to erode pipelines and leak into groundwater, making water more acidic and causing other long-term negative effects. In addition, while taxes skyrocket for everyday people, pipeline companies have been offered almost \$2 billion in tax credits each year alone to pursue unproven technology like CCS projects. Because the Snowy River project is mainly on federal public land using federal public pore space, there is very limited tax benefit for Carter County or the local communities. In essence, Denbury is proposing to use taxpayer money and taxpayer land to profit massively. There are human health, environmental, and other cumulative impacts, as well as the accompanying economic challenges of such impacts, and underinvestment in local emergency services, water protection, infrastructure, and other health care concerns. The working group's recommendations should adopt the precautionary principle to first do no harm.

The Snowy River CO2 Sequestration Project and many other carbon sequestration projects puts communities in harm's way and is concerning in the following ways:

The project will cause disruption to landowners and agricultural operations in the area with its construction and potential threats to local groundwater.

The Snowy River project is a waste of taxpayer money and will only benefit Denbury's financial interests.

Denbury-operated CO2 transport lines have a documented history of dangerous ruptures, including one in Powder River County, MT, causing serious injury to workers and local residents. The risks of a new pipeline rupturing are high.

The project poses potential short-term and long-term threats to water quality and quantity which the local community relies on.

The project will have a negative impact on pristine public lands, recreation, and cultural artifacts.

This type of technology is a false climate solution that clearly negatively impacts those who live near carbon sequestration development and will offer no benefit to local communities. We respectfully urge you to consider all of this when it comes to carbon management. Instead the government should invest in sustainable agricultural practices to sequester carbon.

Sincerely,

Northern Plains Resource Council members and staff

SOUTHWEST

Maine, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont,
New Jersey, New York, Puerto Rico, and U.S Virgin Islands

Laura Watchempino

Docket ID No. EPA-HQ-OEJECR-2023-0099

The Multicultural Alliance for a Safe Environment (MASE) is a coalition of core groups residing in northwestern New Mexico that continue to experience the disproportionate burdens of historic uranium mining and processing in the Grants Mining District (GMD) of New Mexico.

MASE herein requests the White House Environmental Justice Advisory Council to advise the Chair of the Council of Environmental Quality (CEQ) and the newly established White House Environmental Justice Interagency Council (IAC) to increase the Federal Government's efforts to address the environmental injustice impacts that have resulted from over half a century of uranium production in the Grants Mining District (GMD).

Our History

Our communities were forced to endure decades of environmental pollution and degradation when the Federal government collaborated with private industry to extract uranium in the Grants Mining District (GMD) of New Mexico. Our communities were transformed into the unwitting casualties of America's Cold War in the race to develop atomic weapons of mass destruction. Our community health and well-being was sacrificed and our cultural integrity and way of life was torn apart.

Neighborhoods adjacent to the Homestake-Barrick Gold Superfund site in the Grants Mining District (GMD) of New Mexico have borne much of the brunt of this despoilment. Yet our community voices are not being heard when EPA Regions 6 and 9 consult with the responsible parties to assess the long-term environmental damages and select remedies at this site and other Superfund sites throughout the Mining District. Our ongoing health issues have not been re-surveyed for continuing long-term impacts. The company's buyout of homeowners in these neighborhoods at decreased property values should not be used to ignore the health burdens that residents and former residents continue to bear.

We are not being consulted or meaningfully involved in the assessment of long-term damages to our communities or in the selection of remedies to alleviate the irreparable devastation that has been visited upon our agricultural way of life, and upon our community and environmental health.

Radon releases into our air and the continuing seepage of contaminants from wet mill tailings impoundments into our scarce water supplies during an era of climate change has led to the permanent degradation of ecosystems and our shared human, plant, and animal environment. But that damage must be alleviated with appropriate remediation, regardless of the cost or time required to ensure that our communities and neighborhoods are once again safe places to live, work and play.

Groundwater Pollution

The protection of groundwater in the arid Southwestern United States is essential to the survival of our communities into the next millennium. That is why the Multicultural Alliance for a Safe Environment (MASE) developed a Nuclear Free Zone Declaration in 2012 (amended in 2018) and an Environmental Justice Policy Statement in 2015 to guard our communities against the unacceptable health and environmental risks that we have been forced to endure for over 50 years in the Grants Mining District. Many subdivision residents near the Homestake-Barrick Gold Superfund site have died or have been diagnosed with thyroid cancer and other respiratory ailments. The New Mexico State Engineer placed a moratorium on the use of our domestic water supply wells, but no updated health survey has been conducted to date.

In fact, MASE points out that our regulators have repeatedly allowed the mining industry in the GMD to relax cleanup standards below what is necessary to adequately protect our health and safety. MASE has pledged to work towards the elimination of all regulatory exemptions and waivers that impose unjustifiable risks on our health and our environment.

For too long, the mining industry has been allowed to ignore the true costs of mineral development on our communities. And our local governments and state environment departments lack the resources to take on the burdensome cleanup, enforcement, and monitoring responsibilities that the mining industry is allowed to leave behind.

The Remedial Investigation/Feasibility Study process under CERCLA is biased toward the responsible parties and must be amended. The EPA negotiates with the responsible parties to reach settlement agreements and consent decrees without input from the affected communities that have been burdened with toxic releases. EPA tells us that we will be informed of its remedial investigation studies AFTER they are finalized and that we will be informed of the final remedy AFTER it has been selected. Then we will have 30 days to register our comments, but no opportunity to meaningfully advance more protective alternate remedies. In essence, our Environmental Justice communities are not meaningfully involved in EPA's selection of a remedy during the RI/FS process. Only the responsible party is given that unfair advantage.

Legacy Mining Pollution

MASE also wants to stress the historical damage that the mining industry was allowed to inflict on our communities in the form of unrestricted toxic releases to the air, water and soil prior to the imposition of federal and state regulatory frameworks governing toxic releases to the environment.

Nor was any historical data routinely collected in the San Mateo Creek Basin that could be used as a basis for cleanup or benchmark targets. No pre-mining baseline assessments of air, water or soil were conducted. Instead, the mining industry has been allowed to perform its own assessments following decades of unregulated toxic

releases to our neighborhoods and environment. The only way to assess background now is to look back in time rather than rely on the collection of contemporaneous data as a basis for benchmark cleanup targets.

Baseline surface and groundwater quality in the San Mateo Creek Basin must be based on pre-mining background levels before it can form the basis for corrective actions. Preliminary remediation goals must be established prior to the required feasibility studies of alternative remedies, not during the remedy selection phase. Complete characterization of contamination sources, or Principal Threat Waste, must take place in order to guide the selection of the most effective and protective remedies. MASE believes that this process and final remedy selection should be based on the best available science utilizing the best available technology, with the expertise of the affected communities.

Health-based cleanup standards are required to protect our health, our drinking water sources and air quality in the San Mateo Creek Basin. Cost-effective measures that pose unacceptable risks to our community health and drinking water sources must be avoided.

MASE will continue to seek the cleanup of all uranium legacy sites within the Grants Mining District and the removal or complete isolation of all continuing sources of toxic pollution at the Homestake-Barrick Gold Superfund site within the San Mateo Creek Basin.

The Multicultural Alliance for a Safe Environment urges WHEJAC to enlist a “whole of government” approach to ensure that the voices of our environmental justice communities are heard throughout CERCLA’s Remedial Investigation/Feasibility Study process. MASE will continue to seek redress for the legacy impacts of uranium extraction and production in the Grants Mining District, and for the ongoing health and environmental burdens that our communities continue to face.

Submitted by:

Laura Watchempino
Multicultural Alliance for a Safe Environment

Isaiah Grays

Name of Organization or Community: Black Millennials for Flint

City and State: Grand Blanc, Michigan

Topic: Ways that the WHEJAC could recommend advancing environmental justice through a whole-government approach.

Brief description:

Dear Members of the White House Environmental Justice Advisory Council,

My name is Isaiah Grays. I am a senior at Grand Blanc High School where I serve as president of Student Government and a member of the Black Millennials 4 Flint Youth Environmental Justice Council. I am writing to provide public comment on ways the WHEJAC could recommend advancing environmental justice through a whole-government approach. As a high school senior deeply concerned about the environmental challenges facing our communities, I believe that youth representation and advocacy must play a central role in shaping policies that promote environmental justice.

Firstly, I would like to emphasize the importance of incorporating youth perspectives at every stage of the decision-making process. The youth are not just the leaders of tomorrow; we are actively engaged citizens today, deeply invested in the well-being of our communities and the planet. Including youth representation in the WHEJAC ensures that policies reflect the diverse concerns, ideas, and experiences of the next generation.

Moreover, creating avenues for youth advocacy within the whole-government approach is critical. Establishing platforms that allow young people to voice their concerns, propose solutions, and actively participate in the environmental justice discourse ensures a more comprehensive and inclusive decision-making process. Youth advocacy can bring fresh ideas, innovative solutions, and a sense of urgency to the table, fostering a more dynamic and responsive approach to environmental challenges.

To protect the interests of the youth in environmental justice matters, it is essential to prioritize education and awareness programs tailored to young audiences. Empowering youth with knowledge about environmental issues, their rights, and avenues for advocacy equips us to actively contribute to the development and implementation of effective policies. This educational component ensures that youth are not only beneficiaries of environmental justice but also active agents in its realization.

In conclusion, a whole-government approach to advancing environmental justice must prioritize youth representation, advocacy, and education. By actively involving young people in decision-making processes, providing platforms for advocacy, and fostering environmental education, we can build a more resilient and just future for all.

Thank you for considering the perspectives of the youth in shaping environmental justice policies. I look forward to witnessing a whole-government approach that truly reflects the values and aspirations of the next generation.

WEST

Maine, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont,
New Jersey, New York, Puerto Rico, and U.S Virgin Islands

David Hai Tran

Good afternoon,

On behalf of the City of San Jose, we would like to submit the attached comments in response to the White House Environmental Justice Advisory Council's 2023 Public Meetings. Our comments are regarding the **Climate and Economic Justice Screening Tool (CEJST)**. For any questions regarding our letter, please do not hesitate to contact Eric Eidlin at eric.eidlin@sanjoseca.gov. Thank you and wishing you a happy holidays!

Sincerely,

David Hai Tran

Legislative & Policy Lead
Department of Transportation
City of San José
david.tran@sanjoseca.gov | 408-535-8270

December 20, 2023

White House Environmental Justice Advisory Council
1600 Pennsylvania Avenue NW
Washington, DC 20500

RE: White House Environmental Justice Advisory Council (WHEJAC) Virtual Public Meeting

Dear Honorable Council Members,

The City of San Jose (“City”) supports the Biden-Harris Administration’s efforts to implement the Justice40 program. We thank the Council on Environmental Quality (CEQ) for developing the Climate and Economic Justice Screening Tool (“Screening Tool”) and appreciate the WHEJAC for the opportunity to comment on it. Below, we offer some comments on how we feel that the tool could be refined to capture a broader range of economic justice impacts.

In summary, we feel that the tool does a good job of assessing the *more localized and primarily negative* economic justice impacts of transportation infrastructure on the immediate communities in which transportation facilities are located. However, we feel that the tool is less well-equipped to capture the *potential upsides in terms of improved access to opportunity* that certain types of transportation facilities can enable. The way in which the tool assesses the Diridon Station Area puts us at a disadvantage in pursuing federal funding. Below, we offer some suggestions on how the tool could be refined to better support hub station planning efforts like Diridon, which are key to improving non-auto access to opportunity for disadvantaged groups.



Figure 1 - Diridon Station in the Climate & Economic Justice Screening Tool

Diridon Station

As the primary transit station in Silicon Valley, **Diridon Station** is a critical hub in both the San Francisco Bay Area’s regional transit network as well as the statewide rail system. It currently serves intercity passenger rail, commuter rail, local and regional bus and light rail, as well as freight rail. The station is currently being comprehensively redesigned in anticipation of an eightfold increase in passengers in the coming decades – from 17,000 daily trips pre-pandemic to over 100,000 daily trips in 2040 – as electrified Caltrain, BART, and California High-Speed Rail initiate service at the station.

The area surrounding Diridon Station has been recognized as a historically disadvantaged community (“DAC”). However, while the Screening Tool shows that some neighborhoods near the station such as Guadalupe-Washington and Tamien are overburdened and underserved, it shows that the Census Tracts immediately surrounding the station are not.

Opportunity of Diridon Station for Existing Disadvantaged Communities

Many grant programs that have environmental justice as their central focus tend to concentrate on identifying and quantifying the *primarily negative impacts* of transportation infrastructure projects on the neighborhoods in which these pieces of infrastructure are constructed. However, a multimodal hub project like Diridon Station will facilitate vastly improved non-auto access between homes, jobs, as well as educational and recreational opportunities. It will ultimately have *overwhelmingly positive effects* on disadvantaged communities that we feel could be better acknowledged and quantified in the Screening Tool. This is especially true of Diridon Station, given the way in which in which it is being designed to improve not only regional transit connectivity, but also to facilitate local street connections for pedestrians and cyclists in the immediate station neighborhood.

Maximizing Local Connections and Minimizing Negative Impacts for Underserved Communities

Improving Local Access to Opportunity for Underserved Groups

An essential physical feature of the future station is to elevate tracks 25’ above the surrounding street level. This will turn the current station and approach tracks, which currently divide the neighborhoods on either side, into a connector. The elevated tracks will create street connections across the tracks that are safer, more accessible, and more convenient, particularly for people who are walking or bicycling, as shown in Figure 2. This will be beneficial not only for individuals who live immediately adjacent to the station, but also for those who live just beyond the

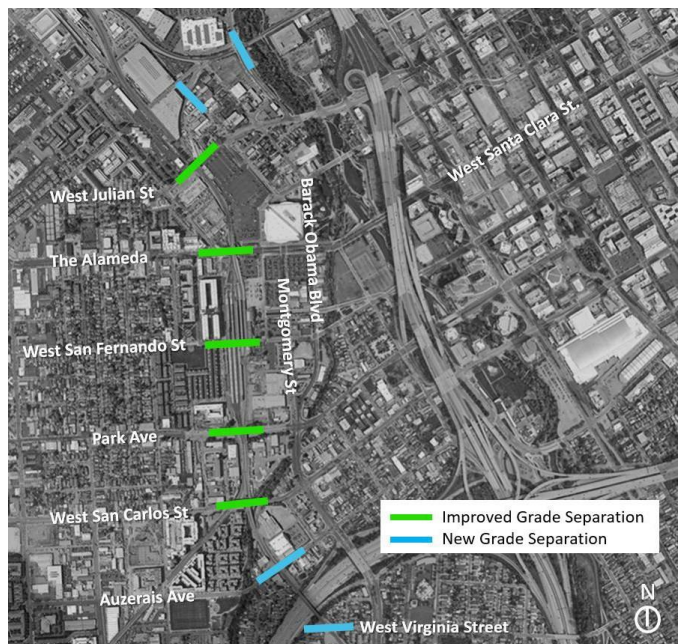


Figure 2-New and improved grade crossings created through the Diridon Integrated Station Project

station area in the disadvantaged neighborhoods of Washington-Guadalupe and Tamien and who are seeking job or educational opportunities on the opposite side of the tracks.

Minimizing the Negative Impacts of Track Infrastructure

The design of the station and track approaches has been explicitly shaped by a desire to reduce negative impacts to disadvantaged communities. A long-held notion was that future track approaches into the station from the south for California High-Speed Rail would be built along a new alignment that would have introduced significant new noise and visual impacts to the primarily Latinx neighborhoods of Washington-Guadalupe and Tamien.¹ Instead, the approved station layout specifies that track approaches generally stay within the existing northern and southern corridors, reducing disproportionate impacts to these groups.

Maximizing Regional and Statewide Access to Opportunity

As the world's preeminent center of technology and innovation, San José and Silicon Valley have attracted people from all over the world. But while Silicon Valley may be a place that offers plentiful career opportunities, many of the available jobs are only accessible to those with cars. People's access to opportunities are restricted, including Silicon Valley's most underserved and lower-income communities that are primarily Latinx and Southeast Asian. The future Diridon Station will change this by offering quick and convenient connections to new and improved high-capacity and intercity transit options, both from underserved communities in the Bay Area and the broader Northern California Megaregion, as shown in Figure 3 below. The new Diridon Station will make it possible for people living and working throughout the Bay Area and Northern California to travel in more efficient, environmentally sustainable, and affordable ways. Beyond improving transportation efficiency and air quality, the new station will also promote economic growth and facilitate access to opportunity for disadvantaged populations by putting many more places within reach of those without access to cars.

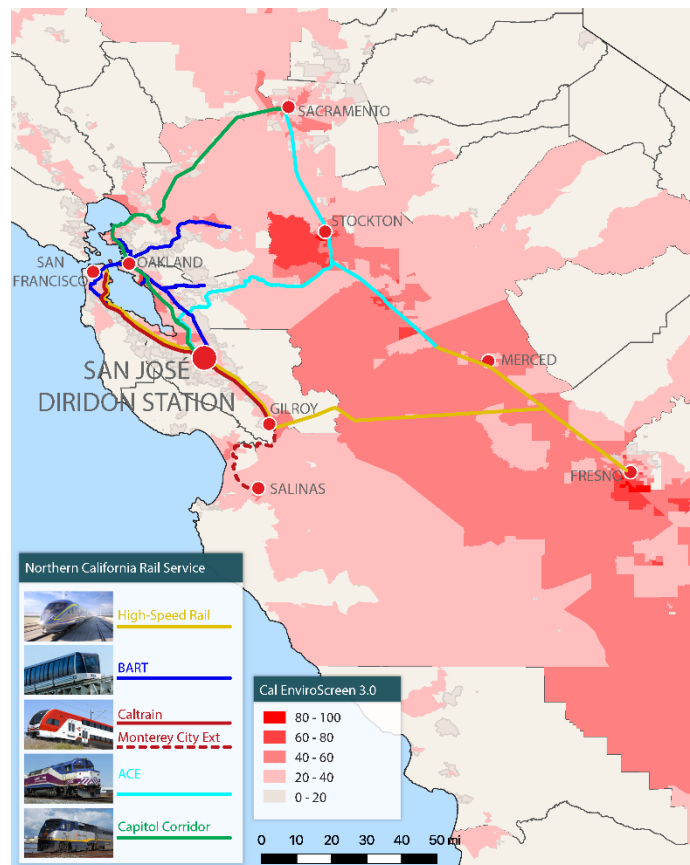


Figure 3 – Disadvantaged Communities in the Northern California Megaregion and rail connections into Diridon Station. (Source: [CalEnviroScreen 4.0 - OEHHA - CA.gov](https://www.calenviroscreen.com/)).

It is important to note that while a multimodal station hub like Diridon serves to facilitate regional and statewide access to opportunity, it also has the potential, without proper policies in

¹ <https://www.mercurynews.com/2020/01/29/where-will-new-diridon-station-tracks-cut-through-san-jose-leaders-mull-these-two-options/>

place to counteract this, to lead to increased land values, gentrification, and displacement. This is why the recently amended [Diridon Station Area Plan](#) includes a range of policies create new affordable housing (25 percent affordable housing goal within the station area). The Plan also includes specific action and commitments to avoid small business displacement.

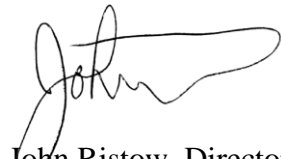
Impacts of the Screening Tool on Station Project Funding

Station projects like Diridon Station are often at a competitive disadvantage when applying for grants. While station projects may be eligible to compete for existing funding programs, evaluation metrics for most sources tend to be corridor-based, including measures of travel time savings over distances of many miles. While the City supports the Justice40 initiative and the subsequent Screening Tool, we also ask that the administration ensures that the Screening Tool does not place a transformative project like Diridon Station for DACs at a disadvantage for funding itself.

In closing, we once again would like to thank the Council for the opportunity to provide this feedback and hope that it will assist in the evolution of these important policies and tools that will advance environmental justice. If the Council has any further questions, please do not hesitate to contact Eric Eidlin, Project Manager, at eric.eidlin@sanjoseca.gov.

Thank you,

Sincerely,



John Ristow, Director
Department of Transportation
City of San José

Andrea Vidaurre

Name of Organization or Community: People's Collective for Environmental Justice

City and State: San Bernardino, CA

Region: West

Topic: Other

Brief description:

Hello WHEJAC, my name is Andrea Vidaurre - I am calling in from San Bernardino right now where our office is. I am w/ an organization called the People's Collective for Environmental Justice - our communities are at the frontline of the freight transportation system here in the Inland Empire of Southern California.

This is my first time attending a WHEJAC meeting - I appreciate all the folks here and the work I know yall have done in your communities. I admire alot of you and the work yall do here to represent our EJ movement. I also just wanna shout out yall sitting through the multiple hours these meetings take.

I wanted to give a public comment today because I wanted to raise more awareness on freight transportation pollution. Many communities throughout the U.S. are impacted by freight transportation and at the beginning of Biden's administration - he made sure to state that he was going to prioritize and commit to environmental justice. We believe that commitment must include addressing ej communities impacted by freight. Specifically - an emphasis on zero emissions and how to make a more sustainable goods movement system that meets all our needs and doesn't put that burden on the back of a few for the benefit of all.

Right now, the EPA is working on finalizing the Phase 3 GHG Rule - also known as the federal truck rule. This is the ONLY rule in which the administration has mentioned or named zero-emissions in the past 4 years. The rule is set to come in March.

This rule would regulate heavy duty trucks throughout the Country. Right now in the IE, we have ½ million trucks that drive in/out everyday to support the global supply chain. Our friends and families drive those trucks & we also live next to their routes - being exposed everyday to deadly diesel pollution. Not a phenomena for the IE but really a practice that occurs throughout many EJ communities.

So really, I feel like the Biden Administration's "commitment" to EJ is coming into question for us. The EPA's draft rule is dangerously weak. And harmful - it would lock in diesel, fossil fuels, false solutions and dangerous "new" technology solutions that are coming into our communities.

All of our communities across the Country deserve stronger rules across the board. And this Council has incredible power to validate or challenge the validity of the Biden's administration's commitment to ALL EJ communities.

We would like to ask the WHEJAC if they would stand in solidarity with our EJ communities that are a part of the Moving Forward Network & others that are part of a larger movement to transition our freight system & send a letter with your recommendations on the EPA Phase 3 Rule.

MFN sent in over 100 pages of technical and anecdotal comments to the EPA which we can share that have our recommendations. And we can also send past letters we have sent. I appreciate the WHEJAC in the past sending letters on rule-makings such as the PM and Ozone rule - and would just ask if the WHEJAC could do the same for the Phase 3 GHG Rule at the EPA.

By no means does this rule solve the problem - its going to take an all government and larger community input approach to talk about how to transition a system that works for all. But we do think this is the start & that we have to hold the Biden Administration to their word of commitment to EJ and zero emissions.

My last comment - which i hope to flush out more in future meetings is that & was inspired by the conversation that happened today - my organization has had a really hard time accessing these funds that keeps getting talked about from the Biden Administration. A bit of it is education but alot of it is the fact that as EJ communities we are tapped out fighting our local officials, fighting the industry ever day because its always something new with them tryna industrialize and displace our neighborhoods that its hard to find the time, capacity, staff, etc to work on it. So although the monetary investment to EJ efforts has been important & i see the importance of it- without regulation and accountability of the industry and long term policy change, we find it hard to engage with that type of work because we feel tapped out fighting for accountability.

Def a goal for us in 2024 is to dig into this topic more. And participate more here. Thank you for your time & yeah i hope to keep coming back. Thanks all

OTHER

Location not specified

Stephanie Herron

Hello,

Please find attached my public comment on behalf of the Environmental Justice Health Alliance for Chemical Policy Reform.

Additionally, please find attached a few supporting materials in the form of three comments EJHA and our partners have submitted in the past year regarding different air toxics rulemakings on ethylene oxide and other Hazardous Air Pollutants.

Thank you for your service and for the opportunity to comment!

Stephanie

--

Stephanie Herron

National Organizer

Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)

802-251-0203 ext.707

sherron@comingcleaninc.org

(she/her/ella)

My name is Stephanie Herron. I am the National Organizer for the Environmental Justice Health Alliance for Chemical Policy Reform. EJHA is a national network of environmental & economic justice organizations in communities that are disproportionately harmed by toxic chemicals and legacy pollution. Together with our EJHA affiliates and our partners we are working to achieve a pollution-free economy that leaves no community or worker behind.

EJHA is thankful for this Administration's commitments to take a whole of government approach to advance Environmental Justice. Our leaders are deeply committed to carrying out these commitments as evidenced by the service of several of our members on this council and our attendance at the ceremonial signing of [Executive Order 14096](#) (Revitalizing Our Nation's Commitment to Environmental Justice for All).

In that Executive Order, President Biden said "To fulfill our Nation's promises of justice, liberty, and equality, every person must have clean air to breathe; clean water to drink; safe and healthy foods to eat; and an environment that is healthy, sustainable, climate-resilient, and free from harmful pollution and chemical exposure." Unfortunately, we are still far from fulfilling that promise.

Some [recent actions](#) EPA has proposed to reduce exposure to the extremely hazardous chemicals like ethylene oxide are a step in the right direction, but in trying to understand and comment on these actions, we realized that air toxics regulation is confusing, siloed and inadequate. EPA takes a siloed and noncomprehensive approach by looking at HAPs one "source category" at a time, even though many communities—especially EJ communities have multiple facilities that are covered fully or partially by multiple source categories.

It's extremely difficult and time-consuming to even figure out which categories cover the facilities in your community. This siloed approach fails to account for the reality that we are not exposed to pollutants in a vacuum. We are exposed to multiple chemicals, from multiple facilities at once, and those cumulative and synergistic impacts can be further exacerbated by demographic factors like poverty and systemic racism. The EJ EO calls on agencies to analyze cumulative impacts, but EPA's proposed rules on the [Synthetic Organic Chemical Manufacturing Industry](#) and [Ethylene Oxide Sterilizers](#) fail to account for cumulative impacts.

In May 2019 NEJAC sent EPA a "[recommendation to regulate Ethylene Oxide to protect public health](#)". **I'm here today to ask the WHEJAC to join NEJAC, impacted communities, and advocates in calling on the White House, the IAC, EPA, FDA and OSHA to ensure long overdue protections that eliminate the danger to workers inside and EJ communities outside sterilizers, chemical plants, and other sources of hazardous air pollution like ethylene oxide on the fastest timeline possible.**

While the recent EPA proposed rules make some really important improvements to reduce cancer risk from several facilities, many communities are still left exposed to extreme health harms. There are major gaps in the way EPA regulates air toxics. Communities with facilities that do not meet EPA's arbitrarily high and non health-based "major source" threshold receive minimal protections. EJ communities that are disproportionately exposed to and harmed by these emissions need and deserve so much better. We ask the WHEJAC to join us in calling on EPA to do right by [communities in Puerto Rico](#), [Mossville, La](#), [Institute, WV](#), [New Castle, DE](#), [Houston](#),

[TX](#) and around the country who are being harmed by Ethylene Oxide and other toxic air pollution. We would be glad to work with WHEJAC to draft recommendations for how to do this.

Thank you for the opportunity to comment and thank you all so much for your service to the WHEJAC on behalf of EJ communities.

Stephanie Herron

June 27, 2023

OAR Docket # EPA-HQ-OAR-2019-0178
OPP Docket # EPA-HQ-OPP-2013-0244
Environmental Protection Agency Docket Center (EPA/DC)
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

Subject: Letter Urging Strengthening of Proposed Rule on Commercial Ethylene Oxide Sterilization Facilities and Proposed Interim Decision on Ethylene Oxide

The 114 undersigned business, community, environmental, faith, health, and labor organizations urge the EPA to include in its final commercial sterilizer rule: the regulation of offsite storage warehouses, fence-line monitoring, and a quicker compliance deadline. We further urge the agency to use its authority under FIFRA to better protect workers and communities from ethylene oxide.

Ethylene oxide is a potent carcinogen used to sterilize medical equipment, spices, and other dry foods. According to a February 2023 report from the Union of Concerned Scientists, nearly 14 million people live within five miles of a commercial sterilization facility where this process occurs.¹ Despite knowing that emissions from these facilities pose an elevated cancer risk to nearby communities, EPA has not reviewed its rules for sterilizers since 2006 and has not strengthened them since they were first put in place nearly 30 years ago. It is, therefore, particularly imperative for EPA to ensure that communities are quickly and comprehensively protected from this dangerous chemical.

Offsite warehouses must be regulated in the final rule

Once products are sterilized, they are often stored in warehouses before going to their final destination. These warehouses can have high emissions – essentially functioning as additional aeration chambers. For example, one warehouse in Georgia had estimated annual emissions of 5,600 pounds of ethylene oxide – enough to require its own air permit.²

These warehouses are often in the same communities as the sterilizer themselves – such as in Richmond, Virginia, where the warehouse is directly across the street.³ EPA identified communities like Richmond as being at an elevated risk of cancer from commercial sterilizers⁴ and stated that the rule will

¹ Union of Concerned Scientists. *Invisible Threat, Inequitable Impact. Communities Impacted by Cancer-Causing Ethylene Oxide Pollution*. Feb. 7, 2023. Available at: <https://www.ucsusa.org/resources/invisible-threat-inequitable-impact>

² Georgia Environmental Protection Division. *Georgia EPD Continues Oversight of Becton, Dickinson and Company; Issues Notice of Air Quality Rules Violation for Global Distribution Center*. December 18, 2019. Available at: <https://epd.georgia.gov/press-releases/2019-12-18/georgia-epd-continues-oversight-becton-dickinson-and-company-issues>

³ U.S. Environmental Protection Agency. *Response to 2021 Section 114 ICR from Sterilization Services of Virginia in Richmond, VA*. Available at: <https://www.regulations.gov/document/EPA-HQ-OAR-2019-0178-0246>

⁴ U.S. Environmental Protection Agency. *Community Engagement on Ethylene Oxide (EtO)*. Available at: <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/forms/community-engagement-ethylene-oxide-eto>

reduce emissions from these facilities by 80%.⁵ However, by not including offsite aeration warehouses, the agency has neither quantified the additional emissions and associated risks from these sites nor is proposing to reduce those emissions and risks. And by including onsite warehouses and not offsite ones, the rule as proposed would incentivize facilities to move all sterilized products offsite, thereby exacerbating communities' cancer risk. This is worsened further by the fact that many companies failed to report the location of their warehouses to EPA – giving communities an incomplete picture of the locations and magnitude of the risk they face.

The final rule must include fenceline monitoring with health-protective action levels – both for the commercial sterilizers and offsite warehouses

As EPA noted in its recent proposed updates to the Synthetic Organic Chemical Manufacturing (SOCMI) emission standards (where ethylene oxide is also regulated), fenceline monitoring is an important way to “ground-truth emission estimates from a facility’s emissions estimates.” Communities near commercial sterilizers similarly deserve to know how much of a carcinogen they are being exposed to. Fenceline monitoring is critical to verifying that EPA’s proposed fugitive emission controls are working. And when monitors detect unsafe levels of ethylene oxide, EPA must require facilities to identify and fix the source of the increased emissions. Intra-facility monitoring systems, as the rule proposes to require, will not adequately protect communities from a chemical that is dangerous at extremely low levels. Fenceline monitoring saves lives.

The final rule must shorten the compliance deadline from the proposed 18 months

For decades, dozens of communities across the country have been exposed to largely uncontrolled ethylene oxide pollution from sterilization facilities. Industry has been on notice that updated emissions standards were coming; EPA was required to make those updates in 2014 but now is not slated to finalize the rule until March 2024. The agency has authority to require companies to install pollution control equipment within 90 days, yet the agency is proposing to give facilities 18 months – until September 2025. This compliance deadline must be shortened. Communities have already waited too long to be protected from this deadly chemical.

EPA must use its authority under FIFRA to better protect workers and communities from ethylene oxide

EPA has also revisited ethylene oxide’s registration under the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), which covers not only commercial sterilization facilities but also hospitals and healthcare facilities where the chemical is used to sterilize equipment on site. Under FIFRA, EPA cannot maintain any ethylene oxide registration that presents unreasonable risks to public health or the environment. Given EPA’s findings of extreme cancer risks to workers in those facilities (as high as 1-in-10),⁶ as well as the known harms to surrounding communities, EPA must cancel all non-essential

⁵ U.S. Environmental Protection Agency. *Actions to Protect Workers and Communities from Ethylene Oxide (EtO) Risk*. Available at: <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/actions-protect-workers-and-communities-ethylene-oxide-eto>

⁶ U.S. Environmental Protection Agency. *Ethylene Oxide (EtO). Addendum to “Draft Human Health and Ecological Risk Assessment in Support of Registration Review” - Inhalation Exposure Risk Assessment in Support of*

ethylene oxide registrations and impose additional limits on any uses that remain. To start, EPA must prohibit the use of ethylene oxide to sterilize spices, as the European Union has already done for decades. EPA must also use its FIFRA authority to address ethylene oxide sources that are not currently covered by the proposed Clean Air Act rule – such as offsite warehouses and healthcare facilities – and strengthen its occupational controls to reduce worker exposures to the greatest extent practicable before the consideration of personal protective equipment.

Signed,

Accelerate Neighborhood Climate Action
ACFAN, Athens County's Future Action Network
AFGE Local 704
Air Alliance Houston
Alaska Community Action on Toxics
Alianza Nacional de Campesinas, Inc.
Alliance of Nurses for Healthy Environments
Appalachian Voices
Beaver County Marcellus Awareness Community (BCMAC)/EyesOnShell
Beyond Plastics
Black Millennials 4 Flint
Black Women for Wellness
Breast Cancer Prevention Partners
Breathe Project
Bullard Center for Environmental and Climate Justice at Texas Southern University
California Communities Against Toxics
California Safe Schools
Call to Action Colorado
CatholicNetwork US
Center for Biological Diversity
Center for Environmental Health
Center For Food Safety
Citizens 4 Clean Air IL
Clean Air Coalition of North Whittier and Avocado Heights
Clean Air Council
Clean Power Lake County
Clean+Healthy
CleanAirNow_EJ
Coalition for a Safe Environment (CFASE)
Colorado Businesses for a Livable Climate
Coming Clean
Comite Dialogo Ambiental, Inc.
Comite Pro Uno
Community Dreams

Registration Review. Available at: <https://www.epa.gov/system/files/documents/2023-04/eto-draft-human-health-ra-add.pdf>

Community for Sustainable Energy
Connecticut Coalition for Environmental Justice
Defend Our Health
Downwinders at Risk Education Fund
Dr. Yolanda Whyte Pediatrics
Earth Ethics
Earthjustice
Endangered Species Coalition
Environment America
Environmental Defense Fund
Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)
Environmental Law & Policy Center
Environmental Protection Network
Farmworker Association of Florida
Fire Drill Fridays
FracTracker Alliance
FreshWater Accountability Project
Greater New Orleans Housing Alliance
GreenLatinos
Healthy Environment Alliance of Utah (HEAL Utah)
Healthy Gulf
Honor the Earth
I-70 Citizens Advisory Group
Indivisible Ambassadors
Labor Council for Latin American Advancement (LCLAA)
Larimer Alliance for Health, Safety and Environment
League of Conservation Voters
Littleton Business Alliance
Liveable Arlington
Mallory Heights Community Development Corporation
Mayfair Park Neighborhood Association Board
Mental Health & Inclusion Ministries
Micah Six Eight Mission
Moms Clean Air Force
Moms for a Nontoxic New York
Montbello Neighborhood Improvement Association
Northeastern Environmental Justice Research Collaborative
Northwest Center for Alternatives to Pesticides
Nuclear Information and Resource Service
Occidental Arts and Ecology Center
Ohio River Guardians
Ohio Valley Allies
Physicians for Social Responsibility Pennsylvania
Physicians for Social Responsibility- Los Angeles
Pipeline Safety Coalition
PODER
Port Arthur Community Action Network (PACAN)
Presente.org

Protect Our Aquifer
Protect PT
Public Citizen
RapidShift Network
Respiratory Health Association
Rio Grande International Study Center (RGISC)
RISEstjames
Rural Coalition
Safer States
Save EPA
Sierra Club
Small Business Alliance
Southwest Organization for Sustainability
Spirit of the Sun, Inc.
Stop Sterigenics
Story of Stuff Project
System Change Not Climate Change
Tackling the A-Z Impact of Plastic & Petrochemicals
The Climate Reality Project
The Descendants Project
The Green House Connection Center
The Mind's Eye
Toxic Free NC
U.S. PIRG
Union of Concerned Scientists
Unite North Metro Denver
Until Justice Data Partners
Wall of Women
Waterkeeper Alliance
Western Slope Businesses for a Livable Climate
Womxn from the Mountain
Working for Racial Equity

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

National Emission Standards for Hazardous Air Pollutants: Ethylene Production, Miscellaneous Organic Chemical Manufacturing, Organic Liquids Distribution (Non-Gasoline), and Petroleum Refineries Reconsideration Proposed Rule, 88 Fed. Reg. 25,574 (Apr. 27, 2023)

Docket No. EPA-HQ-OAR-2022-0787

COMMENTS OF AIR ALLIANCE HOUSTON, CALIFORNIA COMMUNITIES AGAINST TOXICS, CLEAN AIR COUNCIL, COALITION FOR A SAFE ENVIRONMENT, DEL AMO ACTION COMMITTEE, ENVIRONMENTAL INTEGRITY PROJECT, ENVIRONMENTAL JUSTICE HEALTH ALLIANCE FOR CHEMICAL POLICY REFORM, LOUISIANA BUCKET BRIGADE, SIERRA CLUB, AND UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT

Submitted via regulations.gov and e-mail on June 12, 2023, by Earthjustice

Earthjustice submits these comments on behalf of the above listed environmental and community groups (“Commenters”), whose members and constituents live and work and whose children play and attend school near petroleum refineries and facilities in the Ethylene Production, Miscellaneous Organic Chemical Manufacturing (“MON”), and Organic Liquids Distribution (“OLD”) source categories. For years, EPA has allowed these facilities to emit dangerous levels of toxic, cancer-causing pollutants into communities’ air. This pollution settles onto the soil and water and builds up in the food they grow and the fish they eat.

Commenters support EPA’s proposal to remove the unlawful force majeure exceptions and its re-proposal of storage vessel degassing standards that apply to floating and fixed roof storage tanks. However, EPA must improve on the proposed rule in certain key ways, including by removing the so-called “three strikes” exemption for pressure relief devices (“PRDs”) and smoking flares because emissions standards must apply at all times and thus such malfunction exemptions are unlawful.

Commenters incorporate by reference the evidence and arguments included in their prior comments in the Refinery Rule docket, EPA-HQ-OAR-2003-0146; the Ethylene Production (“EMACT”) docket, EPA-HQ-OAR-2017-0357; the OLD docket, EPA-HQ-OAR-2018-0074; the MON docket, EPA-HQ-OAR-2018-0746; and on the amendments to the Risk Management Program, EPA-HQ-OEM-2015-0725.

I. COMMENTERS SUPPORT REMOVING THE FORCE MAJEURE EXEMPTION FOR PRESSURE RELIEF DEVICES AND FLARING

Commenters support EPA’s proposal to remove the so-called “force majeure” exemptions. EPA appropriately expressed concern that a force majeure exemption may make it

more difficult to determine compliance or may encourage facilities to avoid pursuing corrective actions.¹ By analyzing periodic reports from 18 refineries in Texas and Louisiana across 12.5 refinery-years, EPA determined that there were no releases from PRDs that could meet the definition of a force majeure event. 88 Fed. Reg. at 25,580. Based on reports from 22 refineries across 15.5 refinery-years, EPA found three (of eight) emergency flaring events may, as reported, meet the definition of force majeure events. *Id.* at 25,580-81. Thus, EPA appropriately concluded that a force majeure exemption is not needed. Moreover, by removing the exemption, compliance becomes easier to assess.

However, EPA should also remove force majeure exemptions because they are unlawful. While EPA continues to insist that some “components of both the PRD management provisions and emergency flaring provisions” apply at all times, EPA does not name them. *Id.* at 25,580. And it does not appear that a lawful emission standard applies to flares and PRDs at all times.

In its response to comments document in the MON rulemaking, EPA pointed to the requirement that facilities initiate a root cause analysis to assess the cause of a release from a PRD.² However, steps taken *after* a release has occurred are not standards that apply *during* a release and thus are not standards that apply continuously. Moreover, a root-cause analysis after an emission attributable to malfunction does not reduce emissions to the maximum degree achievable during the malfunction, and thus is not an emission standard under section 7412.³

In the 2020 MON final rule, EPA also pointed to the requirement that facilities monitor PRDs for any releases, and that facilities take “prevention measures,” such as using indicators or monitors, or inspecting the PRD.⁴ However, steps taken *before* a release, such as monitoring, are not standards to reduce emissions to the maximum degree achievable *during* the malfunction. The D.C. Circuit has already rejected EPA’s argument that a “general duty” provision that applies continuously but does not actually limit pollution during periods of startup, shutdown, and malfunction could satisfy the Act.⁵

¹ See National Emission Standards for Hazardous Air Pollutants: Ethylene Production, Miscellaneous Organic Chemical Manufacturing, Organic Liquids Distribution (Non-Gasoline), and Petroleum Refineries Reconsideration, 88 Fed. Reg. 25,580 (April 27, 2023).

² See EPA, Summary of Public Comments and Responses for the Risk and Technology Review for Miscellaneous Organic Chemical Manufacturing 180, 183 (May 2020) [hereinafter MON RTC], available at <https://www.regulations.gov/document/EPA-HQ-OAR-2018-0746-0200>.

³ See 42 U.S.C. § 7412(f)(2); *U.S. Sugar Co. v. EPA*, 830 F.3d 579, 608 (D.C. Cir. 2016), reh’g granted on remedy, 844 F.3d 268 (D.C. Cir. 2016).

⁴ National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review, 85 Fed. Reg. 49,084, 49,120, 49,142 (Aug. 12, 2020).

⁵ *Sierra Club v. EPA*, 551 F.3d 1019, 1027-28 (D.C. Cir. 2008) (vacating original general SSM exemption).

PRDs are only activated due to malfunction.⁶ To ensure that standards for PRDs apply at all times and reduce emissions to the maximum degree achievable, EPA must specify that any uncontrolled release from a PRD is a violation of the standards, as EPA has already done in the MON rule for PRDs in ethylene oxide service and in the OLD rule.⁷

For flares, in the 2020 MON final rule and EPA's response to comments document in the MON rulemaking, EPA pointed to the requirement that the flares' pilot flames be lit and other combustion efficiency limits (such as on the "NHVcz", or net heating value of the combustion zone gas).⁸ However, elsewhere in the RTC, EPA explains that flaring events that last less than 15-minutes are exempt from needing to demonstrate compliance with new NHVcz requirements.⁹ Moreover, EPA has not explained how a flare will comply with the NHVcz limit and achieve 98% destruction while smoking.

Commenters additionally support EPA's proposal to require refineries and EMAX facilities to make emission event data publicly available by reporting such data through EPA's Compliance and Emissions Data Reporting Interface (CEDRI). However, EPA should also require this reporting for OLD facilities, and ensure MON facilities are required to report the same quality of data regarding emissions events through the more general compliance report template. *See* 88 Fed. Reg. at 25,581.

II. EPA MUST ALSO REMOVE THE "THREE STRIKES" EXEMPTION

As discussed above, Commenters strongly support EPA's proposal to remove the force majeure provisions. For the same reasons, EPA must also remove the work practice standards that allow one or two uncontrolled releases every three years (the "three strikes" provisions) from PRDs and from smoking flares during periods of malfunction. EPA erroneously concludes that the so-called "three strikes" exemptions are reasonable.

⁶ *See, e.g.*, Proposed National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review 84 Fed. Reg. 69,182, 69,206 (Dec. 17, 2019) ("PRDs are designed to remain closed during normal operation").

⁷ *See* 85 Fed. Reg. at 49,104; 40 C.F.R. § 63.2493(d)(4) (MON standards); National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review, 85 Fed. Reg. 40,740, 40,763 (July 7, 2020) (removing prior malfunction allowance for opening a PRD or "safety device"); *see also* National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production, 79 Fed. Reg. 17,340, 17,344 (March 27, 2014) (in Group IV Polymers and Resins standards, "clarifying that pressure releases from such PRDs are prohibited").

⁸ *See* 85 Fed. Reg. at 49,120, 49,124; MON RTC, *supra*, at 180, 183.

⁹ MON RTC, *supra*, at 136.

As Commenters have previously stated in comments on the original proposals for these NESHAP and in petitions for reconsideration, “no control” is not a standard—it is an exemption.¹⁰ EPA must remove these unlawful exemptions for PRDs and smoking flares.

A. The PRD and Flare Exemptions are Unlawful Exemptions from Sections 7602(k) and 7412(d)

The Clean Air Act directs EPA to set emission standards for all HAPs emitted by a source category, and such emission standards must apply continuously to satisfy section 7412(d) and (f)(2).¹¹ When EPA previously removed the unlawful SSM exemption, it improperly created new exemptions for PRDs and smoking flares during periods of malfunction. These exemptions allowed one or two uncontrolled emissions per PRD or flare every three years and unlimited uncontrolled emissions during so-called *force majeure* events.¹² EPA’s proposed removal of the *force majeure* provision undoubtedly improves this exemption, as it removes the allowance for unlimited emissions during certain events, but it does not correct it or bring it into compliance with the Act.

First, the PRD and smoking flare work practice standards are just another variation on the original malfunction exemption and the affirmative defense to civil penalties, each of which the D.C. Circuit has found unlawful under sections 7602(k), 7604, 7413, 7412(d), and 7412(f).¹³ The Act requires that emission standards apply continuously, and EPA thus lacks authority to create any exemption from continuous compliance with emission standards. The work practice standards lift key limits on smoking flares and allow uncontrolled releases from flares and PRDs during these periods of malfunction. This violates the Act’s requirement that standards apply continuously.¹⁴ Again, “no control” is not a standard.¹⁵

Second, EPA’s creation of these exemptions—and the current proposal that leaves them in place—also runs directly contrary to its own recognition in prior administrative practice. As EPA explained in its brief defending the boiler rule, which did not include a malfunction exemption:

Hurricanes, strikes, and malfeasance can also occur at well-maintained and well-managed sources, but this does not warrant

¹⁰ See, e.g., Comments of Louisiana Environmental Action Network et al. at 100 (March 19, 2019) [hereinafter MON Comments], available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0746-0154>.

¹¹ 42 U.S.C. §§ 7412(d), (f), 7602(k); *Nat’l Lime Ass’n v. EPA*, 233 F.3d 625, 641-42 (D.C. Cir. 2000); *Sierra Club*, 551 F.3d at 1027-28.

¹² See 40 C.F.R. § 63.2480(e)(3)(v) (MON standards); 40 C.F.R. § 63.1107(h)(3)(v) (EMACT standards); see also 84 Fed. Reg. at 69,208 (“We are proposing that ‘force majeure’ events would not be included when counting the number of releases.”).

¹³ *Sierra Club*, 551 F.3d at 1028; *Natural Res. Def. Council v. EPA*, 749 F.3d 1055, 1062 (D.C. Cir. 2014).

¹⁴ 42 U.S.C. §§ 7412(d), 7602(k).

¹⁵ See, e.g., *Nat’l Lime Ass’n*, 233 F.3d at 633-34.

factoring such unpredictable events into emission standards. And again, even if malfunctions were inevitable for all sources, including the best-performing sources, that does not make it possible to take them into account when establishing MACT emission standards, because they are still unknown in frequency, length, magnitude and, most importantly, effect on emission levels.¹⁶

As EPA explained further:

It is just as difficult to establish a work practice standard for malfunctions that can approximate the level of emission reduction achieved by the best-performing sources during malfunctions as it would be to factor emission levels that occur during malfunctions into the numeric standards, as discussed *supra*. EPA would have to design a single work practice standard that applies equally to a Boiler explosion as it does to a pilot light being extinguished for an hour or innumerable types of operator error, computer glitches or a myriad of other unknown events, or alternatively create innumerable work practice standards.¹⁷

Finally, the fact that EPA has included certain requirements within the exemptions cannot save their unlawfulness. Even though EPA included reporting and root cause analysis requirements, the work practice standards still constitute a total exemption from the core requirements for PRDs and flares during malfunctions of unlimited HAP release in amount and duration. Specifically, a facility may have one or two uncontrolled PRD releases every three years without having this qualify as a deviation of the pressure release management work practice standards. Similarly, for flares, a MON source may, once or twice every three years, exceed and ignore the flare tip velocity and no-visible emissions requirements, such that a flare can smoke without repercussions and without limits. In neither instance will this be a violation or deviation of the standard. There is no limit on the amount of HAPs emitted that applies during those releases. No matter how much health or environmental harm occurs as a result, there is no deviation or violation, no penalty, and no enforcement may occur. There is no incentive for a facility to do anything to prevent or reduce emissions, when it knows it has one or two free passes to pollute from each flare and PRD.

In fact, EPA attempted to justify its original SSM exemption on similar grounds—stating that reporting and other requirements still applied—but that argument failed.¹⁸ It similarly attempted to contend that the affirmative defense provision was lawful because it only removed civil penalties.¹⁹ The court rejected each argument.

¹⁶ Brief for Respondent EPA at 43 (filed Feb. 11, 2015), *U.S. Sugar Co. v. EPA*, No. 11-1108 (D.C. Cir.) 830 F.3d 579, Document #1537028.

¹⁷ *Id.* at 49.

¹⁸ *Sierra Club*, 551 F.3d at 1028.

¹⁹ *Natural Res. Def. Council*, 749 F.3d at 1063-64.

B. The PRD and Flare Exemptions are Not Lawful Work Practice Standards under Section 7412(h)

In the original rulemakings in which it established the flare and PRD exemptions and in the current proposed reconsideration rule, EPA attempts to characterize the exemptions as “work practice standards” under section 7412(h).²⁰ Even if EPA could set work practice standards, this provision does not allow EPA to avoid its obligation to enact standards that restrict HAPs at all times.

Work practice standards are only allowed in lieu of numerical emission standards under narrow circumstances. In enacting the 1990 Amendments, Congress reiterated its “strong preference for numerical emission limitations,” permitting the use of work-practice standards “in a very few limited cases.”²¹ Specifically, EPA may not set work practice standards unless it is “not feasible to prescribe or enforce an emission standard.” 42 U.S.C. § 7412(h)(1), (2). This means that EPA may not set such a standard unless EPA determines that the pollutant cannot be emitted “through a conveyance designed and constructed to emit or capture such pollutant,” or that “application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.”²² In fact, even when EPA sets a work practice standard, such a standard must require the “maximum” degree of emission reduction “achievable,” and still be consistent with section 7412(d)(2)-(3)—that is, apply continuously.

First, the malfunction exemptions are not “work practice standards” because they do not apply continuously and are thus inconsistent with section 7412(d)(2) and (3). Because the proposed rule contains no limits on emissions from periodic malfunction and force majeure events, such emissions are *uncontrolled*. That is, there is no control that applies *continuously*. Post-hoc measures to understand why a release happened are not controls or limits on the pollution that was released. Just as the SSM reporting and minimization measures that accompanied the original SSM exemption did not make it lawful, the same is true here.²³

Second, work practice standards are not allowed because traditional emission restrictions are feasible to restrict the excess emissions. Section 7412(h) requires EPA to make a very specific finding that numeric emissions are infeasible. EPA has not satisfied that requirement here. For PRDs in particular, EPA’s assertion that emissions cannot be measured is contradicted by its requirement that sources calculate their emissions during any PRD release to the atmosphere. EPA’s reporting and recordkeeping requirements mandate facilities “calculate the quantity of organic HAP released during each pressure release event.”²⁴

Further, the standards for equipment connected to PRDs have been on the books for years without any unlawful, back-door exemptions through PRDs, demonstrating that it is “feasible to

²⁰ See, e.g., 88 Fed. Reg. at 25,880-81; 84 Fed. Reg. at 69,207.

²¹ S. Rep. No. 95-127, p. 44 (1977).

²² 42 U.S.C. § 7412(h)(2)(A)-(B); see also *Chesapeake Climate Action Network v. EPA*, 915 F.3d 310, 313 (D.C. Cir. 2020).

²³ See, e.g., *Sierra Club*, 551 F.3d at 1028.

²⁴ 85 Fed. Reg. at 49,117; 40 C.F.R. § 63.2520(e)(15).

prescribe and enforce an emission standard.” *See* 42 U.S.C. § 7412(h). As EPA proposed in the refineries rule, “emissions of HAP may not be discharged to the atmosphere from relief valves in organic HAP service.”²⁵ Or, as EPA finalized in the MON rule, “any release event” from a PRD in ethylene oxide service, “is a deviation of the standard.” 85 Fed. Reg. at 49,089. EPA should have finalized such a clear prohibition here. EPA cannot use section 7412(h) to circumvent the emission standards of equipment connected to PRDs and smoking flares through uncontrolled releases from these devices.

A recent D.C. Circuit decision underscores the fact that work practices are inappropriate for a period of malfunction because “[a]ny possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.”²⁶ Exemptions “cannot be framed in simple numerical terms, as, say, an allowance of four excessive discharges per year,” as doing so would give emitters “a license to dump wastes at will on several occasions annually.”²⁷ Again, no control is not a standard—it is an exemption. Such malfunctions and force majeure events are appropriately dealt with through “the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.”²⁸

Further, a number of sources covered by the NESHAPs at issue here have multiple pressure release devices and more than one flare.²⁹ Finalizing these unlawful exemptions would incentivize facilities to install redundant pressure release devices or flares. Operators could cycle through pressure release devices, sealing off each one after a release event to avoid repeated violations of the underlying equipment’s emission standards. In the same way, emissions could be routed away from controlling flares to an endless number of cycling pressure release devices resulting in unlimited emissions with no technical violation. Instead, treating releases from PRDs and smoking flares as violations would incentivize operators to do the planning/maintenance, etc., to eliminate the root causes of these releases.

Even if EPA could set work practice standards for PRDs and flares rather than prohibiting facilities from routine, uncontrolled releases, the malfunction exemptions do not reflect the “maximum” degree of emission reduction “achievable.” As Commenters have

²⁵ *See* Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 79 Fed. Reg. 36,880, 36,912 (June 30, 2014).

²⁶ *U.S. Sugar Corp.*, 830 F.3d at 608.

²⁷ *Weyerhaeuser Co. v. Costle*, 590 F.2d at 1011, 1057 (D.C. Cir. 1978) (citing *Am. Petrol. Inst. v. EPA*, 540 F.2d 1023, 1036 (10th Cir. 1976) (denying excursions)).

²⁸ *Weyerhaeuser Co. v. Costle*, 590 F.2d at 1058.

²⁹ In the recent proposed rulemaking discussed below, EPA recently estimated that there are an average of 14 PRDs per Hazardous Organic NESHAP (HON) process, for a total of 8,876 PRDs within the source category nationwide. *See* Memorandum from Eastern Research Group, Inc. to EPA, Re: Review of Regulatory Alternatives for Certain Vent Streams in the SOCM I Source Category that are Associated with Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs at 12 (March 2023), *available at* <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0730-0100>.

previously noted, the best-performing PRDs emit nothing, and the best-performing flares do not smoke.³⁰

C. EPA Must Remove the Exemption and Require Continuous Control, as EPA Has Required for PRDs in Ethylene Oxide Service

EPA must remove the exemptions for PRDs and flares and require that operators control emissions continuously, as it has already done for PRDs in the OLD source category and for PRDs in ethylene oxide service at MON sources.³¹ In the Final Rule for OLD, EPA “remove[d] the allowance for [pressure relief] devices,” stating that “[t]he final rule requires that opening of pressure relief devices in OLD transfer operations is a deviation,” because “[i]t is our intent that owner/operator would report a deviation upon opening of a safety device and releasing unregulated emissions or emissions in excess of a limit.”³² In the Final Rule for MON, EPA specified that “any release event” from a PRD in ethylene oxide service, “is a deviation of the standard.” 85 Fed. Reg. at 49,089. The fact that EPA has recognized the necessity of such controls for some PRDs but has not applied equal controls to other PRDs or to flares underscores the unlawfulness of the exemptions. Treating these releases so differently is also arbitrary and capricious.

Similarly, in the recent proposed NESHAP rule for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and the Groups I and II Polymers and Resins Industries, EPA has proposed “the same provision that we finalized in the MON for PRDs in EtO service”: that “any release event from a PRD in EtO service is a violation of the standard” and that “any release event from PRDs in the Neoprene Production source category facilities is a violation of the standard.”³³ EPA justified these requirements for PRDs in ethylene oxide service on the basis that ethylene oxide emissions from PRDs comprised so much of the human health risk from the SOCMI source category. Specifically, the maximum individual lifetime cancer risk (MIR) “posed by the [SOCMI] source category is 2,000-in-1 million, driven by EtO emissions from PRDs (74 percent).”³⁴ EPA justified its prohibition on PRD releases from the Neoprene Production source category (i.e., the source category involving chloroprene emissions) on similar grounds: “given the high potential risk posed by chloroprene from PRD releases” and that “we are concerned that allowing them could compound already unacceptable risk.”³⁵

³⁰ See, e.g., MON Comments, *supra*, at 116-27, 128-37.

³¹ See 85 Fed. Reg. at 49,104; 40 C.F.R. § 63.2493(d)(4).

³² EPA, Organic Liquids Distribution Response to Comments, EPA-HQ-OAR-2018-0074-0075 at 83, 85, 88; 85 Fed. Reg. at 40,763 (removing prior malfunction allowance for opening a PRD or “safety device”).

³³ See Proposed New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 88 Fed. Reg. 25,080, 25,116, 25,118 (April 25, 2023).

³⁴ *Id.* at 25,106, 25,116.

³⁵ *Id.* at 25,118.

While EPA has unfortunately proposed the same “three strikes” exemption for the majority of PRDs in the SOCOMI source category and the Groups I and II Polymers and Resins Industries (i.e., all PRDs not in ethylene oxide service and not in the Neoprene Production source category), the agency admitted the vast scope of the problem and the potential scale of emissions that would be allowed by the “three strikes” exemption: specifically, “[p]ressure relief events from PRDs that vent to the atmosphere have the potential to emit large quantities of HAPs.”³⁶

Given that EPA has demonstrated the need for and capability of prohibiting PRD releases for PRDs in the OLD source category, for PRDs in EtO service in the MON and SOCOMI source categories, and for PRDs in the Neoprene Production source category, EPA should do the same for all PRDs in the source categories under reconsideration here.

III. COMMENTERS SUPPORT EPA’S PROPOSED STORAGE VESSEL DEGASSING STANDARDS

In the proposed rule, EPA has re-proposed a storage vessel degassing standard that applies to both fixed roof and floating roof storage vessels covered by the EMACT, OLD, and MON standards. 88 Fed. Reg. at 25,581. Commenters support this standard and agree with EPA’s reasoning that it must set a standard that applies to all storage vessels and may not leave degassing emissions from floating roof vessels uncontrolled.

In the EMACT, OLD, and MON rules, EPA finalized a standard that sets specific requirements for the degassing of storage vessels.³⁷ Specifically, the standard requires operators to degas storage vessels to certain concentration thresholds—less than 10 percent of the lower explosive limit—before opening them to the atmosphere. 88 Fed. Reg. at 25,581. Even though EPA based the new standards on Texas permit conditions that industry groups cited in their comments, the same groups raised issues in their reconsideration petition with EPA’s application of the standards to both fixed roof *and* floating roof storage vessels. *Id.*

As EPA correctly asserts, it would be improper to apply the standards only to one type of storage vessel while leaving degassing emissions from floating roof vessels uncontrolled, as “EPA is required to set MACT standards for each emission source.” *Id.* at 25,582. The Clean Air Act is clear that EPA must set limits for all uncontrolled HAP emissions.³⁸ This includes degassing emissions from *all types* of storage vessels.

While “operators have historically considered degassing emissions from shutdown of storage tanks to be covered by their SSM plans,”³⁹ EPA correctly removed the unlawful SSM

³⁶ *Id.* at 25,158.

³⁷ See 88 Fed. Reg. at 25,581-82; 40 C.F.R. § 63.1103(e)(10) (EMACT standards); 40 C.F.R. § 63.2346(a)(6) (OLD standards); 40 C.F.R. § 63.2470(f) (MON standards).

³⁸ See *Louisiana Env’tl. Action Network v. EPA*, 955 F.3d 1088, 1096 (D.C. Cir. 2020) (“LEAN”) (holding EPA must add missing limits for uncontrolled HAP emissions).

³⁹ See National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review, 85 Fed. Reg. 40,740, 40,752 (July 7, 2020).

exemption from all three source categories pursuant to the Clean Air Act requirement that emission standards must apply continuously.⁴⁰ With the removal of the exemption, storage vessel degassing emissions were uncontrolled, and EPA acted correctly in promulgating the new standards.

One area in which Commenters raise questions about the storage vessel degassing standards is with respect to compliance reporting and recordkeeping. The standards specify that operators must determine the degassing concentration threshold—10 percent of the lower explosive limit—“using process instrumentation or portable measurement devices and follow procedures for calibration and maintenance according to manufacturer’s specifications.”⁴¹ However, there does not appear to be a specific requirement for operators to record or report their compliance with this measurement. The regulatory subparagraph including the degassing standard does include certain recordkeeping requirements, but these appear to be with respect to the “general duty to minimize emissions”:

Comply with the requirements in § 63.2350(d) for each storage tank shutdown event and maintain records necessary to demonstrate compliance with the requirements in § 63.2350(d) including, if appropriate, records of existing standard site procedures used to empty and degas (deinventory) equipment for safety purposes.⁴²

In order to better ensure compliance with the new storage vessel degassing provisions, EPA should revise the standards to include more specific reporting and recordkeeping requirements.

For the reasons stated above, Commenters support EPA’s re-proposed storage vessel degassing standards and their application to all storage vessels covered by the EMAX, OLD NESHAP, and MON standards. Commenters additionally recommend that EPA adopt more specific compliance reporting and recordkeeping requirements for these standards.

IV. ADDITIONAL COMMENTS REGARDING MON EQUIPMENT IN ETHYLENE OXIDE SERVICE

Commenters raise three additional comments regarding the technical corrections and clarifications to the MON standards regarding the potent carcinogen, ethylene oxide.

First, Commenters agree with EPA that there must be no delay of repair for equipment in ethylene oxide service. Such a delay would allow continuing releases of this potent carcinogen.

Second, Commenters oppose calculations as an alternative to sampling and analysis in determining the ethylene oxide concentration in storage tank material. Calculations introduce uncertainty and are often underestimated.

⁴⁰ See *Sierra Club*, 551 F.3d at 1027-28.

⁴¹ See, e.g., 40 C.F.R. § 63.2346(a)(6).

⁴² See, e.g., 40 C.F.R. § 63.2346(a)(6)(iii); 40 C.F.R. § 63.2350(d) (providing “general duty to minimize emissions”).

Third, while EPA states that scrubbers that use an acid solution are “necessary” to control ethylene oxide, other types of scrubber liquid are still being used even when ethylene oxide is present. 88 Fed. Reg. at 25,586. EPA should thus require that scrubbers in ethylene oxide service use acid solutions to control ethylene oxide.

CONCLUSION

For the reasons explained above, Commenters support EPA’s removal of the force majeure exemptions and urge EPA to remove the unlawful three strikes exemptions and take further steps to reduce emissions of the potent carcinogen, ethylene oxide from MON equipment in ethylene oxide service. Commenters also support EPA’s re-proposal of the storage vessel degassing standards and recommend that EPA adopt more specific compliance reporting and recordkeeping requirements for these standards.

Commenters appreciate EPA’s time and consideration of these comments.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Docket No. EPA-HQ-OAR-2022-0730

Proposed New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 88 Fed. Reg. 25,080 (April 25, 2023)

Introduction

The Environmental Justice Health Alliance for Chemical Policy Reform (EJHA) is a national collective of grassroots Environmental and Economic Justice groups located throughout the United States. Along with our partners, we support a diverse movement towards safe chemicals and a pollution-free economy that leaves no community or worker behind. EJHA organizes direct engagement in industry reform strategies by grassroots organizations in frontline communities to promote just outcomes. EJHA hosts a network and policy platform engaging organizations and individuals in advocacy for communities that are disproportionately impacted by toxic chemicals, from legacy contaminated sites, from ongoing exposure to polluting facilities, and from toxic chemicals in consumer products. The EJHA network model features leadership of, by, and for local Environmental Justice groups with participation and support by additional allied groups.

The EJHA Network is aligned in a principled strategic partnership with the environmental health network Coming Clean. Coming Clean is a nonprofit environmental health collaborative working to transform the chemical industry so it is no longer a source of harm, and to secure systemic changes that allow a safe chemical and clean energy economy to flourish. Our members are organizations and technical experts — including grassroots activists, community leaders, scientists, health professionals, business leaders, lawyers, and farmworker advocates — committed to principled collaboration to advance a nontoxic, sustainable, and just world for all.

Our work together is guided by the [Louisville Charter for Safer Chemicals: A Platform for Creating a Safe and Healthy Environment Through Innovation](http://www.louisvillecharter.org/), a vision and set of principles to guide transformation of the chemical industry, backed by policy recommendations. This Charter is endorsed by over 100 diverse organizations across the country. The very beginning of the Charter recognizes that: “Justice is overdue for people of color, low-income people, Tribes and Native/Indigenous communities, women, children and farmworkers, who experience disproportionate impacts from cumulative sources. This chemical burden is unprecedented in human history and represents a major failure of the current chemical management system.”¹ The

¹ The Louisville Charter for Safer Chemicals. <http://www.louisvillecharter.org/>

hazardous chemicals manufactured, stored and processed at chemical facilities, such as HON and P&R facilities, not only disproportionately impact Black, Latino and low-income communities, they continue to have toxic impacts across the chemical supply chain, often ultimately ending with disposal, burning or application in other EJ communities.²

We appreciate the EPA's consideration of these joint comments on these critical rules to protect public health and the environment. The undersigned commenters represent represent fenceline community, worker, environmental justice, business, conservation, science, health and other constituencies that are deeply committed to ensuring that the EPA get these rules right. Commenters support EPA's proposal to strengthen the New Source Performance Standards (NSPS) and the Hazardous Organic NESHAP (HON) for SO2 sources, and the NESHAP for P&R sources as a step in the right direction, but call on EPA to improve the proposed rules in the following critical ways to protect the people and constituencies that we represent.

There is no such thing as acceptable risk

“Environmental Justice Health Alliance for Chemical Policy Reform” is a long but deeply intentional name given to EJHA by members of the Alliance themselves. EJHA affiliate members are largely small grassroots environmental and economic justice organizations motivated to do their work by deep ties within and love for their families, neighbors and communities. Many EJHA affiliate organizations have zero paid staff members (others have few) and many of the volunteers—and/or staff—who lead these organizations are struggling with health challenges within their own families. EJHA affiliates chose this long but intentional name for EJHA because they know that health is at the very heart of how people experience the environment. Environmental Justice advocates define the “environment” as where we live, play, pray, work and go to school. We know that every person, regardless of age, race, gender, citizenship, religion or anything else, intrinsically has the basic human right to live in an environment that is healthy and safe. The mission of the Environmental Protection Agency is to protect human health and the environment.³ The basic human right to health is what these rules need to deliver to our communities, and what EPA is obligated both morally and legally to ensure to all people under the Clean Air Act.

The only acceptable cancer risk and other health risk to communities is zero. If the EPA staff reading this comment only take one sentence away from this comment, let it be that one. As detailed later in this comment—and in the additional technical comment on this rule joined by

² Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Center for Effective Government. (May 2014). *Who's in Danger? Race, Poverty and Chemical Disasters*. <https://ej4all.org/assets/media/documents/Who's%20in%20Danger%20Report%20FIN>

³ Environmental Protection Agency. (Accessed July 7, 2023). Our Mission and What We Do. <https://www.epa.gov/aboutepa/our-mission-and-what-we-do#:~:text=The%20mission%20of%20EPA%20is%20to%20protect%20human%20health%20and%20the%20environment>.

EJHA and Coming Clean—even though the proposed rules are a significant improvement from those currently in place, the proposed rules still leave thousands of people above EPA’s “acceptable risk” threshold of 100 in 1 million. However, EPA’s assessment and regulation based on a cancer risk benchmark of 100 in 1 million misses the mark entirely. There is no such thing as an “acceptable” cancer risk. Eliminating the risk of cancer, respiratory illness and other health harms is what EPA should be striving toward in this and every rule.

The real and present danger posed to communities by toxic air pollution from HON and P&R facilities is not theoretical. These health harms devastate real people with names, faces, families and lives. They result in lost time and productivity at work, at school, with family, and significantly diminishes quality of life, and lives lost. It is unconscionable and illegal for EPA to continue to allow polluters covered by these rules to externalize the cost of their operations and onto the people who live, work, worship and go to school in and around their facilities (and beyond).

Because the data EPA used to calculate the health risks for HON facilities in EPA’s “community risk assessment” was based on modeling of facility-self reported data, it is almost certainly dramatically underestimating. EPA openly acknowledges that for the facilities which conducted fenceline monitoring as part of the information collection rule, the modeled concentrations at the fenceline were significantly lower than what was actually measured.⁴ This was true for all the contaminants at all facilities. This means that the published risk estimates which are based on modeling and not monitored levels, are likely far too low. Further, the source categories at issue in this rulemaking are only a few of the EPA regulations that are allowing continued health harm and disproportionate impacts in communities of color and low income. Looking at the cancer and other health risks in this segmented way down plays the real danger communities and workers inside facilities face.

EPA needs to look at the HON + P&R rules in the greater context of cumulative impacts and act to holistically reduce the health risks these chemicals pose to our communities

Hazardous air pollutants pose increased cancer risk, reproductive, developmental, neurotoxic, endocrine-disrupting, and other serious health harms. The communities that surround facilities emitting these hazardous air pollutants are disproportionately communities of color and low-income communities, and in many communities, they are emitted from multiple sources that

⁴ Clean Air Act Section 112(d)(6) Technology Review for Fenceline Monitoring located in the SOCM I Source Category that are Associated with Processes Subject to HON and for Fenceline Monitoring that are Associated with Processes Subject to Group I Polymers and Resins NESHP (March 2023) Tables 2-7. <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0730-0091>

are regulated under different source categories yet located at the same facility or very nearby.^{5,6} Fenceline residents don't breathe in one hazardous air pollutant at a time, and they experience a variety of additional sources of chemical and non-chemical stressors that are delivered through a variety of social and environmental ways.

Take the community of Mossville, LA, as one example.⁷ Mossville is a historic Black community in Louisiana founded by free Black people before the end of slavery in the United States. Mossville is now choked by more than a dozen heavily polluting industrial facilities. Calcasieu Parish, where Mossville is located, has at least nine facilities covered by this rulemaking (8 HON facilities: Westlake Styrene LLC, Westlake Petrochemicals, Eagle US 2, Axial, SASOL Chemicals, Citgo, Lotte Chemical and 1 P&R I facility: Firestone Polymers)⁸. Mossville (also now known as Westlake, LA) is identified as a disadvantaged community by the Climate and Economic Justice Screening Tool. According to that tool, Mossville is located in the 98th percentile for Proximity to RMP facilities, the 94th percentile for Wastewater discharge, the 88th for Proximity to Superfund sites and the 82nd for Proximity to hazardous waste facilities.

A number of current and former Mossville residents suffer from cancer, respiratory issues and other health problems which can be caused, and are undoubtedly exacerbated by elevated levels of pollution in the air and water. Blood-levels of dioxin in Mossville were found to be three times that of the general population.⁹ Many of the remaining community members in Mossville have been advocating for a just relocation for years. Around 2013, SASOL, a South African-owned petrochemical company, announced plans to build the world's largest ethane cracker and offered a buyout to some residents of Mossville and the nearby town of Brentwood. There is strong evidence to suggest that the handling of the voluntary buyout programs in the two towns was racially discriminatory against the Black residents of Mossville.¹⁰

EPA Administrator Regan visited Mossville in 2021 as part of his "[Journey to Justice](#)" tour. Upon visiting Mossville, Administrator Regan said "I can tell you, being on the ground here, seeing it for myself, talking with the community members, it's just startling that we got to this point. And the question really is at this point, for all of us as federal, state and local government

⁵ Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Center for Effective Government. (May 2014). *Who's in Danger? Race, Poverty and Chemical Disasters*.

<https://ej4all.org/assets/media/documents/Who's%20in%20Danger%20Report%20FIN>

⁶ Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Campaign for Healthier Solutions. (September 2018). *Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities*. <https://ej4all.org/life-at-the-fenceline>

⁷ White House Council on Environmental Quality. Climate and Economic Justice Screening Tool: Mossville, Louisiana. Accessed June 30, 2023. <https://screeningtool.geoplatform.gov/en/#13.15/30.25069/-93.26019>

⁸ Environmental Protection Agency. (Accessed July 7, 2023). [List of facilities covered by EPA's Proposed Rule to Strengthen Standards for Synthetic Organic Chemical Plants and Polymers](#)

⁹ Rogers, Heather. (November 4, 2015). [Erasing Mossville: How Pollution Killed a Louisiana Town](#). The Intercept.

¹⁰ Sneath, Sara. (November 21, 2021). [A chemical firm bought out these Black and white US homeowners – with a significant disparity](#). The Guardian.

officials: What are we going to do moving forward? We can examine how we got here and I think we should, but there needs to be a sense of urgency around a solution for how we move forward, and that's what I want to put in motion.” and added **“It's our responsibility to protect every person in this country, no matter the color of their skin, how much money they have in their pocket or their ZIP code.”**¹¹

In addition to the impacts on fenceline communities, some of the HAPs included in this rulemaking are persistent organic pollutants (POPs) which also disproportionately impact communities far away from where they originate, such as dioxins and furans. Oceanic and atmospheric currents transport these emissions into the Arctic which is a hemispheric sink for POPs that partially originate from HAPs emissions. They contaminate the environment and bodies of Arctic communities and Indigenous peoples without consent, and bioaccumulate in traditional subsistence foods.¹² Traditional hunting and fishing is both physically and culturally essential to Alaska Native communities and the persistent accumulation of POPs, including dioxins, is contributing to a cancer crisis and other health disparities in communities such as Sivuaq (also known as Saint Lawrence Island) in Alaska.

We are glad to see EPA finally acknowledging the harmful effects of furans and dioxins in the proposed rules and support this inclusion being included in the final rule. However, it is important to consider the health-harming impacts of these—and all—chemicals released at covered facilities in the real-world context in which people experience them. In the case of Alaska Native peoples this includes extremely high concentrations of POPs, on top of toxic legacy contamination left by the military, and temperatures that are warming and dramatically altering the landscape at a rate nearly four times as fast as the rest of the planet.¹³ Climate warming is exacerbating and accelerating the mobilization and transport of persistent and toxic chemicals within and into the north/Arctic. Accelerated melting of sea ice, permafrost, and glaciers is mobilizing sequestered contaminants (including industrial chemicals and mercury) and microplastics, threatening the health of our oceans, fish, wildlife, and peoples of the north.

President Biden's recent executive order on Environmental Justice requires all executive agencies to consider and address cumulative impacts of pollution and other health stressors.¹⁴ EPA must analyze and address the cumulative impacts of all facilities emitting hazardous air pollutants, including but not limited to ethylene oxide. This must involve:

¹¹ Smith, Mike. (November 18, 2021). [‘Startling’: EPA head pledges action for vanishing Black community of Mossville](#). The Advocate.

¹² Alaska Community Action on Toxics. (2009). Persistent Organic Pollutants in the Arctic—Report to the United Nations. https://www.akaction.org/wp-content/uploads/POPs_in_the_Arctic_ACAT_May_2009-2.pdf

¹³ Rantanen, M., Karpechko, A.Y., Lipponen, A. et al. The Arctic has warmed nearly four times faster than the globe since 1979. *Commun Earth Environ* 3, 168 (2022). <https://doi.org/10.1038/s43247-022-00498-3>

¹⁴ Executive Order 14096 [Executive Order on Revitalizing Our Nation's Commitment to Environmental Justice for All | The White House](#)

- Identifying all health harming chemicals being emitted from every facility and considering the cumulative risk of all of them, using the best possible science;
- Taking into account the reality that communities experience multiple chemical and non-chemical stressors;
- Taking seriously the lived experience and testimony of impacted communities and the specific facilities that communities identify as negatively impacting their health and well-being.
- Considering the health of not only where HAPs are emitted but where they finally end up as they are further transported through the environment.

EPA must finalize additional Clean Air Act rules ASAP to protect communities from HAPs

We commend EPA's attempt to significantly reduce emissions of the highly toxic chemicals ethylene oxide (EtO) and other harmful air pollutants in this rule. These chemicals contribute to the overwhelming risk of cancer and other health harms for many communities, and environmental justice communities disproportionately bear that burden. However, the source categories that are addressed in this rule are not the only sources of EtO and other health harming emissions for many communities. There are multiple rules addressing these sources of HAPs emissions, such as facilities that produce polyether polyols, chemical manufacturing area sources, and hospital sterilizers. EPA should update those rules as soon as possible to ensure the maximum possible protection for communities from these hazardous emissions. Even EPA's Risk Management Program (RMP) rule can play a role in protecting communities from HAPs emissions.

The Croda facility in New Castle, DE is a prime example of a facility that is contributing to elevated community cancer risk, but falls through the cracks due to the EPA's piecemeal regulations. Croda is a producer of ethylene oxide that is not covered by any of the EPA's proposed ethylene oxide rules to date, but we know that documented emissions and leaks of ethylene oxide are raising residents' cancer risk. None of the proposed air toxics rules addressing ethylene oxide require Croda to conduct air monitoring or take corrective action to lower its ethylene oxide emissions. Leaks of HAPs can cause major disasters. In 2018, the plant leaked [thousands of pounds](#) of ethylene oxide due to a faulty gasket, causing city officials to shut down the Delaware Memorial Bridge for seven hours. In 2020, DNREC [found](#) that Croda had exceeded its annual emission limit for ethylene oxide multiple times. Strengthening leak detection and repair regulations for more facilities like Croda, which are not covered under the current proposed air toxics rules addressing ethylene oxide emissions, can help prevent chemical disasters involving HAPs like EtO, as can strengthening the proposed RMP rule to require all

facilities to conduct a Safer Alternatives Assessment Analysis (STAA) and implement safer alternatives.

The proposed rule also does not address EtO emissions that may be driving high cancer risk for some communities. For example, EPA's proposed changes to the HON and P&R I & II rules only cover one of the facilities in Institute, West Virginia with ethylene oxide emissions, Altivia. But there are [multiple facilities](#) in Institute that are emitting ethylene oxide, and raising residents' risk of cancer. Most notably, the Union Carbide facility (now owned by Dow Chemical) produces polyether polyols, and is a huge driver of high cancer risk from ethylene oxide emissions. The area within and around the Union Carbide plant fence line has an excess cancer risk from industrial air pollution of 1 in 280, or 36 times the level the EPA considers "acceptable," according to a 2021 [analysis by ProPublica](#). But operations at Union Carbide will not be impacted by any of the [EPA's proposed ethylene oxide rules to date](#), because polyether polyols production is a different source category of hazardous air pollutants regulated by the NESHAPs. Institute is a majority Black community that has long been called a "sacrifice zone," due to its legacy contamination and the ongoing health harms that residents continue to experience today due to racist zoning laws that placed hazardous facilities in communities of color. EPA should propose updates for polyether polyol facilities like Union Carbide in Institute as quickly as possible.

Harcros Chemicals Inc in Kansas City, KS, uses ethylene oxide in its ethoxylation plant and ships ethylene oxide through the Armourdale community (an EJ community) by rail car. According to its Risk Management Plan's worst case toxics scenario, the facility could release 175,150 lbs of EtO into a vulnerability zone of nearly 6 miles, affecting 190,000 people. According to the Toxic Release Inventory ([TRI](#)), the company released 4,282 lbs of EtO in 2021. Despite using and storing mass amounts of EtO on site, this facility will also not be impacted by any of the EPA's [proposed ethylene oxide rules to date](#), because it is a surface active agent manufacturer.

If EPA is serious about reducing cancer-causing emissions to zero, you should:

- 1) **Revise and strengthen the Polyether Polyols rule** to require fence line air monitoring and emissions reductions for additional facilities that release cancer-causing chemicals into the environment.
- 2) **Revise and strengthen the Chemical Manufacturing Area Sources rule** to require emissions reductions at facilities that harm community health, but don't meet the extremely high threshold of having the potential to emit 10 tons of a single HAP or 25 tons of multiple HAPs over the single calendar year.
- 3) **Finalize the strongest possible Risk Management Program rule**, to require all hazardous facilities covered by the RMP to conduct a Safer Technology and Alternatives

Analysis, conduct real-time fenceline air monitoring, and require other common-sense hazard reduction measures that have been recommended by the Coalition to Prevent Chemical Disasters.¹⁵

EPA must act soon to release additional proposed NESHAPs rules on polyether polyols production, smaller chemical manufacturers known as “[area sources](#),” and hospital sterilizers as soon as possible. EPA must also eliminate the harm from ethylene oxide and other health harming hazardous air pollutants by finalizing a strong Risk Management Program (RMP) rule that requires all facilities to conduct a Safer Alternatives Assessment Analysis (STAA) and implement safer alternatives.

These rules must be strengthened to advance environmental justice and combat environmental racism, in line with Executive Order 14096

We commend the EPA for taking urgent and long overdue action to address the extreme cancer risk that is being driven by facilities covered under this rulemaking. If finalized and adequately enforced, this rule could go a long way toward reducing health harms in many communities and save lives. However, while the proposed rulemaking is a significant improvement from what is currently in place, even if this stronger rule is finalized, there will still be thousands of people living with “elevated” cancer risk (according to EPA’s 1 in 10,000 threshold) from SOCOMI covered facilities alone. As EPA’s demographic analysis shows, the people who would remain at “elevated risk” are disproportionately Black and low income.¹⁶ The vision of Environmental Justice laid out in President Biden’s Executive Order 14096: *Revitalizing Our Nation’s Commitment to Environmental Justice* requires that no community member or worker be left behind by health protections.

As noted earlier in this comment, Mossville, LA is one example of a community that has been left behind by centuries of environmental racism and failed by all levels of government. Until there is justice for the people of Mossville, the President’s vision and promise of environmental justice will not have been achieved.

In addition to disproportionate impacts on communities of color and low income communities due to the citing of covered facilities and the underlying “social determinants of health”, the pollution from these facilities is especially harmful to children. Because children’s bodies are still growing, some chemicals are more likely to harm them. Those chemicals include (but are not limited to) ethylene oxide and chloroprene, both of which damage DNA. Also, some people

¹⁵ Coalition to Prevent Chemical Disasters. (Accessed July 7, 2023) via regulations.gov [Comment submitted by Coalition to Prevent Chemical Disasters](#)

¹⁶ Environmental Protection Agency. (Accessed July 7, 2023). [FACT SHEET Understanding the Impact of EPA’s Proposed Rules for Chemical Plants](#)

like children, are more susceptible than others to air pollutants.¹⁷ EPA needs to act to address the generational impacts these chemicals can have to protect kids.

In addition to the Executive Order, The Clean Air Act requires that EPA consider the risk to “the individual most exposed.”¹⁸ EPA has a legal obligation to eliminate all “unacceptable” health risks and to assure “an ample margin of safety to protect public health,” including for children and the most exposed and vulnerable communities.

EPA must remove all illegal pollution loopholes and apply the law continuously for all facilities

We strongly support the elimination of exemptions for periods of start-up, shutdown and malfunction (SSM) in the proposed rule. Such loopholes are illegal and are appropriately removed in the proposed rules. That the law should apply consistently and at all times is commonsense; it is also consistent with the spirit and the letter of the Clean Air Act. People who work inside or live outside facilities can’t get an exemption from breathing when the plant has an “upset” and therefore the government cannot arbitrarily choose not to enforce the rules during those times. There are numerous examples of facilities that have significantly imperiled neighboring communities by claiming “affirmative defense” and other forms of SSM loopholes.

EPA must however eliminate all free passes to pollute from the proposed rule before finalizing. The so called “three strikes” loophole for pressure relief devices and smoking flares is in clear violation of the law as interpreted by repeated court decisions invalidating SSM and other such loopholes and it stands in stark contrast to EPA’s stated goal in proposing this rule (and [other recent proposed actions](#) to lower health harms from ethylene oxide and other hazardous air pollutants). EPA must not finalize the work practice standards it has proposed for HON and P&R I that would allow one or two uncontrolled releases every three years from pressure release devices (PRDs) and from smoking flares during periods of malfunction. This is simply an illegal malfunction exemption by another name.

These exemptions are not only inconsistent with the letter and spirit of the law, they will have real-world harmful effects on communities.¹⁹ EPA estimated that there are an average of 14 PRDs per HON process, which adds up to a total of almost 9,000 PRDs nationwide. If each PRD has the maximum allowed number of releases over a three-year period, this would be an average of ~6,000 releases per year at a direct cost to the health of communities that could go completely unenforced by the agency that is responsible for protecting them. Consistent with the

¹⁷ EPA. (2023). Research on Health Effects from Air Pollution. <https://www.epa.gov/air-research/research-health-effects-air-pollution>

¹⁸ See 42 U.S.C. § 7412 (f)(2) (A).

¹⁹ Hollingsworth et al. (3 May, 2019.) The Health Consequences of Weak Regulation: Evidence from Excess Emissions in Texas. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3382541

requirement to meet the “maximum achievable degree of emission reduction”, EPA must set an emissions limit of zero for all PRDs, since the best performing PRDs have zero emissions.

As we have noted in comments elsewhere, EPA admits, “pressure relief events from PRDs that vent to the atmosphere have the potential to emit large quantities of HAPs.”²⁰ Under the risk-based standards for EtO and chloroprene, EPA **correctly** does not propose to allow the loophole for PRDs that emit ethylene oxide or chloroprene. We support this decision. But EPA’s reasoning points to the need to close the loophole for all PRDs and flares. We strongly oppose malfunction exemptions that allow any facilities to have unpermitted emissions from PRDs and smoking flares and call on EPA to correct these loopholes before finalizing the SOCM rules.

EPA must improve Leak Detection and Repair (LDAR) for all facilities, with an emphasis on prevention of emissions

We support EPA’s proposal to improve leak detection and repair for facilities that emit EtO and chloroprene, but EPA’s ability and obligation to control fugitive emissions, especially from equipment leaks, is significant shortcoming in the rule and will leave many communities unjustifiably in harm’s way. As EPA found in its HON risk review, equipment leaks, and fugitive emissions more broadly, are a significant and difficult to characterize source of HAP emissions and risk from chemical plants—and they are driving extreme cancer risks in some communities. EPA should require leak detection and timely repair at all facilities, with an emphasis on leak prevention, identification and speedy repair.

This proposal is an improvement but does not do enough to protect people’s health. EPA should require the maximum achievable level of leak prevention measures, and require leak detection and timely repair at all facilities. As leak prevention and leak detection technology improve over time, EPA’s requirements to should also evolve to better reduce pollution and protect communities, with a goal of zero health risk. In the proposed rules, EPA has largely failed to account for developments in equipment leak controls that have proven successful and cost-effective in reducing equipment leaks at chemical plants, refineries, and related facilities. These include, but are likely not limited to, area monitoring, leak detection sensor networks, low-leak and leakless equipment, optical gas imaging, and components of “enhanced LDAR” programs. EPA must account for these developments in the final rule and should also provide a plan and timeline revisiting and updating leak prevention and leak detection technology requirements to keep up with technological advances.

EPA must continue to rely on the best science available

We strongly support the EPA’s reliance on the Integrated Risk Information System (IRIS) cancer risk values for ethylene oxide and chloroprene in this rule. The IRIS values were established

²⁰ 88 Fed. Reg. at 25,158.

through an extensive peer-reviewed process using the best available science and are the value most protective of public health. The cancer risk of ethylene oxide established in 2016 and reaffirmed in 2022 best protects fenceline communities from the hazards of ethylene oxide which have been known for decades.²¹ In all future rules, EPA needs to continue to use the best available science to understand the health hazards people face and act to remove those hazards.

As science and technology evolve over time, EPA needs to continue evolving their understanding of health impacts from HAPs and other chemicals. This includes recognizing the cumulative and synergistic impacts of chemical stressors with non-chemical stressors and social determinants like racism, low access to healthy foods, safe housing and transportation which impact how our bodies experience health. It also includes recognizing the health impacts for the most sensitive people, at all facets of the scientific process underlying decision-making, rather than relying on the assumption that the baseline of health for the general population is that of a healthy white man. Many people have compromised health systems that make them more susceptible to chemical and non-chemical stressors, and these stressors are experienced inequitably. These real world contexts must be reflected in the science that EPA uses to make decisions, they cannot simply be ignored due to methodological challenges. EPA needs to more proactively update their rules to reflect the most current and health protective science as this understanding evolves.

Fenceline Monitoring with appropriately protective correction active is needed to help inform and protect communities

We support the EPA’s proposal to require fenceline monitoring with corrective action for some facilities that emit six extremely hazardous chemicals (ethylene oxide, chloroprene, benzene, 1,3-butadiene, ethylene dichloride and vinyl chloride) under these rules. However, fenceline monitoring, reporting and corrective action requirements should be expanded to cover **all** facilities that release chemicals that can harm health, not just a few. It is well documented that fugitive emissions of HAPs pose significant health risks to communities, and disproportionately harm EJ communities, however it is impossible to know—let alone address—the full extent of this problem without expanding and improving fenceline monitoring requirements.

The data EPA collected as part of the Information Collection Rule clearly showed levels of pollutants at the fenceline consistently, and often significantly, higher than predicted by models that use reported emissions. Specifically, EPA notes “Overwhelmingly (as indicated by the monitor to model ratio), monitored concentrations exceeded concentrations established by the

²¹ National Toxicology Program. 2021. Report on Carcinogens, Fifteenth Edition: Ethylene Oxide. Retrieved February 22, 2022 from <https://ntp.niehs.nih.gov/ntp/roc/content/profiles/ethyleneoxide.pdf>

modeling. In some cases, this exceedance occurred by multiple orders of magnitude".²² This finding clearly illustrates that communities are exposed to greater amounts of health-harming pollution than accounted for in risk estimates. Therefore, communities need fenceline action levels that can ensure that corrective action is taken to reduce emissions when levels measured at the fenceline exceed health-based levels of concern for each chemical individually and in combination.

One of the big potential levers for reducing exposures and risk at the fenceline are the fenceline action levels, but unfortunately these are currently not based on health risk and are thus likely set too high to be protective. Action levels need to be set at levels that are low enough to be meaningfully protective of health. Where health harms can occur at levels lower than the detection level using best available current technology, EPA and companies must develop better technology. In the final rule, EPA must commit to an evaluation of health threats experienced at the fenceline based on measured levels of pollutants and a revision of action levels as necessary to ensure that fenceline communities do not continue to be burdened.

EPA should require the best currently available monitoring technology to be deployed at all facilities covered under these rules

When paired with appropriately protective corrective action levels, as detailed above, air monitoring can be a critical tool for community information as well as community and worker protection. EPA must ensure Consistent with Sections 3 and 5 of Executive Order 14096, consider “best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards”.²³ In order to do this, EPA must require the best technology possible to be deployed at every covered facility that emits and pollutant(s) that cause harm health.

This means that monitoring requirements need to specify that the monitors be sensitive and accurate enough to capture any emissions that have the potential to impact health. Where appropriate, EPA should use fenceline monitoring in combination with continuous monitoring to get a full picture. Where the technology is not currently available, or if it is not able to accurately capture emissions at the lowest level that can impact health, EPA needs to prioritize development of this technology on the fastest timeline possible—working with other federal agencies and with the private sector as needed. As air monitoring technologies evolve and improve over time,

²² Clean Air Act Section 112(d)(6) Technology Review for Fenceline Monitoring located in the SOCOMI Source Category that are Associated with Processes Subject to HON and for Fenceline Monitoring that are Associated with Processes Subject to Group I Polymers and Resins NESHAP (March 2023) Tables 2-7.

<https://www.regulations.gov/document/EPA-HQ-OAR-2022-0730-0091>

²³ Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

<https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>

EPA's monitoring requirements must also evolve. When finalizing, EPA should include a time schedule within each NESHAP rule on which they will update their monitoring requirements to keep consistent with the best available technologies.

Community right to know

Communities should be able to access information and easily understand what rules govern facilities in their area, what chemicals are being emitted and what the risks are from them. Monitoring data and other information must be accessible and multilingual.

To the maximum extent possible, EPA should make monitoring data available in real time and pair it with accessible, multilingual notifications when levels that can impact health are reached. Where reliable real time monitoring and reporting technologies are not currently available or reliable, EPA needs to prioritize their development.

People can't protect themselves from something they don't know is happening. Preventing health-harming emissions of HAPs in the first place should be EPA's #1 goal; but unless and until EPA can guarantee that every facility has completely eliminated emissions that have the potential to cause harm, then real-time air monitoring data and other forms of community notifications will remain vital. You can't protect yourself or your family in the moment if you don't know that an incident or high emission is happening in the moment. There is no going back in time and bringing your kids in from the yard, or closing your elderly mom's windows when you hear about a release a week or month after it happened.

For example, during the Croda release in New Castle, DE that is cited in an earlier section of this comment, most neighboring communities were not notified of the massive ethylene oxide release until they read about it in the paper the next day. The Delaware Department of Natural Resources & Environmental Control had the foresight to close down the Delaware Memorial Bridge (on one of the busiest travel days of the year) for fear of a spark igniting the huge cloud of volatile EtO, but they didn't have the foresight or courtesy to call the residents who are living nearby—some just a block or two away—or the elementary school within a short walk from the facility. In fact some residents reported going outside their homes to see what all the commotion and traffic was about.

In Mossville, LA and nearby Lake Charles, LA, there have been numerous examples of times when residents experience a toxic release—and sometimes even felt or heard an explosion in their homes—but didn't find out until much later that there had been a release of HAPs from a HON or other nearby facility. There are even instances where a local shelter in place was issued but folks only found out about it in the news hours or days after the fact.

At the end of the day, communities have a basic human right to know, understand and be alerted of the potential impacts of pollution that is released in and nearby their communities. If there are

instances where the technology does not exist to adequately monitor for health-harming chemicals being emitted, then EPA should require facilities to develop adequate monitoring equipment to measure and report actual emissions of all health harming pollutants or be required to transition to safer chemicals and processes that don't produce them in the first place.

EPA has a responsibility to ensure consistent, continuous enforcement of federal law across all jurisdictions as a minimum baseline of protection for communities

Enforcement is key to protecting communities from hazardous air pollution. In any and all communities where there are no additional state or local requirements, the EPA must ensure that all HAPs rules and regulations are fully, consistently and continuously enforced as the minimum standards of protection for all workers and communities. We have heard and experienced time and time again that there are wide disparities in how information is communicated and rules are enforced between different states, EPA regions, and sometimes even between facilities in the same area.

If EPA delegates authority to states or other jurisdictions to enforce the standards at issue in this rulemaking, those jurisdictions must enforce requirements that are at least as protective as the federal standard. If a state agency, for example, fails to fully and consistently any part of these standards (such as continuing to allow illegal SMM exemptions to be incorporated in the Title V permits of HON or P&R facilities), then EPA has an obligation to use their federal authority to reject that permit and potentially to revoke that delegation. This example is exactly what happened in a recent Title V permit issued by the Delaware Department of Natural Resources and Environmental Control to the Delaware City Refinery, which is included on EPA's list of HON facilities.²⁴

Additionally, EPA should make it clear in the these NESHAP rules that EPA limits are the floor and not the ceiling. It needs to be made explicit in the HON Rule that the EPA standard cannot preempt state or local programs, like the STAR Program in Louisville, KY for example, that are more protective than the EPA standard. Specifically we request that the final rule include language to clarify that local authorities may not use the EPA "acceptable risk" benchmark of 100 in 1 million to rollback local air quality regulations that are more protective than EPA's standard.

We also call on EPA to conduct and require enhanced inspections and enforcement at facilities that knowingly and repeatedly violate emissions rules (including NESHAP, RMP or other air rules). When a facility is found to be in violation of one or more rules, that facility must be required to demonstrate that they have corrected the problem(s) and prevented it from happening

²⁴ Environmental Protection Agency. (Accessed on July 7, 2023) [2022 Petition Requesting the Administrator Object to Title V Permit for Delaware City Refinery](#)

again in order to be able to resume normal operations. Penalties levied in response to violations need to be meaningful and adequate to prevent future violations, rather than just a proverbial “slap on the wrist” which are just the “cost of doing business” to these facilities, many of which are part of multi-million or even billion dollar corporations.

It is deeply frustrating and offensive to residents when they see the same units or equipment failing at a facility over and over again causing HAPs to be released into their communities, or when it becomes clear that had proper corrective action been enforced that it could have prevented the “upset” that caused a release.²⁵ For example, according to the Louisville Metro Air Pollution Control District, between January 2018 and May 2019 the Hexion, Inc. facility in Louisville, KY (which is a HON facility) “experienced 50 upset conditions resulting in excess emissions...Several of the events were repeat occurrences indicating inadequate design, operation, or maintenance of equipment.” The District further determined that “the company failed to adequately address factors in their 2014 Process Hazard Analysis” which lead to a July 3, 2018 release of formaldehyde to the ambient air when a storage tank overfilled.²⁶ These kinds of repeated releases of health-harming air pollution can and must be prevented by adequate enforcement, compliance and inspections. Enhanced inspections and enforcement should prioritize facilities with a record of violations.

Furthermore, there is a correlation between facilities that have “leaks” and then have disasters. If a facility has had incidents or releases covered under the HON or some other rule that are underreported or under-enforced, they may be more likely to have a major incident that would be covered under another rule, like the Risk Management Program (RMP) rule which regulates facilities with high-risk of chemical disaster from hazardous air and other pollutants. This is especially important for repeat violators.

For example, Shell’s Deer Park refinery, which is on the list of facilities covered by the HON rule, had a major incident in May 2023—just the kind of disaster that the EPA’s Risk Management Plan Program is supposed to be designed to prevent. This facility has self-reported 8 violations of pollution permits since 2022 alone—one of 513 such events in the last 20 years, according to TCEQ data. Shell claimed the “affirmative defense” malfunction loophole for each of these eight violations and faced essentially zero consequence as a result, until the recent explosion and days-long fire that burned releasing toxic benzene and other HAPs into surrounding communities.²⁷

²⁵ See October 2019 comment of Rubbertown Emergency ACTION (REACT) submitted to the Air Pollution District, included with the supplemental materials accompanying this comment.

²⁶ Louisville, Kentucky Air Pollution Control District. (16 Oct, 2019.) Agreed Board Order 19-02. <https://louisvilleky.gov/air-pollution-control-district/document/20191016-agreed-board-order-19-02pdf>

²⁷ Baddour, Dylan. (May 9, 2023.) Shell Refinery Unit Had History of Malfunctions Before Fire. Inside Climate News. <https://insideclimatenews.org/news/09052023/shell-refinery-fire-malfunctions-texas/>

Another example is the Westlake, Eagle US II facility in Lake Charles, Louisiana which is covered by both the RMP and the HON rule. Between the years 2004-2020, the company reported 14 chemical incidents, which together injured 12 workers, caused 5,000 people to shelter in place and 130 people to evacuate, required 27 people to seek medical treatment, and cost nearly \$12M in damages.²⁸ It is a positive development that the proposed HON rule will require fence-line air monitoring and corrective action at this facility, but it should be an enforcement priority—coordinated across EPA clean air rules and offices—given its long track record of Clean Air Act violations and failure to prevent chemical disasters. This facility should also be required by the RMP to consider and document safer alternatives.

EPA must use its full authority to prevent disasters like these in the first place by adequately enforcing the HON, P&R and other rules. EPA complex and siloed ways of regulating facilities need to be better integrated to work together to prevent disasters, reduce pollution, and protect workers and nearby residents.

EPA needs to improve and ensure consistency in public engagement

Communications and engagement have not been consistent across recent rulemakings. For example, outreach on the EtO Commercial Sterilizers rule included publishing risk assessments for the most hazardous sterilizers and conducting community meetings in these areas. High level political appointees delivered information in public information sessions on the EtO Commercial Sterilizer rule, signaling that the Agency is taking the matter seriously. Conversely, no political appointees presented information in sessions regarding updates to the proposed HON/P&R rule, the information presented was confusing and at times very technical, and less than one week of notice was given for the session, meaning many community members were not able to rearrange schedules to attend. As well, more robust advanced notice was provided to community members for the Commercial Sterilizers rule than for the other rules, and more public announcements on opportunities for engagement (including multiple days of public hearings and “walk-in” hours) learning were shared with the press than were announced for the HON/P&R rules.

Although outreach on the EtO Commercial Sterilizers rule is a step in the right direction and should be considered the floor for what is consistently repeated for other rules, *there were still opportunities for improvement.* For example, many community members still did not know about these facilities in their backyards and some of the community meetings never happened, and details about when the meetings would happen were vague and not communicated clearly. The Commercial Sterilizer hearings were held too soon after the information sessions, and the recordings for both the HON and Sterilizers proposed updates were not available in time to help community members adequately prepare for the hearings.

²⁸ Coming Clean and EJHA. “Preventing Disaster: Three chemical incidents within two weeks show urgent need for stronger federal safety requirements.” September, 2022.
<https://comingcleaninc.org/assets/media/images/Reports/Preventing%20Disaster%20final.pdf>

EPA communications need to be understandable. Information presented on the HON/P&R informational webinar was confusing for those attending. Communities should not be expected to be experts in the complexities of these regulations, and EPA should recognize that the regulations may not reflect the realities of exposure and concerns on the ground. It is EPA's responsibility to explain to community members how NESHAPs/Hazardous Air Pollution rules function as a group to reduce health harm, and to do so with consistency when engaging the public about each proposed rulemaking.

Communications and engagement are disparate across EPA regions and states. For example, the webinars presented on EtO cancer risk in EPA Region 3 were very different from each other, and the Region 3 webinars were different from those presented in Region 6. While each community has unique characteristics that may require sharing information in different ways, consistency in public engagement is essential to promote a democratic process of rulemaking.

EPA's public engagement must be meaningful. Meaningful engagement means the community is involved in drafting the policy and setting the priorities in the first place. Impacted community members need to be sitting at the table from the beginning and throughout the process, not reading it at the end.

Language justice needs to be considered across the board and be inclusive of all languages that are spoken in a given community. It is encouraging that EPA has begun hosting Spanish language interpretation of meetings and this is something that should be continued. Explanation of rulemaking and outreach to communities must be available in all of the languages that are spoken by impacted communities and communicated in a way that makes technical details easy to understand. We recommend that in addition to technical supporting documents, EPA make a plain language version documents available. These documents should be translated into all languages spoken by impacted communities and shared at the same time as the other related materials are published.

Finally, as a best practice, EPA must provide communities sufficient time to comment, particularly when multiple rules with a high level of technical detail are proposed simultaneously.

Conclusion

We appreciate the opportunity to comment on this critical and overdue EPA action to protect communities and workers from toxic air pollution. The undersigned commenters support EPA's proposal to strengthen the New Source Performance Standards (NSPS) and the Hazardous Organic NESHAP (HON) for SOCOMI sources, and the NESHAP for P&R sources. EPA's proposal takes important steps in the right direction and if finalized and properly enforced will result in emissions reductions and important improvements in lives of some communities. However, EPA must further strengthen and address key shortcomings and gaps in its proposal in

order to protect public health and satisfy the requirements of the Clean Air Act, as detailed in the above comment.

We look forward to working with you to ensure the final rules are fully protective our communities in actualization of the vision of President Biden’s Executive Orders and Administrator Regan’s commitments to protecting workers, communities and the environment.

Respectfully submitted,

Alaska Community Action on Toxics

Black Women for Wellness | Los Angeles, CA

Breast Cancer Prevention Partners

Center for Environmental Health | Oakland, CA

CleanAirNow_EJ | Kansas City, MO & Kansas City, KS

Clean Power Lake County | Waukegan, IL

Coming Clean

The CT Coalition for Economic and Environmental Justice | Hartford, CT

Delaware Concerned Residents for Environmental Justice

Dr. Yolanda Whyte Pediatrics | Atlanta, GA

Ecology Center | Ann Arbor, Michigan

Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)

Harambee House Inc | Savannah, Georgia

Learning Disabilities Association of America

Los Jardines Institute | Albuquerque, NM

Moms for a Nontoxic New York

PODER (People Organized in Defense of Earth and her Resources) | Austin, TX

Rubbertown Emergency ACTION (REACT) | Louisville, KY

Texas Environmental Justice Advocacy Services | Houston, TX

Union of Concerned Scientists

B Ker

the ceq is on a tear to destroy all the nepa environmental rules. every chance they get they tear down nepa regulations so that there is no environmental justice for the planet. the planet is suffering under biden imo. ceq has been destroying the environment for the last ten years imo. i would like ceq closed down as it is a terrorist to the natural world. it is against preserving and protecting. it is for tearing down for money. every single decision they have made has been of this caliber. it is against natural america, which is so vital to all of our health and safety. i also believe we have gone far enough with this constant pressure on equity. it has gone far enough and we need to start moving back toward common sense., biden has pushed this issue past common sense so that the us constitution is in fact being attacked by him. that is wrong and i stand with the u.s. /constitution forever. this comment is for the public record. i have signed up to speak. b ker bk1492@aol.com:

