

THE COUNCIL ON ENVIRONMENTAL QUALITY

White House Environmental Justice Advisory Council

VIRTUAL PUBLIC MEETING

Washington, District of Columbia

MARCH 30, 2021

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ATTENDEES LIST

SPEAKERS AND FACILITATORS	
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KAMALA HARRIS (<i>By Video</i>)	Vice President of the United States
CECILIA MARTINEZ, PhD	Senior Director for Environmental Justice Council on Environmental Quality (CEQ)
SHALANDA BAKER	Deputy Director for Energy Justice Department of Energy (DOE)
LUCAS BROWN	Digital Service Team Lead for Justice40 U.S. Digital Service (USDS)
CHRISTOPHER COES	Acting Assistant Secretary for Transportation Policy Department of Transportation (DOT)
GINA MCCARTHY	National Climate Advisor White House Climate Office
MICHAEL REGAN	Administrator Environmental Protection Agency (EPA)
JAHI WISE	Senior Advisor, Climate Policy, and Innovation White House Climate Office
CANDACE VAHISING	Associate Director for Climate, Energy, Environment and Science Office of Management and Budget (OMB)
GEORGE WARD	Program Analyst Environmental Protection Agency (EPA)
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PEGGY SHEPARD	WHEJAC CO-CHAIR
CATHERINE FLOWERS	WHEJAC VICE CO-CHAIR
CARLETTA TILOUSI	WHEJAC VICE CO-CHAIR
LATRICEA ADAMS	WHEJAC MEMBER
SUSANA ALMANZA	WHEJAC MEMBER
JADE BEGAY	WHEJAC MEMBER

MARIA BELEN-POWER	WHEJAC MEMBER
ROBERT BULLARD	WHEJAC MEMBER
TOM CORMONS	WHEJAC MEMBER
ANDREA DELGADO	WHEJAC MEMBER
JEROME FOSTER	WHEJAC MEMBER
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NICKY SHEATS	WHEJAC MEMBER
VIOLA WAGHIYI	WHEJAC MEMBER
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MIYA YOSHITANI	WHEJAC MEMBER
HLI XYOOJ,	WHEJAC MEMBER

PREFACE

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

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

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

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

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

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

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

**WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL (WHEJAC)
VIRTUAL PUBLIC MEETING**

MARCH 30, 2021

MEETING SUMMARY

The White House Environmental Justice Advisory Council (WHEJAC) convened via Zoom meeting on Wednesday, March 30, 2021. This summary covers WHEJAC members' deliberations during the meeting and the discussions during the public comment period.

WELCOME AND OPENING REMARKS

Dr. Cecilia Martinez, Senior Director for Environmental Justice, Council on Environmental Quality (CEQ), welcomed everyone to the very first White House Environmental Justice Advisory Council meeting. She stated that this was a momentous and historical occasion to stand up this inaugural committee and expressed appreciation for all the members agreeing to serve on the committee.

Ms. Karen Martin, Designated Federal Officer, U.S. Environmental Protection Agency (EPA), delivered a brief statement regarding the federal advisory committee meeting protocols.

Dr. Cecilia Martinez introduced and played the welcome video from the Vice President Kamala Harris.

Vice President Kamala Harris, White House, via video, addressed the committee as such: *"Welcome to the first meeting of the very first White House Environmental Justice Advisory Council. Some of you have been speaking truth about environmental justice for decades. Others here are speaking out on behalf of a generation that's fighting for your very future on this planet. And today, all of you are making history. The President and I are committed to addressing environmental justice and environmental injustice in everything we do. Because we know we cannot achieve health justice, economic justice, racial justice or educational*

justice without environmental justice. And we are confident that the work you do as members of this Council will help our administration help Americans across our country. We need your insight, your expertise, your lived experience. We need your ideas and your recommendations. Basically, we need you, period.

And, you know, I've been doing this work a long time, 16 years ago, in fact, as district attorney of San Francisco. I created the office's first Environmental Justice Unit to take on polluters. And then I continued the work as Attorney General of California and obviously as United States Senator and now as Vice President. And over the years, I've seen firsthand how dedicated the folks are who are committed to this work, and how critical this work is. So, on behalf of our nation, thank you all for joining this historic White House Environmental Justice Advisory Council. I look forward to meeting you and working with you and have a productive meeting and take care. See you soon." Video Link:

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

Dr. Cecilia Martinez reiterated that this Administration has placed environmental justice as a top priority, moving forward to build a healthy and viable set of environmental policies, energy polices, health policies and climate polices to address the issues of the most vulnerable communities. She introduced Ms. Gina McCarthy. She stated that Ms. McCarthy is the first White House National Climate Advisor, a historic position, to address climate across all the federal agencies and to ensure that climate impacts are addressed in vulnerable communities.

Ms. Gina McCarthy, National Climate Advisor, White House, began stating that the challenge of environmental justice is the challenge of climate justice and challenges to be faced together. She explained that the committee is not just looking at environmental justice, but justice and equity across all works of all agencies. She stated that President Biden made a commitment to 40 percent of clean energy investments to benefit environmental justice communities and the people of those communities. She stated that the commitment and understanding of how racial issues and equity issues injustice have to be integrated into the framing of all of the work across the government. Whether it is the frame that you have

brought to the table before, it must be the framing you bring today. She stated that the Council has an outside potential and opportunity, and the Administration's first role will be to listen before acting. She stressed that for far too long it's been the communities that are now represented that have not been listened to before. And it is those communities that have been disinvested systemically, not by accident, that we need to get our arms around, understand, and move forward with one vision of the future that is safe, healthier, opportunity laden and hopeful for everyone.

Ms. McCarthy advised that the President was scheduled to address how the focus is not just growing the economy but growing the economy for everyone and making it available to everyone, not just the chosen few. She expressed her excitement in working with a Cabinet that is more diverse than it has ever been in the history of the United States of America. She stated that it is a future that brings different views to the table that the committee will help guide. She closed thanking the committee and expressing her delight to see the familiar faces of champions to work with. Ms. McCarthy turned the floor over to Michael Regan, U.S. EPA Administrator for remarks.

Mr. Michael Regan, Administrator, U.S. Environmental Protection Agency (EPA), opened reiterating the appropriateness of the committee due to their body of works and courage to speak truth to power. He stated that environmental justice has found it rightful place at the center of the White House's agenda. He expressed his gratitude to the Council, as well as President Biden, for recognizing the interconnected crisis facing our Black, Latinx, Tribal and low income communities. He mentioned that President Biden's agenda is to rebuild stronger policies to make groundbreaking investments that will cut pollution from the power sector, modernize water infrastructure and clean up legacy pollution that has gone unaddressed for far too long in many communities of color. He stated that this investment strategy would complement, not replace, EPA's commitment to use its authority under the Clean Air Act to reduce harmful air pollution from powerplant smokestacks. He emphasized that even if the administration or Congress decide to pursue a clean energy standard, EPA will continue to use its authority to clean up powerplants. He stated that as the President has clearly mandated, equity will be a central consideration across the board in all of the policy and regulatory thinking. He also mentioned a commitment to strengthening the enforcement

of the Bedrock Environmental Laws and the Title VI of the Civil Rights Act to ensure violations in environmental justice communities do not go unpunished.

Administrator Regan shared a read-out from a meeting with the NEJAC members committee, whose perspectives have been essential to shaping EPA's environmental justice work. He shared that there were lengthy discussions about multiple way frontline workers, especially farm workers, have been affected by the pandemic, and the current and future economic reality facing communities as we transition to a new, cleaner economy. He stated that members spoke about struggles with cities and states making decisions that directly affect communities of environmental justice concern. The NEJAC members expressed an urgency of EPA to be more active in supporting states in their environmental efforts, especially to prioritize greater funding for the cleanup of contamination, from Brownfields to hazardous legacy sites, to ongoing wastes and military sites. He also shared the enthusiasm and optimism of the NEJAC committee for the President's whole-of-government philosophy in fighting environmental injustice, especially given how the issues of race, climate and equity are so deeply interwoven. He said that they spoke about the need for justice and funding, starting with how the American Rescue Plan, which earmarks 5 million dollars for states and local environmental justice programs, should be spent to maximize its impact on community-led efforts to change the conditions on the ground. He explained that issues were raised that spanned the gamut of enforcement and reconsideration of rules to the impact of pollution on community in the country's border areas, and the need for more resources to advance environmental justice within and outside the government. He stated that NEJAC has sets the standard for authenticity and engagement for federal advisory committees and many of its past and present members are part of the WHEJAC. He stated that collaboration with the WHEJAC committee will enhance the ability of the White House and the entire U.S. government to hear the perspectives that has long been provided to EPA. He closed expressing enthusiasm in continuing to build a relationship with the Council and working collaboratively on the NEJAC recommendations that are critical to the shared mission with the WHEJAC.

Dr. Cecilia Martinez thanked Administrator Regan and Ms. McCarthy for illustrating and demonstrating how environmental justice is going to be a fundamental part of the

Administration's priority.

Ms. Karen Martin, DFO, went through a brief overview of agenda and informed the meeting participants that the agenda is posted on the WHEJAC website at <https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council>. She informed that the video from Vice President Kamala Harris could also be found on the WHEJAC website.

INTRODUCTION OF WHEJAC MEMBERS & OVERVIEW OF WHEJAC MISSION

Mr. Richard Moore, WHEJAC Co-Chair, opened acknowledging that this is a very historical moment in the long history of the environmental and economic justice movement. He spoke in remembrance of the elders who celebrated the first People of Color Summit, noting that they are smiling down on the Summit's celebration of the 30th year anniversary this year. He recapped instances of the summit where several important things took place. He stated that environmental and conservationism was redefined as where we live, where we play, where we work, where we pray, and where we go to school and where we learn. He explained that this is very crucial to this WHEJAC moment in history. He closed with sentiments of looking forward to working with the Council and Administration as well as his Co-Chair, Peggy Shepard, to move the agenda forward.

Ms. Peggy Shepard, WHEJAC Co-Chair, acknowledge that she has been working in New York City since the late 80's to achieve environmental justice. She stated that she has been working with colleagues in the National Environment Justice Movement for the past 30 years. And since the first People of Color Environmental Leadership Summit where they developed the 17 principles of Environmental Justice, which are really critical to understanding a perspective on the range of environmental and climate issues. She stated that she was optimistic and enthusiastic to help lead efforts to center equity and justice in all government policies. She expressed gratitude in seeing so many colleagues, old and new friends, and looking forward to working with everyone to make a real difference.

Ms. Katherine Flowers, WHEJAC Vice Co-Chair, stated that it is a very historic and

meaningful moment for her to be in the company of those whom she have admired for many years. She stated that she was in Montgomery Alabama, and that she was looking forward to the opportunity to also make sure that we lift up the voices of people living in rural communities throughout the united states. She explained that these communities have been left out of all decisions when it comes to having access to the basic kind of infrastructure needs that is expected to be found in America at this particular point in time. The thanked the Council for being here.

Ms. Carletta Tilousi, WHEJAC Vice Co-Chair, stated that her tribe was located in Grand Canyon, Arizona. She shared that she was honored being selected as one of the vice chairs on this historic committee. She noted that her village has been fighting against uranium development since her childhood, and she grew up in this movement to protect the water for all generations to come. She stated that her tribe was a small tribe in the bottom of the Grand Canyon, basically far away from the city, but the pollution is reaching them very slowly. She explained that this has been an ongoing commitment of her people and herself since childhood. She ended expressing hopes that she can bring skills and knowledge to the table for this Administration. She ended with a quote, “Together we are stronger.”

Ms. Karen Martin, DFO, allowed the other WHEJAC members to introduce themselves. Ms. Martin announced that a quorum was met and turned the meeting back over to Dr. Martinez for an overview of the WHEJAC mission.

Dr. Cecilia Martinez began, explaining that President Biden signed Executive Order 14008 on January 27th. That Executive Order jump started efforts to prioritize environmental justice communities as we rebuild our economy and mobilize and build a clean energy economy that creates good jobs. And turning our vulnerable communities that have been historically marginalized and overburdened, into healthy thriving communities. At the same time, the Executive Order issues efforts to try and undertake robust actions to mitigate climate change, while preparing for the impact of climate change across rural, urban, and tribal areas. She stated that agencies shall make achieving environmental justice part of their mission by developing program, policies, and activities to address the disproportionately high and adverse human health environmental, climate-related and other cumulative impact on our vulnerable communities. She explained that this was the center point of Executive Order

14008 and that it placed environmental justice at the center of the President's agenda.

Dr. Martinez explained that Justice40 is a goal that 40 percent of the overall benefits of federal investments will flow to vulnerable communities in clean energy and energy efficiency, in clean transit and affordable and sustainable housing, and training and workforce development, and importantly in the remediation and reduction of legacy pollution in many of our communities, as well as the development of critical clean water infrastructure. She went on to say that the recommendations that the Council will provide to Justice40 will help to move towards making sure that Justice40 becomes a very strong program in the federal government.

Dr. Martinez added that Executive Order 14008 establishes an Environmental Justice Interagency Council to develop a strategy to address current and historic environmental justice. The Interagency Council will also develop clear performance metrics to insure accountability of the federal government and be responsible for publishing an annual public performance scorecard on its implementation. She explained that Executive Order 12898, the pillar of Environmental Justice since 1994, established the Environmental Justice Interagency working group convened by the EPA and almost 30 years later, it is time to update and modernize that Executive Order. She stated that the Interagency Council will build off of the incredible work the Interagency Working Group has done over the last almost 30 years thanks to the dedicated career staff that have kept environmental justice an important consideration in the federal family.

Dr. Martinez continued to explain that, of course, Executive Order 14008 established this body, the White House Environmental Justice Advisory Council (WHEJAC), to provide recommendations to the Interagency Council, helping to be the centerpiece for a whole-of-government approach to environmental justice. She stated that the Council's mission is to advise on how to increase and support the federal government to address current and historic environmental injustice. She noted some of the deliverables and priorities the Council would be providing recommendations for are updating Executive Order 12898, sharing understanding on how to develop a geospatial climate, advising on the economic justice screening tool, strengthening the enforcement of environmental violations and

disproportionate impact on underserved communities, creating a community notification program to provide real-time data to the public on current environmental pollution, and developing a comprehensive environmental justice enforcement strategy at the Department of Justice to provide timely remedies for systemic environmental violations and contaminations. She went on to explain that the WHEJAC members were selected for their vast experience and demonstrated commitment to the environmental justice communities. Stating that their presence is as an advisory role to CEQ and to the highest levels of government on environmental justice, and to serve the nation's most vulnerable. She also stated that there are many people across the environmental justice landscape that have the community and experienced credentials to serve on the Council, and she hopes to continue to add members to build the Council's capacity on issue expertise and diversity, to ensure that community voices can and will be heard at the table.

She closed advising the Council that they were appointed by the President of the United States and that the Administration is truly grateful for their willingness to serve. She stated that there will be a considerable amount of work in the days ahead. She stated that on behalf of Karen, herself, CEQ team, EPA team, many fellow colleagues in different agencies, that they very much look forward to working with the Council on the road ahead.

Dr. Martinez introduced the Justice40 Initiative as a landmark initiative of President Biden and Vice President Harris. She stated that the Council will hear from speakers who are helping to push the Justice40 Initiative forward.

JUSTICE40 INITIATIVE - 40% Investment Benefits

Ms. Candace Vahlsing, Associate Director for Climate, Energy, Environment and Science, Office of Management and Budget (OMB), opened affirming that it is an honor to participate in this historical event today. She reiterated that in the Executive Order, the President committed to deliver environmental justice in communities across the country while creating good paying jobs. She explained that delivering on those promises include making decisions that are driven by data and science, targeting resources in a way that are consistent with environmental justice, climate justice and economic justice. She stated that one of the most

effective tools we have, to turn disadvantaged communities that have been historically marginalized and overburdened into healthy thriving communities, is Justice40, to ensure we grow good paying jobs and a just economy.

Ms. Vahlsing continued to explain Justice40. She stated that in President Biden's first week, he committed to directing 40 percent of the benefits of climate and clean energy infrastructure investments to disadvantaged communities that have been marginalized and overburdened. She noted that eligible investments include climate change, clean energy, energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution and the development of a critical clean water infrastructure. She displayed examples of applications of Justice40 and highlighted a few: existing funding that is not already allocated, the American Rescue Plan of 2021, noting that has 1.9 trillion dollars of funding and targeting part of that benefit towards environmental justice communities is in the works. She noted a third is the President's budget, which will be released soon.

Ms. Vahlsing shared that in terms of ongoing work, there is a lot to do. She highlighted a few of the works in progress. She stated that the first thing is identifying a baseline and existing programs to achieve Justice40. That includes selecting government-led budget data and performance information that will provide a framework towards how we implement Justice40 and measure benefits, adding, being mindful of related workstreams on the implementation of Justice40 and other executive orders including executive orders on racial equity, the intergovernmental working group on coal powerplant communities and economy revitalization. She stressed that the mission is collaboration across the whole of government.

Ms. Vahlsing went on explaining that soon will begin the process of developing interim guidance for agencies on how to implement Justice40 as there is a 120-day timeline in the Executive Order. She added that the team is considering options for the environmental justice scorecards to ensure accountability for achieving Justice40, and that they are learning from states with similar existing efforts to ensure the best information is taken into account. She closed advising that OMB is looking forward to consulting with the WHEJAC committee and thanked the committee for their time and service.

Ms. Shalanda Baker, Deputy Director for Energy Justice, U.S. Department of Energy (DOE), took the floor as the next speaker to talk about where we've been, where we are and where we're going. She acknowledged the committee's advocacy and scholarship over the last 30 years, and some would say 40 or 50 years. She noted that we wouldn't be here in this moment, where there is a position called the Deputy Director for Energy Justice at the Department of Energy, without the committee's advocacy.

Ms. Baker began with where DOE is currently. She noted that there is a new role that was created to help facilitate the Justice40 initiative at DOE. She reminded everyone that there is a 41 billion dollars budget at the Department of Energy, and that a lot of work revolved around research and development as well as deployment of energy resources on the ground. She stated that the question she had, when she joined the Department of Energy, was how do we bring justice to scale across this massive complex that includes 14 thousand employees and almost 100 thousand people in labs around the country? She stated that the works started was to evaluate justice in every aspect of the work at the Department of Energy, from procurement, to grants, to policies, to processes and programs. She stated that as one of the persons sitting amidst all of these executive orders, she's not only helping to execute Executive Order 14008, but also 13985, which is the Equity Order. She stated that she is delighted to hold all of that work as a separate total advisor on equity.

Ms. Baker continued to say, the question of how do we bring justice to scale across DOE will be reflected in some of the outputs. She explained her 100-day project is the Justice40 Dashboard. She stated the Justice40 Dashboard will be a public-facing dashboard for everyone in the world to see how DOE is spending its money. And that's a broad crosscut against all of the things being done, and will evaluate the procurements, the grants and program dollars. She noted that this will allow people to see where DOE is spending money at a zip code level and encouraged everyone to keep their eyes open for that.

Ms. Baker also shared that DOE is engaging in stakeholder engagement. And that conversations with various stakeholder groups were started and will continuing through roundtables with Secretary Granholm, as well as ongoing engagements on a more

individualized basis with certain movement leaders. She noted that many of the committee members have been working tirelessly since they've learned about Justice40, when it was called Environmental Justice40 in the campaign, and planning for this moment which is historic in nature. She advised the group that this is the moment everyone has been waiting and fighting so hard for.

Ms. Baker discussed that there are some serious gaps to fill, and energy burden is something that plagues communities of color and frontline environmental justice communities. These communities are paying a lot for electricity. She stated that getting at the issues with respect to energy burden is one part of the broader set of issues that will be evaluated. Noting that DOE will look at how to leverage resources to increase the amount of distributed energy resources, clean energy resources that are going on the grid in frontline communities. She stated that the goal is deeper resiliency, economic security, and filling the gap that has been created by this pandemic, which has really devastated frontline communities around the country. She encouraged the committee to keep her accountable and to stick with her through this very difficult work. She ended with a repeat of the question of how do we bring justice to scale both inside DOE and in the programs that are executed outside of it? She urged the committee to keep their eyes open for the dashboard which will be coming out on day 100.

Mr. Christopher Coes, Acting Assistant Secretary for Transportation Policy, U.S.

Department of Transportation (DOT), took the floor as the next speaker to discuss what they are doing at the Department of Transportation on Justice40. Mr. Coes started with explaining that within his portfolio he helps advise the Secretary on any type of service reauthorization, recovery package as well as on a number of discretionary current programs. Prior to joining USDOT he worked over ten years in Smart Growth America, working on environmental justice. He went on to explain that transportation has a fundamental role in how we get around communities. He noted that there is a historical element that has driven a lot of environmental challenges that are still faced today. He expressed his distinct honor to represent Secretary Buttigieg and fellow colleagues at DOT and share a few key highlights on plans to advance transportation equity, including environmental justice.

Mr. Coes continued on to say in response to President Biden's Executive Orders, USDOT

immediately created an Executive Leadership Team to guide overall implementation. He noted that this demonstrates commitment from the Secretary level as well as middle administrators, whether it's transit administration or highway administration, as well as research and budget teams. He stated that a serious deep dive is being taken into DOT's internal and external practices, and how those practices impact and advance transportation equity. He shared that there are a number of key areas to identify as DOT has been, in these areas, on the forefront trying to mitigate environmental justice issues.

Mr. Coes noted posed the question, how can we actually create transition policies that actually elevate environmental justice issues versus being in mitigation? He noted that as part of that question, six workstreams were identified: Data assessment, workforce development, stakeholder engagement, innovation as well as budget, as key areas of focus. He explained that it was recognized that these were not issues that DOT could discuss internally and engagement from the committee, as well as focus groups for very honest, targeted conversations, would need to take place. He shared that over the next several weeks, DOT will be launching a request of information on what can be done better, what are some of the key datapoints. And specifically, how can Dot drive more transportation investments to meet Justice40. He noted that DOT recognizes that more research is needed and a lot more tracking of investments, particularly working with transit agencies and others who oftentimes may not look at these issues directly. He shared that the Secretary also established, for the first time, The Equity Task Force. This taskforce brings not only the leadership team of USDOT, but also the rank and file career staff who have been in the trenches working on these issues for dozens of years, who also are bringing their owned lived experience to the table, working with some of these key issues.

Mr. Coes went on to explain that in addition to carrying out both the executive orders around climate and equity, DOT recognized immediately that on an annual basis this was a 72.4 billion dollars budget where money was put on the ground in real time. He noted that in response to the Executive Orders, DOT reviewed and retracted grants that were going out of the door by the previous Administration. He stated that in using the Justice40 and the Climate and Equity Executive Order, DOT could reassess and potentially realign some of the executive orders and some of the discretionary grants. He pointed out particularly an 800

plus million dollars grant that was allocated to help improve highway and freight dollars. And added that for the first time, DOT was able to include equity, environmental justice as well as other additional sustainability criterion as part of that grant. He cited this as just one example of how DOT is moving forward to make sure that environmental justice, Justice40 principals, serves underserved and overburdened communities that have been long left behind.

He wrapped up stating that DOT is trying to do thing in real time, looking back and looking forward. He reiterated that the DOT is asking some very basic questions: how do we actually track our dollars? How can we really show the impact, both the legacy and the promise? How can we talk about the mitigation of the things that were done, and how can we create more communities of opportunity? He also displayed a dashboard that will help define what Justice40 will look like on the ground. He echoed encouragement that the committee and DOT will work together to assure that these are the correct indicators for planning and buildout to meet the goals of the current Administration.

Dr. Cecilia Martinez, CEQ, thanked the speakers for sharing information and opened the floor for questions.

Mr. Robert Bullard, WHEJAC Member: Are all the federal agencies providing this same dashboard information about the resources from the various agencies?

- **Dr. Cecilia Martinez**, CEQ: At this point agencies are not doing the level of work as DOE, but that is the goal. We want all agencies to get to the point where they are doing the same level of work as DOE and provide that information. That is why the Climate and Economic Justice Screening Tool is being developed, as well as Performance Metrics that will be put in place.
- **Ms. Candace Vahlsing**, OMB: Right now were in the phase where we're doing training for agencies to ensure that they know what Justice40 is. We start creating a baseline and seeing what programs are available to get up to speed on what we have going on right now and then we'll build from there.

- **Ms. Shalanda Baker, DOE:** I just wanted to pick up something that was asked in the chat or reflected on, by Dr. Bullard, just in case people didn't see it. But with respect to the sketch of the dashboard that we're creating at DOE. And I mentioned that we're using zip plus 4, which is our current procurement data, but we're layering on the environmental justice screening tool and other relevant metrics that our team is creating to really understand issues of vulnerability. I did want to highlight that. It's not just the straight up zip plus 4 analysis. And the effort really was to begin to start diving in on this work, understanding that Candace's office and others will be leading and have the sort of final say in terms of how it all shakes out with your input. But we really just wanted to get a head start and get our arms around what is happening at DOE at this stage.

Ms. Peggy Shepard, WHEJAC Member: For Christopher Coes – I wanted to understand why in your equity organizational chart you did not have environment and reducing pollution from cars and trucks. Environment seems to be in a different construct. And then I wanted to ask Ms. Vahlsing, if we are really to begin developing a workgroup on Justice40, I think the key thing everyone is asking is, give us an example of 40 percent of a benefit, and how you're actually providing a guidance on that?

- **Mr. Christopher Coes, DOT:** In my third slide, that question is specifically on impact and assessment of how it is actually impacting lives. And you might have seen in the breakout in terms of how we're looking at people versus places. That is definitely one of the subject areas that we're definitely looking into. Sorry if it did not come out in my words, but it definitely is in our metrics of looking at how does transportation impact lives. And more or less sometimes we talk about these conversations of how do we mitigate, let's say highway investments or other investments on communities. But actually the reverse of that, how can we create a transportation system that actually creates healthier communities, more resilient communities, and more prosperous communities. So, that is definitely a part of our thinking, currently the metrics that we're looking for, but we're definitely open to

additional conversations about how and what are some of the best datasets as well as practices to make sure that is throughout everything that we're doing at DOT.

- **Ms. Candace Vahlsing, OMB:** Great question that we really wanted to talk about without trying to get in front of that by answering that on our own. We have our thoughts here but really want to engage with you guys on the answer to that question. I'm not punting, I'm just trying to be as inclusive as possible.
- **Dr. Cecilia Martinez, CEQ:** I think the idea here is, welcome to the team, because you all are going to be helping provide input on exactly that question, Peggy. That was why we also wanted to get the WHEJAC up and started as soon as possible, so that we could benefit from all of your expertise on that.

Dr. Cecilia Martinez, CEQ, introduced Jahi Wise, Senior Advisor for Climate Policy and Innovation, White House Climate Office. She explained that Jahi has been helping lead the Interagency Workgroup on Energy Communities, on trying to figure out how to transition these communities into vibrant, healthy communities that are not independent on degrading and environmental pollution from fossil fuels.

JUSTICE40 INITIATIVE - Energy Communities Interagency Working Group

Mr. Jahi Wise, Senior Advisor for Climate Policy, and Innovation, White House Climate Office, stated that it was an honor to be at the first WHEJAC meeting. He stated that many of the members on the call are individuals he looked up to, whose books he read, while spending a decade before coming to the White House working in equitable clean energy deployment and investment. He expressed the desire to provide an update on the work of the newly formed Interagency Working Group on Coal and Powerplant Communities and Economic Revitalization, and its intersections with environmental justice. He explained that the Interagency Working Group was established by the same Executive Order that established the Justice40 Initiative. He informed that it is co-chaired by the National Climate Advisor and Director of the National Economic Council and is administered by the Department of

Energy. He noted that its membership is comprised of about 15 agencies across the federal family. He informed that the mandate of the Interagency Working Group is to coordinate the identification and delivery of federal resources to revitalize the economies of coal, oil and gas in powerplant communities. And that under this mandate, the Interagency Working Group will intentionally focus on coal, oil and gas in powerplant communities, but also the fence line and other environmental justice communities who experience the impacts of this energy infrastructure. He stated that the Executive Order actually directs the Interagency Working Group to achieve certain environmental justice outcomes through its work, including by deploying federal resources to reduce admissions of toxic substances and greenhouse gases from existing in abandoned energy infrastructure, to mitigate environmental damage to communities and also to remediate idle properties such as brownfields. And to revitalize those properties as well as help economic growth.

Mr. Wise turned to discussing where we are now. He stated that the Interagency Working Group recently finalized its first deliverable, which is an initial report to the President describing existing federal resources that can be allocated in keeping with the mandate. He noted that the Climate Office is working on a plan to make the report public and roll it out as part of larger goals. He noted that in preparing the report, a small listening session was convened with leaders from varying communities, some of whom are on the WHEJAC. He closed thanking the WHEJAC for their participation, stating that Climate Office is looking forward to building out a much larger engagement strategy to dig deeper into environmental justice and fence line communities around this issue of fossil fuel infrastructure. He stated that they are actively engaged in the Justice40 initiative overall and trying to coordinate on identifying programs and agency guidance that can align with and support the mandate.

JUSTICE40 INITIATIVE - Climate and Economic Justice Screening Tool

Dr. Cecilia Martinez, commented on how apparent it is that the agencies and committee have been talking and working together across agencies. She stated that this is an exciting time to anticipate the realized benefits of the work that has been done. She introduced Lucas Brown, U.S. Digital Service Team Lead for Justice40, U.S. Digital Service. She stated that

Lucas has been extraordinary in helping support the effort to coordinate and build out outreach. She praised him for learning how to stand up this new climate and economic justice screening tool that builds off the work that EPA has been doing through the Economic Justice Screening tool, and address issues and indicators across agencies on what should be incorporated into a full and robust justice screening tool.

Mr. Lucas Brown, U.S. Digital Service Team Lead for Justice40, U.S. Digital Service, explained he was speaking today on behalf of members from U.S. Digital Services and the Environmental Protection Agency that have been working on the Climate and Economic Justice Screening Tool. He stated that they are deeply committed to the gravity, importance, and opportunity of this work to redress a long legacy of environmental, economic and climate injustice.

Mr. Lucas continued with explaining the history of USDS. He advised that USDS originated during the healthcare.gov rescue when a number of different teams of contractors, that weren't appropriately coordinated, spent 700 million dollars building a traffic website that wouldn't turn on. He stated that a small team of USDS technologists, working side-by-side with dedicated civil servants, helped write the scripts and stopped technology problems from derailing a critical presidential priority that affects the health and wellbeing of many people. He explained that USDS become official in 2014 and have worked on an enormous number of projects since then, always trying to do the greatest good for the greatest number of people in the greatest need. He also explained that the way USDS works is with small teams of different expertise, designers, users research, engineering, project management, working and empowering civil servants on critical priorities. He stated that one of the core values from the very beginning has always been to design with users and not for them. Really making sure that people who are impacted by a government program, who are trying to use the government program, are really leading in the design of those services and their voices are being heard. He stated that the Justice40 team deeply believes in the Jemez principles of democratic organizing and self-determination. And that they also try to release software and data publicly, early, and often to get feedback and input from stakeholders.

Mr. Lucas explained that on the screening tool, USDS and EPA was asked, by Dr. Martinez,

to work on designing and building this new screening tool that will be used for the allocation of the Justice40 benefit. He noted that USDS wanted to start with what are the community needs, what are the goals, what are main points, and then work backwards to determine what technology and data supports that. He assured that a part of getting to that would be collaborating, iterating, and working repeatedly with community stakeholders, such as WHEJAC, on developing all of those things.

Mr. Lucas stated that the Executive Order directed a tool launch date for the end of July. He noted plans to release something small, but effective, that address some core needs. He stated that a goal for the launch is to build a rhythm, and build experiences, with a collaborative process of meaningful community oversight of this tool/program. He also stated that USDS is task with helping develop the Environmental Justice Agency Scorecard that is targeted for launch by the end of this year, with hopes to get a lot of feedback and continued iterations. He stated that a focus would be to work with the committee on designing what is important to measure, how to measure what is important and explore any problems with the method of measuring.

Mr. Lucas then shifted to cover USDS progress thus far. He stated that they have been building out the team on the Justice40 project. And stated that he would love to use the committee to recruit anyone who would be a good fit and has experience with product management, project management, user research and data science. He explained that the application is very straight forward and applicants may upload a resume in a 500-character field at usds.gov/apply. He opined that the salaries are quite generous. He stated that the hopes is to work with people with prior experience working with environmental justice data and on processes like this. He stated that they have conducted approximately 31 stakeholder interviews thus far, which included some meeting participants. He stated that investigation has gone into California and New York, as they have ran similar programs, to ascertain what went well and what could have gone better and what can be learned going forward.

Mr. Lucas noted that it's important not to just listen to concerns and have them go in one ear and out the other as he shared a tweet that he felt very relevant. "Why is it always "we want to engage with the community and hear your concerns" and never "We've heard your concerns and are implementing systemic changes, and here is our implementation plan so

y'all can hold us accountable"? ~Susanne Nyaga~. He stated that USDS would like to have this type of accountability and have the Council's guidance if or when mistakes are made. He stated that when the program does not seem to meet the needs, or for when there are foreseen problems, the plan is to launch an implementation plan with an allowance for accountability.

In closing, he stated that Federal, State and local governments have repeatedly and intentionally contributed to the unjust distribution of pollution burden, health hazards, climate risk in the communities of color and low-income communities for decades. He noted that, unfortunately, those policies have been quite successful. He stated that USDS is honored and humbled to be working with the WHEJAC to do the work of addressing that harm and contributing to a just transition.

Dr. Cecilia Martinez thanked the speakers for sharing information and opened the floor for questions.

Ms. Katherine Flowers, WHEJAC Member: My question is very simple, and it was regarding the Justice40 initiative. I'm very interested in wastewater. Under eligible investments, it said critical clean water. I think that if we're not specific and say clean water and sanitation infrastructure, it goes over peoples' heads that don't have that problem. I would like to keep pushing that we include those words.

Ms. Kim Havey, WHEJAC Member: I was just wondering, with the Recovery Bill passing and counties and states are receiving quite large allocations in many cases, it would be really great to provide some guidance or at least bring forward to recommend that those communities look at and follow the principles of the Justice40 initiative. I work in a city and it's part of a team looking at investment and that did not come down at least from the mayor's office in my city, anything about Justice40. So, this might be a really good way to jump on something going on right now.

Ms. Michele Roberts, WHEJAC Member: Two very quick questions. One, is where does legacy chemicals and chemicals period exist within the framework of this discussion? I see

the conversation about oil and gas, energy and what have you, but we all know that chemicals play a huge role. Where does that fit in? In addition to what Katherine Flowers was saying, how is it that during the Obama administration we signed onto, it is my understanding, through the U.S. Department of State committed to that of the human right to water and sanitation. With all of that being said, how is that interconnected into this process to make sure that we honor that not only internationally but domestically here in the U.S., now that we are making sure that environmental justice is manifested throughout the full federal family?

- **Dr. Cecilia Martinez, CEQ:** I think one aspect of the chemical issue will be -- we did not have a presentation today from EPA, just because we wanted to give you presentations from folks you had not previously necessarily heard from, DOE, DOT, OMB. But that will be an essential piece as you move forward, is getting that information from EPA, particularly around the Justice40 priority of legacy pollution reduction. That's being integrated absolutely into the Justice40 Initiative. A great question about the water and sanitation and human rights. I think that's one, Karen, that we should mark and make sure to come back to and be able to -- unless our other speakers -- I will defer to other speakers if you have a response to the human rights questions to water and sanitation.

Ms. Michele Roberts, WHEJAC Member: My deepest apologizes. I failed to equally say, again very quickly, with respect to roads and highways, hopefully the model is different from yesterday because the model of yesterday's road and highway infrastructure, through the Department of Transportation, was inefficient and so we need it to be more robust.

- **Dr. Cecilia Martinez, CEQ:** I think that was a really important point because I think that's also been ongoing discussions. I know at CEQ, Austin Brown, who is also in Transportation. And there's been a whole lot of transportation infrastructure folks from different agencies trying to think through not only how do we build transportation better, but how do we built it in a way that reduces pollution for communities as well as improve transit access. There have been really vibrant conversations.

Ms. Andrea Delgado, WHEJAC Member: I'm really glad to know that chemicals are going to be a part of this work. And hopefully, not just chemicals that are regulated by the Toxic Substances Control Act, but also chemicals that are regulated under FIFRA, the Federal Insecticide, Fungicide, and Rodenticide Act, which governs the use of agricultural pesticides. The question I had is with the Interagency Group, whether they are looking at the waste component of coal, oil, and gas. I saw in the presentation that the focus was on impact of infrastructure of those fossil fuel production, but just thinking about the whole life cycle, where does waste play into that? And not just at the point that it is turned in to hazardous waste, but the in between. Since we know that there's some gap between the systems of National Standard to regulate their disposal. Separately would be just to emphasize a comment in the question that we can't talk about climate change without also talking about heat stress and the fact that we're in the fight to reduce greenhouse gases and a lot of other harmful emissions. What is government, the Interagency Group, doing to make sure outdoor workers and indoor workers, that don't work in climate-controlled spaces, are being protected from heat stress? And what efforts are going to be undertaken to subset standards to that effect?

- **Mr. Jahi Wise**, White House: The Executive Order mandates that the Interagency Working Group look at all of the impacts of this infrastructure. And you are right, we can take that all the way to the waste impact. I think that's a big part of what we're trying to wrap our arms around right now, is what is the full scope of impact that needs to be looked at? And what are the tools that the government currently has and what are the tools that need to be created to effectively deal with those impacts? So, very much welcome your expertise as we have those conversations. We'll circle back for more on that.

- **Dr. Cecilia Martinez**, CEQ: The other taskforce that has been set up to the Executive Order is a Climate and Health Equity Taskforce through Health and Human Services (HHS), to get to your point about the impact of climate change and heat, et cetera. That's also going to be an important intersection of your work and our work with them, to make sure that we are capturing all the components that you're talking about. Thank you for lifting that out, we'll definitely make note of it.

Ms. Viola Waghiyi, WHEJAC Member: I have two questions. One is for Mr. Wise and the other is for Mr. Brown. Regarding the focus on your agencies on the coal, oil, gas and power plant, and the environmental justice communities who experience the impacts from energy infrastructure, do you have a just transition away from fossil fuels? Because the Arctic has been the canary in the coal mine as far as climate change. We need to make sure that Arctic Indigenous People are at the table when we talk about climate justice because these issues have been harming the health and wellbeing of our environment for decades. Do you have a just transition plan away from coal, oil and gas power plants?

Also, to Mr. Brown. In the Climate Economic Screening Tool, as the polar icecaps shrink, as glaciers permafrost shrinks, my communities and tribes in Alaska, there are 229 tribes who continue -- a lot of our coastal communities continue to live off the land like we have for many decades. When there is a fishery crash, they give aid, immediate aid. However, we have food security issues in communities like mine because of the availability of our subsistence foods. The ice-dependent marine animals, the walrus and seals that are our main foods during the long winters, it's not that their numbers are low, it's just that they are dependent on the ice. And our people have to go out hunting further, it's more dangerous. We need assistance with food security. As I mentioned during fishery crashes, they get assistance.

And my last question also is for Mr. Brown. Of those 29 stakeholder interviews, did you have an Arctic Indigenous People interviewed yet? Because as I mentioned, these issues we have been facing with climate change not only include legacy chemicals that have been sequestered for military, that 700 formerly used defense sites in Alaska, but also persistent organic pollutants because the Arctic has become a hemispheric sync. My people are being contaminated without our consent to our traditional foods because of where we live. It's so important that you get -- My question was do you have interviews yet with an Arctic Indigenous person?

It was great to hear Gina McCarthy speak about modernizing water and sewer. In my regions we have communities still with no running water or adequate water and sewer. She talked

about modernizing water and sewer. Some the communities live in third-world poverty level, but also third world levels as far as no water and sewer. It is so important these issues are taken up, not only by this, but all the inter-agencies working on this issues together.

- **Mr. Jahi Wise, White House:** The Biden Administration has a strong commitment to supporting a clean energy transformation and supporting the preliminary resources that are clean and low carbon to address exactly the climate impacts you are describing. I think the Interagency Working Group is still trying to wrap its arms around some of these questions you are asking us to wrestle with. We very much welcome your thoughts on the best ways to support the communities that are being impacted currently by this pollution. But also, then to support those communities as they move away from things like coal, a generation that's part of their local economy. Very much welcome the expertise of this group. We are very excited to have you on board to help us think through these very important and complicated questions.
- **Mr. Lucas Brown, USDS:** We have met with representatives from one indigenous group so far, which is not nearly enough, obviously. We are working to set up more. We would absolutely love to work with you on coordinating interviews with particularly that Arctic indigenous perspectives that you named. In the conversation we had, not only with the representative from that one indigenous group, but in other meetings as well, we have heard food insecurities come up quite a lot. July feels like tomorrow for launching a tool with new datasets and combining data into some sort of prioritization methodology. That is the type of data we would be interested in eventually including in a tool like this. I hope this is a first example where we would love to open up to this group of, what are the most important datasets that we can go around and work with different agencies to try and gather clean and believed. And hearing you loud and clear on food insecurity. I would love to follow-up offline to help schedule those interviews.

Ms. LaTricea Adams, WHEJAC Member: I actually have three questions, but I'm going to try to merge them together. The first question is specific to Flint, Michigan. We know that environmental justice issues are pervasive throughout the entire country and have been

specifically for majority black and brown communities for centuries. However, in the wake of the Flint water crisis, it is still not over. And my question is, as it related to recovery, could there be some type of taskforce, some type of working group that can be developed that specifically focused on how do you recover from a man-made environmental justice issue? I think -- and I won't go too far in-depth, but I believe that through that experience with the Flint water crisis, as a country we learned a lot of hard lessons. And how can we get it right by actually doing some particular type of focus on the Flint community, considering all of the moving parts that contributed to that crisis? That's my first question.

My second question -- and it's combined with my third question. I am an educator by trade, and with all of the presentations -- and thank so you much for sharing that this afternoon. I'm wondering, with all of the work we plan on doing, what are the implications on K-12 education? Many of our schools, where our children are sent, are located in frontline and environmental justice communities. As we think about this work, how are we also thinking through the lens of K-12 education? And the final question is around health, specifically around maternal health. We noticed, for example, when congress released the Solving the Climate Crisis Report, it was completely absent around maternal health. And we learned last year, but black women have been knowing this the whole time, that climate disproportionately impacts black mothers. So, how is maternal health, specifically, going to be woven into all of these intricate moving parts?

- **Dr. Cecilia Martinez**, CEQ: I am mindful of the time and I know we do have several other people on stack. Karen, I know you are taking notes and our notetakers are taking note of all the questions that are coming forward. We may not have time to have responses to your questions now, at this point, but we are marking them for future deliberation as we move forward.
- **Ms. Karen Martin**, EPA, informed members to ask questions, which would be noted on record, and responses to their questions will be gathered and distributed.

Mr. Nicky Sheats, WHEJAC Member: For Ms. Baker and Mr. Wise. I'm wondering if one of you, or maybe both of you, will be or are already working on the issue of energy

infrastructure and how it plays a role in the disproportionate amount of pollution that we often find in environmental justice communities? Maybe that's in your report already, Jahi. And part of that question is, also the citing of energy infrastructure, which tends to be disproportionately cited in environmental justice communities. And second, a question about an issue that Dr. Martinez actually pioneered. Are one or both of you also going to address the issue of ensuring that community residents have significant say on how energy issues that affect their community are decided?

Ms. Ruth Santiago, WHEJAC Member: My question has to do with effective community participation in the Justice40 allocation of funds. The reason why I'm asking this is that here's what we're seeing, is on the one hand civil society consensus on the radical transformation of the electric system, because all of you know what we experienced after hurricane Maria. So the consensus is let's do onsite rooftop solar coupled with batteries, energy efficiency, et cetera as alternatives to the central station on this transmission electric system that we have now, that left us without service for so long after hurricane Maria. Unfortunately, that's the Civil Society consensus and that's great, but it is not being heard. And for example, the government of Puerto Rico submitted a ten-year infrastructure plan to FEMA to use recovery funds for -- there's zero -- there's 12 billion dollars in the request, and zero is for renewable energy, and much less onsite solar and battery. That's why I'm interested in knowing how can communities have effective participation in the allocation of these funds so that, say these lessons learned and experiences after the hurricanes, for example, are considered? And at the same time, simultaneously, by doing that we can also lessen the burden on the environmental justice communities, especially here in Southeastern Puerto Rico, Salinas Guayama, with the AES coal burning power plant and the power complex.

Mr. Robert Bullard, WHEJAC Member: I'm a professor at Texas Southern University in Houston, Texas. I have a couple questions. Number one, EPA. It seems like EPA have been given the lead in dealing with the Executive Order and NEJAC and the Interagency Working Group. My question is, to what extent will there be leeway for other agencies, like DOT, to drill deeper than the larger Executive Orders and the larger mandates to come up to reinforce the DOT order, Environmental Justice Order that was signed in '97, and the FHWA

Environmental Justice Order that was also followed through. Which meant that DOT was doing a whole lot of things around environmental justice that was not just a broad Executive Order. Are they dusting off those kinds of initiatives?

The second one infrastructure. To what extent will there be mapping of infrastructure dollars -- not just Justice40, but infrastructure dollars that somehow -- whether it's stimulus dollars, infrastructure dollars, disaster dollars that generally follows a pattern of money following money, money following power, money following whites. And that the major disasters can be -- a recent study showed that white communities are -- after these 10 billion dollars disasters -- are 126 thousand dollars better off. Whereas people of color communities are worse off by 29 thousand dollars. And a lot of it has to do with cross benefit analysis and how money is distributed.

And the last part is, again, going beyond the Justice40 to talk about how this administration, across the various agencies, will be dealing with metrics for mapping and tracking federal dollars that could be seen. Not just monies coming from Energy, but dollars that are being spent on other issues that intersect with -- whether it's housing, whether it's issues around transportation, energy, flood mitigation, other kind of things to show that all of these things connect. And past history has shown us that when we disconnect those, we end up having communities that are most vulnerable left behind and not getting their fair share of dollars. The pandemic has shown us that. I want to know how are all these other agencies connecting with each and not just looking at Justice40.

Mr. Angelo Logan, WHEJAC Member: I just want to echo Ms. Santiago and Dr. Sheats, and many others, who have raised up the issue around robust and meaningful community participation. So that local communities can determine for themselves what the Justice40 investments really are. Meaning that they really investing in communities and not adding to burdens.

Ms. Jade Begay, WHEJAC Member: My questions are for Mr. Brown. I'm just curious how language justice is being considered in this screening tool. Not just for our Spanish speakers, but also considering indigenous languages throughout the country, particularly in places like

Alaska or places like where I'm from, Navajo Nation would be wonderful to -- I know July is around the corner so integrating accessibility around these languages might be tough in this timeframe. But as we move into the future, we would love to talk more about that. And then also just a follow up would love to support in doing outreach to communities to do more interviews with that work.

Mr. Juan Parras, WHEJAC Member: I live in the city of Houston. And the lack of zoning laws in Houston means systemic racism is permitted and allowed. Basically what we have is, we have a little different challenge, any industry come in and building wherever they want to. So that's my question.

Dr. Beverly Wright, WHEJAC Member: My question really had to do with how, at the end of this process, we really end up with something where communities on the ground can see a difference? I'm looking at all of this and living through Katrina, the experience was always that we went through so many planning processes with meaningful community participation that still did not end up with us getting what we requested. You can have meaningful participation, but the people who make the final decisions often makes decisions in their own interest.

Secondly, I'm really concerned about systemic racism that exist within policies that we have not examined. Because in New Orleans we were a product of that. We looked at hazard mitigation monies that were supposed to go to, for example, communities most affected by flooding. And the money ended up going to mostly white communities, wealthy white communities. And my digging over a matter of a year or so, I found out the reason had to do with the way the policy was already set in place. So when the Army Corps of Engineers decided to do their project, those that were in the (inaudible) got the money. That was a real surprise to us. The same thing happened with hazard mitigation money. There was a rule already on the book that said you have to have had at least two floods before you can get the hazard mitigation money. And the places that were hit didn't flood, so wealthy white people, once again, in the city, got all of the money. I'm so pleased to see all of this work, but if we don't do some kind of analysis or an invoice of policies that could negatively impact -- exiting policy that could negatively impact the output, we can end up in the same situation where I

see New Orleans and be very disappointed. I'm looking for ways that we are actually looking at projects that end up doing something for people on the ground.

JUSTICE40 INITIATIVE - Executive Order 12898

Dr. Cecilia Martinez, CEQ, stated that the concerns really do dovetail very nicely into, how do we develop metrics for agencies to evaluate and develop performance scorecards? She stated that to ensure that not only this work gets embedded with real outcomes, but also how to continue to evaluate how agencies are doing to make sure that we monitor and assess, and not just put the best foot forward, but also make sure that we're getting to the exact place that's we need to be. She shared that one of the other deliverables, to ensure committee input, is actually the revision to Executive Order 12898. She stated that that EO is one of the things that advice is needed on, to get to what kind of revisions. She stated that many of the committee members have been working on this deliverable individually and in collaboration with others. She expressed confidence in being able to get good, solid information, and points to move forward on revision of 12898, to modernize and make sure that we address all the issues that you all have raised now.

ORAL PUBLIC COMMENT PERIOD

Ms. Karen Martin, DFO, opened up the Public Comment Period. She stated that additional public commenters could use the comment form or send comments in writing to whejac@epa.gov. Each public commenter was giving 3 minutes to present comments:

Ms. Kelly Crawford, D.C. Department of Energy and Environment: Good afternoon my name is Kelly Crawford. I'm the Associate Director for Air Quality Division at the D.C. Department of Energy and Environment. The DOEE is the leading authority on energy and environmental issues affecting the District of Columbia. In relations to air, it is the lead agency in ensuring health and welfare based air quality standards are obtained and maintained. Thank you for the time to offer my comments today.

I'm here today in my capacity as a member of Board of Directors of the National Association

of Clean Air Agency, where I serve as a state co-chair of its Program Funding Committee. NACA is a national association that include 155 state, local and county agencies across the country. Their charge is protecting public health and environment from air pollution and climate change. Over the past 12 months, I have been involved as a leader in NACA's efforts to reformulate its core mission and value to put racial equity, diversity and inclusion at the center of our most important writing principals. I have also been engaged with the peers and the Association's strategic efforts to walk the talk on these issues.

In January, NACA sent a letter to the incumbent Biden/Harris Administration laying out 7 priority recommendations for the federal government to protect clean air, prevent pollution, address climate change, and achieve environmental justice. Of these, our top recommendations offers avenues to center environmental justice. State and local clean air agencies have the countries most developed programs to address environmental justice and air pollution control. Many of our agencies have been learning and advancing programs over several years and they now serve millions Americans. Such programs maybe be instructive or federal efforts, and NACA offers its partnership as the Administration advances its own diversity, equity and inclusion activities. For example, NACA recommends that environmental justice should not just be a single program within EPA, but it should be integrated into every program across the agencies. One avenue for walking the talk would be the development of an equity, diversity, and inclusion strategy plan with specific and concrete steps to achieve these goals, with plans to offer avenues to integrate communities in the decision making that affects them. The Administration should engage with NACA on this efforts.

Permitting and enforcement efforts may be valuable early areas of focus to reducing harms to the communities most heavily burdened by pollution. The Administration should consider the permitting and enforcement models of NACA member agencies who even more than the federal government have been the leaders in this country on advancing environmental justice programs. Like our federal counterparts, our state and local member agencies aspire to address systems producing inequitable outcomes for black people, indigenous people and people of color. These efforts should be adequately funded at the federal level. The Administration should support additional funding for our agencies to support their

complimentary and corresponding efforts in this arena, including for staffing, tools and technical assistance. Recent one-time stimulus funding for state and local clean air agencies represents the first increase in funding support that these agencies have seen in years. And our agencies remain in excellent instruments to which and through which to deliver funding to advance environmental justice. If you have questions or would like to learn more about our works here in the District, NACA's transition recommendations or our efforts to advance equity, diversity and inclusion, I would be happy to be of assistance. Thank you for the consideration.

Ms. Lucia Valentine, Our Children's Trust: Hello. My name is Lucia Valentine and I'm an intern at Our Children's Trust. Our promise is interest of our Nation's views in prosperity to inform the Council to advise CEQs to align with protecting fundamental constitutional rights of children such as children within the environmental justice communities. Social and physical scientist and experts are clear that if you focus your efforts on protecting children within environmental justice communities, the entire community benefits. Whereas protecting adults alone will not serve to protect children. Children are uniquely vulnerable to human caused climate change because of their developing bodies, higher exposure to air and longevity on the planet. Young people are often in the front lines of human rights abuses and at the hands of adult in positions of power who do not act in the best interest of children. They are often inevitably at the forefront of the movements, like the Child Labor Law Movement, the Civil Rights Movement and today the Climate Justice Movement.

As such, children's rights and wellbeing must dictate the environmental justice strategies implemented by the Biden/Harris Administration. Congressional support of children's rights in the Juliana v. United States case is clear as demonstrated by The Children's Fundamental Rights and Climate Recovery Resolution and by two congressional amicus briefs filed in support of the case. Biden/Harris Administration has an opportunity to join Congress in protecting children. Twenty one young Americans, including 11 black, brown and indigenous youth filed their constitutional climate change lawsuit against the government in 2015, asserting that the National Energy System, dominated by fossil fuel is violating their constitutional rights to life, liberty, property and equal protection of the law. Which includes a climate system capable of sustaining human life and access to essential public trust

resources.

Juliana plaintiff, Jaime B, is a Diné person of Window Rock, Arizona and grew up on the Navajo Indian reservation. Due to extreme heat, extended drought, and scarcity of water, Jaime's cultural homeland became uninhabitable. She has a profound cultural and spiritual connection to the land where her ancestors have lived for generations. Her culture and entire way of life would be eroded if her extended family is also displaced, in addition, although her people already suffer from burning fossil fuels that have been consistent across access to energy systems. Another Plaintiff, Aji Piper, has explained in testimony to Congress that as a young black man, he has grown up with the long-lasting consequences of unconstitutional discrimination from government sanctioned and continued segregation. The entrenched federal government policies of promoting and subsidizing a fossil fuel energy system will also perpetuate long-lasting harm on generations of innocent children. When government sanctions a system that unconstitutionally deprive children of their basic fundamental rights, that system must be dismantled by all three branches of the government. Stop the perpetuation of intergenerational injustice. We respectfully request that environmental justice strategies are protective of children and the communities where they live.

Mr. Prashant Singh: I am making this comment as a private citizen. I've worked with the Indian tribes in the National Park Service, and they live in environments that really require quite a bit of an investment in rural infrastructure. As the government proceeds with an infrastructure plan, they should be mindful of the sacred sites Executive Order. And they should also make access to Indian tribes much more feasible because they're living in food deserts and they require quite a bit of investment. The benefit/cost analysis that we do as regulators, it uses quite a bit of boilerplate language, it doesn't get into the granularity. And the granularity reveals certain effects that are sort of weeded out as you start aggregating the benefit/cost analysis. In the environmental justice piece of rulemakings, I think EPA should take a more proactive stance in looking at how agencies are doing their regulatory analysis, and how they can improve and actually tackle those underserved communities and help them.

Ms. Brandi Crawford-Johnson: Hello. My name is Brandi Crawford-Johnson and I'm an environmental justice advocate/victim fighting hard for my frontline community in

Kalamazoo, Michigan. My neighborhood of predominately African Americans, and our community, is being discriminated on, on the basis of race by our local government and state. We are all under a great deal of stress, especially with our greater risk of getting severe COVID because of the poisons trapped near our homes. Our city officials have recently allowed our major polluter, Graphic Packaging, to expand despite hundreds of air complaints over the years. The city gave them 21 million dollars in tax breaks to continue poisoning us. I told the city of Kalamazoo, in 2018, at an environmental meeting, that I had severe asthma and that I read in the news the American Lung Association rated us F for pollution. I told them I suspected that our papermill, Graphic Packaging, could be the cause of our failing grade. Instead of the city listening to my warning, and coming up with a plan to help, they sent a cease and desist letter to the reporters reporting on our bad air quality and high lung disease rates. This hurt me deeply.

EGLE, aka Michigan Department of Environmental Quality, is also allowing Graphic Packaging to expand by giving them permits to increase greenhouse emission by 221 percent, while being out of compliance for years for toxic gas leaks. Graphic packaging and the city wastewater plants are releasing toxic poisons that are harming our community by causing respiratory disease and cancer. I am all about seeing action in real time, so recently I initiated a class-action lawsuit against Graphic Packaging for the poisoning of our community for decades. I also filed a Civil Rights Complaint against the City of Kalamazoo because they refused to rezone our neighborhood while they are rezoning the white neighborhoods and wealthy businesses. They are aware a frontline community is located next to hazardous facilities. They hear complaints at city meetings. They know the city zoning maps for our neighborhoods says negroes and hazardous right on them. There are 14-year zap gaps (phonetic) between black and white neighborhoods in Kalamazoo. I have doctors and toxicologists helping me with reports and speaking out with me, but we are all ignored by the city and the state of Michigan. We have one air monitor in the whole county of 250 thousand residents, located at the fairgrounds and not near any polluter.

We need the EPA to take over enforcement for the state of Michigan now. We can't allow any more slow murders to continue in the United States in any frontline communities. It is inhumane. Environmental justice is linked to systemic racial justice. It is easy to see where

environmental justice is needed by looking at EPA tool in every zip code in every state. It's an easy fix, but the action must take place now. Human lives and our environment are at stake. We must fight to protect our most vulnerable, and we must all be allowed to breathe clean air and drink clean water. Our future generations deserve to live their lives without being sick or dying a premature death because of greed, environmental racism, corrupted politicians and local and state government officials who are failing us. Please help Kalamazoo and all the overburdened communities facing environmental and health justice.

Dr. Sacoby Wilson: University of Maryland, College Park. Thank you for the opportunity to present today. I'm real excited to see that we have WHEJAC and one of my questions to CEQ is, as it pertains to WHEJAC, are we not going to move forward with actually having CEQ regions with the opportunity to have a WHEJAC, or a regional WHEJAC, at different levels? I make this comment because as a member of the of the National Environmental Justice Advisory Council, I potentially said we need to try to decentralize NEJAC and have a NEJAC for each EPA region. That comment just means that while we have a current WHEJAC, you will look at the fact that that's probably not expansive enough. So you would actually have a NEJAC at each EPA region. That's great, but now that we have a WHEJAC, we have to take into account other federal agencies. The point is, can we think about having regional level WHEJACs or making sure that every federal agency actually has their own EJAC.

And I think that comment is important because it's speaks to the fact that since President Clinton's Executive Order on Environmental Justice, we've only had one major federal FACA for one individual federal agency. For me, that shows that as a country we have not really been serious about environmental justice until this Administration. Because now you have the opportunity to actually proceed to the WHEJAC to actually have EJACs in every federal agency. And I think you if you go about that right, and make sure this is sustainable beyond this current Administration, this current four years, that we need to make sure we have follow up thorough FACA rule. That there is transparency. We need to make sure because we want expertise as it related to DOD, DOE, DOI, Commerce, Homeland Security, FEMA. I think that's important to look at sustainability of this WHEJAC effort and making sure we can maximize the impact long-term.

As it relates to some of the issues that I think are important, I think Justice40 is great, but I'm concerned about the ambiguous language around 40 percent of the benefits. You can't have benefits without investments. I appreciate Dr. Baker's data dashboard. Every federal agency should have a data dashboard. There should be standardization and harmonization across all federal agencies, not just one agency should have a data dashboard we can kind of track where the dollars are going. And the buckets of benefits, economic, health, environmental and social. That should be standard. In addition, when it comes to the Environmental Justice Screening Tool, we need to make sure, as others have stated, that there's actually income and equality indicators. Workforce development indicators. Indicators of where the dollars are going as it relates to TIF, as it relates to tax credits, wellbeing, also in the national tool. Not to prioritize, but to talk about the solutions and actually track benefits and wellbeing, again, across those four buckets, economic, environmental, social and health.

Ms. Cemelli de Aztlan. Good afternoon. I work with an organization, (inaudible) and they are the parent organization of the community organizing group. (Inaudible). And in this organizing group we are mainly parents working in all capacities within the government, but mainly the huge hurdles that we find are within the school district. And I really wanted in this time and space when we're having the conversation echoing the previous comments, specifically, we need to look at public schools right here right now and the American Rescue Plan. In regard to COVID relief and environmental justice, it must go hand in hand. Specifically, currently in (inaudible), we sort of exist in this black hole where we've dubbed the school district a loophole. Because the school district as an entity of the state. And in a state like Texas, they don't care about immigrant kids. So, they've just centered a cloak of protection to continue this legacy against the Spanish speaking, Mexican immigrant families and communities.

And so what we say, even pre-COVID was this closing down of their schools within their communities, their most safest schools within their communities, within their neighborhoods. And being corralled into these industrial zones, in schools that were surrounded by industry. And so, this is pre-COVID time, but now in COVID times it matters more where we need more space and we need more clean up and we need this investment and

adequate schools. We don't have these systems of accountability and oversight within the school district. They do not have to be held accountable by our city or by our county. And so we need federal intervention. And so when we're talking about this newly created group under the White House, and when we're talking about how we're going to look at and allocate the funds for the American rescue plan, I do hope that we prioritize these children on the frontline in our public schools. Because right now we are in a state of emergency. We are in a state of disaster. And we are not ready to adequately open up these schools for these kids. We need to reopen the schools that were unjustly closed prior to COVID. And we need to clean up these communities to ensure that all of our children are safe, specifically those that fall within our most vulnerable communities. Thank you again for allowing me to speak -- and how we use Title VI to protect these kids under federal protection.

Mr. Jerome Shabazz: Overbrook Environmental Education Center. Thank you. I have a brief comment. First, I wanted to say I'm very appreciative of this stellar team, and proud of the membership that is populating this respective committee. I'm a member of NEJAC and I represent a nonprofit organizations in Philadelphia, Pennsylvania. And at the end of the day, for us, the bottom line is that we need to make sure we get more resources to the people who need it most. As a result, what I am hopeful of is that this particular illustrious body is able to look at our process and make sure that we have the ability to bring resources without burden to our underserved communities. And what that means is, that if there is interagency support that can be realized, that we have to develop a structure that will enable that to happen. We have to enable what we call an inverted pyramid system so that the citizen is able to apply, and all of the relative agencies that are applicable to solving their problems, can be interrelated in this approach.

What that means for us is that, if I'm applying for some brownfields resources and there's some complimentary resources that's coming out of HUD, that's coming out of the Department of Agriculture, that's coming out of Treasury, that we should have a more coordinated approach, so that resources that are necessary to complement projects are made available. And that citizens are able to leverage the value of their efforts. It is a burden for many organization to have to apply, to have to gain the talent. I just wanted to make the simple comment that interagency coordination and having a very similar types of personnel

in other departments, beyond the EPA, to be able to coordinate, it's going to be a wonderful opportunity for us. Congratulate you all and looking forward to wonderful things coming from many of this. I know a lot of these wonderful people and I'm looking forward to seeing what great things happen. Thank you very much.

Mr. Max Sarinsky: Institute for Policy Integrity. Thank you so much and thank you all for the incredible work you are doing, and this opportunity to comment. I'm an attorney of the Institute for Policy Integrity, a think tank at NYU that focuses on environmental regulation and administrative decision making. While the government should address environmental justice using every available lever it has, I focus these comments on Policy Integrity's areas of expertise, which is agency regulation and project level assessment. Until now, environmental justice has rarely been a decisive factor in agency regulations and project level decisions. While agencies assess disproportionate environmental impacts under Executive Order 12898, that analyses is normally much less robust than the cost benefit analyses and the environmental income statements that agencies also prepare. The environmental justice analysis, in addition, typically starts from the consideration of other regulatory impacts and is very rarely a key factor in the actual decision.

To ensure consistently robust analysis, the White House should provide more guidance and oversight to regulatory agencies. And I offer four recommendations. First, the White House should coordinate with scientific and economic experts throughout the federal government to better assess effects on frontline communities. For instance, more granular spatial modeling that has recently become available, including the Environmental Justice Screening Tool that you all are working on. It would allow agencies to better assess pollution at local levels, and granular levels, and incorporate disparate demographic risk factors right into the analysis. In addition, more monetization of localized air toxins would enable agencies to better quantify the cost of pollution in frontline communities.

Second, the OMB Circular Report section on distribution impact to provide clear advice on how agencies can incorporate equity into a cost benefits analysis. EPA technical guidance, from 2016, recommends the that analysts, in addition to reporting total cost and benefits, also analyze and report cost and benefits on discrete population segments, such as by income

period. And putting this into regular practice would be a huge step at all agencies. Third, agencies should receive stronger guidance on how to incorporate distributional analyses into their decision making. So with cost/benefits analysis, for instance, agencies are abided to promulgate a rule only if the benefits justify the cost. But no similar maximum or guidance exist for distributional impacts. For instance, you should not promulgate a rule unless necessary that's progressive, something to that effect. And finally, the White House should consider providing additional coordination and oversight reviewing environmental justice analyses. The cost/benefit analysis here, once again, is a good model, as reviewed by ORIA, has insured consistent best practices across agencies and over decades. And a similar structure for environmental justice analysis can do the same. Thank you, and I look forward to seeing your excellent work.

Mr. Desmond Ondatje: Thank you for taking this task on. It is an enormous task. I am a citizen here in Los Angeles, concerned with the climate crises and what's going on and wanting to get involved. I'm hoping, and I'm sure from listening to most of the speakers, I'm speaking to the choir, that from looking at all the scientific data, I keep getting two deadlines. The Executive Order mentions 2050 for all of these changes. But then I see another timeline where 2030 is more of an urgency, and I tend to lean towards that. And also in the Executive Order, I did not see much of the talk of sequestration of greenhouse gases. I'm hoping that will be addressed throughout all the agencies and within this Council. I did write a few questions, which I'll keep to that to minimize the input here. I'm looking forward to your work. I'm looking forward to listening in on more meetings and giving more input and helping wherever I can. Thank you very much.

Ms. Melissa Martin: I'm with the Center for Democratic and Environmental Rights of Nature Campaign Team. We're asking WHEJAC to please consider a supplement legal pollution to the harm and disparate impact of our environmental crises. Injustice is a violation of rights, and justice is a restoration of what was lost, ideally preventing future wrongs. And environmental justice requires we reconsider our legal approach to nature. If we look our origin story, we find the concept of natural rights hoisting the very brand of America, inalienable rights to life, liberty and the pursuit of happiness, or property as it was implemented in our Bill of Rights. And we know how the law has treated nature as a

function of property. But isn't nature also a pretty important function of our rights to life and liberty? Isn't our right to life dependent on the right to clean water, clean air, nutritious food grown with healthy, natural systems to include pollinator? Aren't the blessings of liberty secured by first being safe from extreme weather, fires, floods, sea level rise? Why does it seem our natural right to life and liberty has been alienated?

As many environmental lawyers will tell you, because it's the law. It currently protects the developers and the pollution industries and immunizes politicians from liability from failing to maintain such things as wastewater infrastructure. It props up state preemption power to keep health, safety and wellbeing standards low. It traps environmental advocates into a well-regulated loop of protests, public comments and hopes for better election results. But the legal imbalance of rights remains. And we currently lack the legal tools to do anything about this. So, to fix a systemic wrong, we must ask a fundamental question, what process is do? How do we ensure our rights to life and liberty are properly enforced?

Three things. One, we need to acknowledge rights of healthy, natural systems. That they must be able to exist, flourish, support ecosystems and be free from harm by human activity. Two, we need legal standing to enforce such rights in the court of law. And three, we need the legal remedy of restoration. For systemic environmental justice, this is what process is due. To hear the voices of those whose natural rights were violated, to understand the best available science on the matter, and to solve problems to restorative needs, righting what was wrong and preventing future harm. It's a necessary procedural safety net should the current regulatory system miss the mark in environmental protections. It encourages responsible government and business activities. It sidesteps politics and brings these issues to bear through a relevant, liable evidence in a court of law, exactly where many of these problems and solutions of environmental justice belong. There is much more to this conversation, but I stand by to answer any questions or concerns offline. Thank you for your time.

Mr. John Mueller: I am a retired civil engineer with more than 25 years' experience in public works, mostly water supply and wastewater treatment. From that experience, I have become an advocate for ending the practice of artificial water fluoridation. And I'm

commenting today to strongly urge the powers that be to do two things. First, please accept the fact that community water fluoridation is a little known, yet most egregious, example of environmental injustice. I refer to a Resolution published in 2011 by the League of United Latin American Citizens, LULAC. The Resolution is titled Civil Rights Violation Regarding Forced Medication. From that resolution, I'm going to quote you some of the whereases. There are 17 whereases all together, but here are several of them.

Whereas fluoridation is mass medication of the public through the public water supply. Whereas, minority communities are more highly impacted by fluorides as they historically experience more diabetes and kidney disease. And whereas, minorities are disproportionately harmed, by fluorides, as documented by increased rates of dental fluorosis, disfiguration and discoloration of the teeth. Therefore, be it resolved that LULAC commands efforts by organizations that oppose this mass medication of the public drinking supplies, using fluorides that are industrial grade, toxic waste byproducts, which contains contaminants like arsenic, lead and mercury, which further endanger life. And be it further resolved that LULAC supports efforts by all citizens working to stop mass medication through the public water system because it violates civil rights.

Number two, I ask the White House Environmental Justice Advisory Council to recommend an immediate moratorium on fluoridation until safe levels of exposure are determined by a proper risk assessment. I understand the recommendation will be made to the Council of Environmental Quality, to the White House Environmental Justice Interagency Council, and to associated partnering agencies in the Department of Health and Human Services, now under the most welcomed leadership of Secretary Xavier Becerra, sworn in last Friday. And immediate suspension of adding fluoridation chemicals to the public water supply would be a most tangible and meaningful effort by the federal government to address environmental injustice, while reducing water infrastructure corrosive damage and utility expenses. Thank you very much for the opportunity to comment.

Ms. Rashmi Joglekar: Thank you so much. I'm a staff Scientist for Earth Justice. I would like to thank you all for providing the opportunity to speak today at this historic inaugural meeting. We appreciate that President Biden has elevated and prioritized the important goal

of addressing environmental injustice. As this advisory committee thinks about how to advise CEQ on how to effectuate these goals, we want to highlight the Toxic Substances Control Act as a potential strategy to do so. CEQ was instrumental in the realization that Toxic Substances Control Act, TSCA, was needed. In a report issued in 1971, CEQ pressed for reforms and protections against toxic chemicals which actually prompted the formation of the federal statute. TSCA requires EPA to protect communities overburdened by exposure to dangerous chemicals when evaluating chemical risks. Given the role of this body as an advisory Council to the White House on environmental justice issues, I specifically ask this Council today to consider the following ways in which TSCA could be used to bolster protections for chemically overburdened communities.

First this Council should advocate for correct implementation of TSCA and urge CEQ to demand that EPA calculate the real-world risks to chemically overburdened communities in its Chemical Risk Evaluation. And then to adopt rules that truly protect these communities from accumulative risks they face. TSCA mandates that EPA determines whether a chemical presents an unreasonable risk to potentially expose or susceptible subpopulations during the chemical risk evaluation process. And to accurately identify these subpopulations, EPA must rely on the best available science to evaluate factors that contribute to greater susceptibility. Study have shown that nonchemical factors, including both intrinsic factors such as life stage or underlying disease, and extrinsic factors such as psychosocial stress from poverty or racial injustice, contributes to an individual's susceptibility to harm from chemical exposures. Certain communities face greater intrinsic and extrinsic susceptibility factors in addition to greater chemical exposures and should thus be considered as susceptible subpopulations.

Take for examples communities living close proximity to petrochemical facilities in the Gulf Coast regions of Louisiana and Texas. These communities are burdened by high levels of exposures from the majority of the 20 toxic chemicals that EPA recently prioritized for risk evaluation under TSCA. These chemicals are associated with a long list of health effects, including cancer, birth defects and even infertility. Further, the communities living near polluting facilities in this area are predominantly communities of color who often suffer from other nonchemical stressors like poverty and other disease. In fact, a part of this region along the Mississippi river and Louisiana, is referred to as cancer alley due to staggeringly high

cancer rates among residents living near these facilities. And EPA failed to adequately consider the susceptibility factors in its finalized and ongoing risk evaluation. And in doing so, is underestimating risk to these susceptible communities. The WHEJAC should issue a statement urging EPA to use its authority under TSCA to protect communities most at risk of harm from toxic chemical exposures using the best available science. Thank you.

Ms. Christine Jones: I'm not actually here in my role at FCPS. I'm here in my role as a private citizen. Thank you so much for giving me the opportunity to speak today. I grew up on the Gulf Coast and that is where my concerns are focused. I have to, before I start give a shout out to miss Catherine Flowers for her incredible work in Lowndes county. I have three issues of concerns that are in the Gulf Coast.

First, Alabama Power has put 21 million tons of toxic coal ash in unlined pond and is polluting Mobile River, Mobile Bay and our Delta, putting them all at risk. This is an area that is incredibly unique in its biodiversity and it is at risk. It's been common knowledge for years, but nobody in power is doing anything about it. Why? Probably because Mobile county is 43 percent people of color and has poverty rate 50 percent higher than the national average. Second, Africa Town, which is a historic community of color near my hometown, is impacted hugely by the historic pollution of the papermills that dispels dangerous chemicals up until the 1980s. These overwhelmingly African American communities are experiencing significant health impact, especially cancer clusters. They need help now. That leads me to my third Gulf Coast concern, the Louisiana Chemical Corridor that the last speaker just eluded to. Again, huge cancer clusters, 400, 500, 600 percent greater than average. And these massive petrochemical companies pollute, they face no consequences or they have a very poultry fine that they just consider the cost of doing business. Most of the people affected are poor or people are color. And I'm confident that Dr. Wright, from New Orleans, will work to get these communities the justice that they deserve. Thank you for your time.

Ms. Jane Williams: California Communities Against Toxics. Thank you for the opportunity to speak to you. A number of the members of the White House Environmental Justice Advisory Council I've known for decades now. I just want to make a couple of very

important points, especially since we have been working on environmental justice issues here in California for decades. And we are, in some ways, very advanced and in some ways I feel like we're back to square one. The first is that we cannot manage what we cannot measure. That why the measurement tools, that the federal government puts together to measure environmental inequities, are critical to get right from the beginning. And when I noticed that the Department of Energy was using the zip code, I strongly urge you to rethink that. Here in California we use the census tract and we have found that information that we collect, on disproportionate impact, is much more accurate at the census tract level.

The second thing I want to note is that there was a review of environmental justice regulation and law that was done about 20 years ago by the United Nations. And what they found was that the country that actually had the strongest set of the rights in their constitutional law, and the strongest set of regulations was the former Soviet Union. The problem in the environmental devastation in the Soviet Union, it was not that they did not have strong laws, it was they did not have strong enforcement. I cannot emphasize enough how much we see complete ignoring of environmental laws. Many of us in the environment justice movement have spent a great deal of our careers trying to implement the Clean Water Act, the Clean Air Act, Resources Conservation and Recovery Act, Endangered Species Act, and over and over and over again when we see that it is the failure of either the appropriate federal agency or the state to actually implement and enforce these laws.

The very important point that I want to make is I want to underscore Dr. Wilson and Dr. Wright's comments. This endemic racism that we see in implementation of who burdens and who benefits from activities by the federal government and by private industry, often the burdens are borne by our most vulnerable communities and that the benefits accrue to the oligarchies. So the federal government can help change that by basically recognizing that you get what you pay for. If you subsidize fossil fuels, you'll get fossil fuels. If you subsidize microgrids in environmental justice communities, that's what you'll get. Thank you.

Ms. Karen Martin, DFO thanked Victoria for facilitating and the public commentators. She recapped that the commenters did an excellent job staying on task as the committee was able

to hear from 15 members of the public. She noted that the public commenting period is meaningful because it is an opportunity to hear what's going on around the country. She stated that it gives the WHEJAC members the benefit of hearing what's going on, on the ground. She said that it is also an opportunity to share information to help as recommendations are being developed. She apologized for not being able to hear from more commenters as there were over 60 people registered for public comments. She encouraged the commenters, who did not get an opportunity to speak, to submit comments in writing. She closed out the Public Comment Period and moved the committee into the business meeting portion of the agenda. She turned the meeting over to the committee chairs to proceed.

WRITTEN PUBLIC COMMENTS

Full Name (First and Last): Celene Krauss

Name of Organization or Community: Kean University, Department of Sociology

City and State: Union, New Jersey 07083

Brief description about the concern: My name is Celene Krauss. I am a sociologist who teaches at Kean University in N.J. I have published research on women in the environmental justice movement, many of whom are now represented on the Environmental Justice Advisory Council. I wanted to recognize today as an inspirational moment. This advisory council is made up of many leaders of the environmental justice movement who have been active in this movement for over three decades. They show what a movement can accomplish over time. I work in New Jersey, which has just passed one of the strongest Environmental Justice bills in the U.S., led by women like Maria Lopez-Nunez. The members of this council have inspired me; they have also inspired many of my students who themselves live in sacrifice zones, vulnerable, hard-hit communities. Like me, my students find hope in the women and men who continue to fight for justice in a difficult historical context where their communities and environmental safety are still under assault.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I trust the council to know what and how to advise

Dear Ms. Martin,

Please find written comments and a question for the White House Environmental Justice Advisory Council March 2021 Meeting.

Question to submit: The social and physical scientific experts are clear that if you focus your efforts on protecting children within environmental justice communities, the entire community reaps the benefits, whereas protecting adults alone will not serve to protect children. How will WHEJAC and CEQ align its strategies with protecting the fundamental constitutional rights of children, such as children within environmental justice communities? Let me know if you have any questions. Thanks,

Liz Lee

Government Affairs Staff Attorney

Full Name (First and Last): Celene Krauss

Name of Organization or Community: Kean University, Department of Sociology

City and State: Brooklyn

Brief description about the concern: My name is Celene Krauss. I am a sociologist who teaches at Kean University in N.J. I have published research on women in the environmental justice movement, many of whom are now represented on the Environmental Justice Advisory Council. I wanted to recognize today as an inspirational moment. This advisory council is made up of many leaders of the environmental justice movement who have been active in this movement for over three decades. They show what a movement can accomplish over time. I work in New Jersey, which has just passed one of the strongest Environmental Justice bills in the U.S., led by women like Maria Lopez-Nunez. The members of this council have inspired me; they have also inspired many of my students who themselves live in sacrifice zones, vulnerable, hard-hit communities. Like me, my students find hope in the women and men who continue to fight for justice in a difficult historical context where their communities and environmental safety are still under assault.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I trust them to know what to do. This is a very accomplished council of devoted environmental justice leaders.

Full Name (First and Last): Benjamin Eaton

Name of Organization or Community: Black Belt Citizens Fighting for Health and Justice

City and State: Uniontown, AL

Brief description about the concern: Environmental injustice

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? Is to have the protection agency that are in place to protect the people, protect them, ADEM, and EPA. All people should be treated equal, all environment, the Black and White and the Rich or Poor

Full Name (First and Last): Julian Wischniewski

Name of Organization or Community: National Park Service

City and State: LACEY

Brief description about the concern: As environmental amenities and places to work, public lands remain inequitably accessible to priority populations. Fear of discrimination, economic marginalization, and structural barriers all play roles in reduced accessibility. Rather than wait for further federal action on these matters, some non-profit conservation corps have built relationships with public land agencies like the National Park Service (NPS) to create space and opportunity for identity-based crews representing women, communities of color, and disabled persons. Many people serving on these identity-based crews are doing conservation and environmental work for the first time and is a step to promoting a more diverse and representational public lands work force. However, challenges remain in creating an atmosphere that is welcoming, relevant, and understanding of the need for affinity spaces, especially in parts of the federal land agency workforce.

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

What steps will this advisory committee take to ensure that public lands are accessible and relevant to priority (EJ) populations as places to work and play in? How will this advisory committee address a legacy of exclusion present in public lands? How can the executive branch through its land agencies promote identity-based crews to serve on federal lands?

Full Name (First and Last): Ava Gabrielle-Wise

Name of Organization or Community: Southeast Crescent Regional Commission Coalition

City and State: Exmore

Brief description about the concern: From the November 2020 letter to President-Elect Joseph Biden: "Federal regional commissions help local, distressed communities leverage their physical, natural and labor assets to create jobs. They make targeted investments in capital, infrastructure, and the workforce with a goal of achieving optimum economic output for regional residents. Federal commissions play a vital role in shifting communities from economic distress to economic resilience with grants that bridge the digital divide and introduce innovation to local industry. These commissions have a track record of stimulating innovation, creating jobs, and fostering economic growth. "

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

1. Make a recommendation to the President to appoint a federal co-chair to the Southeast Crescent Regional Commission.
2. Recommend that you consider these criteria as you seek potential candidates.
 - Have a clearly articulated working knowledge of the historical, political, and social challenges and
 - opportunities of the region
 - Be skilled in economic development strategies including innovative ways to invest in persistent poverty communities and people

- Have the ability to navigate the relationships between federal, state, local government as well as community, people, and organizations
- Have the ability to build strong, productive coalitions across public, private, and community sectors
- Have experience working in the southeast region of the US
- Have experience in executive management of complex operations

Full Name (First and Last): Esther Calhoun

Name of Organization or Community: Blackbelt Women Rising

City and State: Uniontown, Alabama

Brief description about the concern: Coal ash smell in union town, Our federal and state protection agencies not following through with complaints, and overall health violations against the people in the blackbelt.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I want them to look over our previous complaints investigate and prosecute those who have violated our health and human rights.

Full Name (First and Last): Ameli Juarez Name of

Organization or Community: Earth Guardians El Paso

City and State: El Paso, Texas

Brief description about the concern: My concern is about El Paso Electric's project to expand a massive fracked-gas plant called Newman 6. The expansion of this plant would cause devastating impacts to the environment and the community's people. Some of the toxic gases that Newman emits are Carbon Monoxide (CO), Carbon Dioxide (CO2), Nitrogen Oxide (NOx), and Methane (CH4).

These gases will eventually go into the atmosphere and will also go into the lungs of the people.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I want the WHEJAC to advise the White House Council on Environmental Quality to stop the expansion of Newman 6.

Full Name (First and Last): Jeffrey Schub

Name of Organization or Community: Coalition for Green Capital

City and State: West Orange, NJ

Brief description about the concern: Ensure effective policies are enacted that make targeted investments in disadvantaged communities that deliver multiple benefits to undo environmental injustice.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I urge this council to support the proposed legislation to fund a new \$100B national green bank called the Clean Energy and Sustainability Accelerator. At least 40% of the Accelerator's investments must go to disadvantaged communities to align with the Justice40 Initiative. This legislation passed the House twice in 2020. Today, over 200 organizations, businesses, investors, and utilities support this policy. It was endorsed last week by the Equitable and Justice National Climate Platform. And this legislation has already been endorsed by the organizations to which many Council members are affiliated. The Accelerator is a purpose built nonprofit, nonpartisan investment fund with flexibility, independence, and the mandate to invest in underserved communities to deliver an equitable and just transition. With the ability to make geographically targeted investments, it will mobilize public and private investment at the community level to electrify and upgrade homes, improve building and community resilience, deliver cheaper, locally-produced clean power, and much more. It can also use its funds to accelerate the retirement of uneconomical and polluting coal-fired power plants, while investing in community revitalization. The national Accelerator will work through and with state green banks, which in turn will

partner with trusted community-based lenders, like CDFIs, community banks and credit unions. Investments will be specifically structured to ensure local job creation, new business formation and wealth creation, lower energy costs, and greater local control over one's energy future. And the Accelerator will coordinate with government agencies that otherwise are not able to make targeted investments in specific communities. Thank you for the opportunity to participate in the process of this esteemed Council.

Full Name (First and Last): Judi Jones

Name of Organization or Community: Brughter Maine Smiles

City and State: Brunswick, ME

Brief description about the concern: Building the Byhalia pipeline (and all other pipelines)

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

Deny any and all permits allowing pipelines carrying any kind of oil, from being built anywhere. Thank you

Full Name (First and Last): Justin J. Pearson

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: Byhalia Pipeline: "reckless, racist, rip-off" is what former Vice President Gore aptly called this pipeline project and community members across the area agree.

Two companies, Plains All American Pipeline, L.P. and Valero Energy Corporation, are trying to build a pipeline through southwest Memphis neighborhoods to transport crude oil for export. How does it impact my community? The Davis Wellfield, an area where water is pumped from the aquifer, supplies drinking water to areas of southwest Memphis, including Westwood, Boxtown, and White Chapel. MLGW has established Wellhead Protection Zones to guard the wellfield from potential contamination, but despite these precautions, the pipeline is slated to plow through Wellhead Protection Zone 2.

Because crude oil is known to contain cancer-causing hazardous chemicals such as benzene, Memphis residents would be at risk if a leak or spill occurred near a breach in the aquifer's clay layer. One pound of crude oil can contaminate 25,000,000 gallons of groundwater.¹ The pipeline route goes through predominantly Black communities in Memphis. Boxtown is a Black community that was named after formerly enslaved people used scraps of wood and metal from train boxcars to build their homes.² Many Black Memphians were outraged after hearing a representative connected to the project describe the decision to route the pipeline through South Memphis as a "point of least resistance."³ The pipeline company has been claiming that it has the right to take the property of Black landowners, but several landowners are fighting back in court with pro bono legal assistance from local law firm Burch, Porter & Johnson.⁴ This is not the first time that southwest Memphis residents have been forced bear the risks of environmental pollution and industrial intrusion. A 2013 study identified the area as an air pollution hotspot due to the quantity of industries and emission sources, noting that the cumulative cancer risk in Southwest Memphis "was four times higher than the national average."⁵ Once again, local residents face shouldering environmental and health risks that we did not ask for, but together we can build the social and political power needed to stand up to these companies.

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

We need the federal government to rescind the Nationwide permit 12 for this project. They are allowed to ignore and not solicit community input and misrepresent community interest by using this permit. Please consider our request as urgent for social, environmental, and racial justice.

Full Name (First and Last): David Page

Name of Organization or Community: Westwood Neighborhood Association

City and State: Memphis

Brief description about the concern: I am concerned about a pipeline company trying to run a pipeline line through my neighborhood in Southwest part of Memphis TN.

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

Please create some type of legislation to stop fossil fuel and other dangerous chemical companies from setting up business in any community. They need to be in an industrial community far away from living communities.

Full Name (First and Last): Scottie Fitzgerald

Name of Organization or Community: MCAP

City and State: Memphis

Brief description about the concern: Imminent domain, taking properties and making a decision about land that is owned outright by homeowners and landowners without their consent. Going through the court system without any notification. .

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

live in Memphis TN. And as you know the Byhalia pipeline is trying to force this pipeline through our neighborhood. white plains Texas is taking priorities from homeowners offering the pennies on. dollar, to run a line through OUR Yard to get to MISSISSIPPI. THIS PIPELINE IS A REAL DANGER TO OUR COMMUNITIES. THEY ARE SUING US FOR OUR PROPERTY BY IMMINENT DOMAIN FOR A PRIVATE INDUSTRY AFTER WE HAVE SAID NO. WE ARE BEING BULLIED . Checks and balances should be in place. Not allow anyone to just take another person's private property! Using someone else land to establish more wealth for THEIR personal wealth. Only giving the person small amounts of payment for THEIR property and they will profit 99 billion dollars per year. Especially when the. Owner says NO!!

Full Name (First and Last): Lloyd Anderson

Name of Organization or Community: West Junction/Walker Homes/ New Zion MBC

City and State: Memphis Tennessee

Brief description about the concern: Is there no help for the weary? My concern is the bullying of a people simply because of who they are and where they live. The decision to build the pipeline project should not be determined by the billionaires and or corrupt greedy for filthy lucre politicians. There, should be an option to submit both written and to present comment at a meeting.

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

Dear WHEJAC, Do the people a just service and stop the pipeline project from coming to fruition. Stop the bullies from winning against a poor people and an underserved community. Stop the ongoing mob minded mentality that says, "the poor can't win because they can't afford it. Stop the robbery. Stop the pain and suffering. Stop this pipeline project!!!

Full Name (First and Last): Pearl Walker

Name of Organization or Community: NAACP MEMPHIS BRANCH

City and State: Memphis

Brief description about the concern: I'm the Environmental Justice Committee Chair for the Memphis Branch NAACP Please Stop the Byhalia Connection Pipeline from coming through historical, lower wealth, Black communities in Memphis!!!

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

Stop the permit 12 and shut it down!!!

Full Name (First and Last): Holland Harper

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: I live in Memphis, TN, and the Valero oil company is trying to construct a pipeline through our city. This pipeline is environmental racism and classism and would cut through and endanger many of our lower income neighborhoods (what the oil company called the "path of least resistance"). The pipeline plans to run directly over the wellfield for the Memphis Sands Aquifer, which is our city's ONLY supply for drinking water, and it is some of the cleanest and best water in the country, and something of which Memphians take great pride. Please help us protect our aquifer, protect our land, and protect our people, and not allow us to become poisoned by this pipeline.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? Please help us stop the pipeline, protect the people of our city, and protect our aquifer!

Full Name (First and Last): Kathy G. Beckett

Name of Organization or Community: West Virginia Native and Environmental Attorney with Steptoe & Johnson PLLC

City and State: Charleston, WV

Brief description about the concern: EJ and ESG Synergies Must Be Promoted to Garner Sustainable Economic Development

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I recommend the WHEJAC consider outreach to native business professionals from the Appalachian states who have spent their careers working with its people. The Biden Administration has a tremendous opportunity to work with traditional EJ concepts and enhance them by envisioning common goals found in ESG commitments. Helping communities left behind through fostering true economic development necessarily means finding a positive voice looking for solutions (not indictments). Solutions that are near term and tangible inspire local citizens, local thought leaders and objective national financial investors looking for opportunity. Tremendous good can be done with many seats at the table. I would love the opportunity to contribute.

Full Name (First and Last): Lisa Moore

Name of Organization or Community: Memphis TN

City and State: Memphis

Brief description about the concern: My concern is the Byhalia Pipeline project and its path through Memphis, TN and northern Mississippi.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? Please advise the WHEJAC to block the Byhalia Pipeline. Memphis and Northern Mississippi rely upon our underground natural aquifer for 100% of our drinking water. Our clean fresh water is a great source of pride. We also protect our neighbors from harm! The Byhalia Pipeline project plans a route that is directly over our drinking water wells in a significant earthquake risk zone. The threat of oil spills into our drinking water is not an IF scenario it's a WHEN scenario! The pipeline company has also threatened homeowners with lawsuits if they do not give their ancestral land to the pipeline company. Families who have owned their land since the 1930s are at risk. To quote former VP Al Gore, the Byhalia Pipeline efforts in Memphis is Reckless (earthquake zone over drinking water aquifer), Racist (going through historic African American community) and a Rip-off (no benefit to Memphis community, only for pipeline company and Valero). Please stand for Memphis and neighboring areas to protect home ownership and clean drinking water by saying no to Byhalia Pipeline! Thank you for your consideration.

Full Name (First and Last): Josie Wallace

Name of Organization or Community: Memphis, TN

City and State: Memphis, TN

Brief description about the concern: Byhalia pipeline

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

Please block the development of the Byhalia pipeline in the Memphis metro area. It presents a clear and present danger to the drinking water of the predominantly low-income citizens of our area.

Full Name (First and Last): Britney Thornton

Name of Organization or Community: JUICE Orange Mound

City and State: Memphis

Brief description about the concern: Very concerned about the potential threat to our water. Being a major source of life and asset, we must not take any chances.

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

Deny any land use to the Byhalia Pipeline that compromises water consumption by ANY citizens.

Consider tougher regulations so these land approvals do not get approved without citizen input.

Promote more environmentally friendly alternatives. Save our planet!

Full Name (First and Last): Christopher Pilcher

Name of Organization or Community: Mississippi Environmental Stewards

City and State: Olive Branch Mississippi

Brief description about the concern: We are facing issues of environmental racism and injustice in the Memphis and North Mississippi area. Yet another oil company is trying to obtain rights to install a crude oil pipeline that would pump oil to the gulf for export. We are facing a climate crisis and these companies are still being able to inflict harm on our communities with minimal regulations and oversight.

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

Stop them. Stop these oil and gas companies from adding more toxins to our environment and help us get regulations in place that prevent added carbon in our atmosphere. We need to be working on a solution to the problem rather than allowing companies to create more chaos.

Full Name (First and Last): Jessica Clark

Name of Organization or Community: Memphis

City and State: Memphis

Brief description about the concern: A crude oil company wants to build a pipeline through one of the poorest parts of Memphis and through the aquifer where we get our delicious water. This pipeline would not benefit the people of Memphis at all

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

Please help us stop the Byhalia pipeline and keep our water safe and protect our community! Thank you sincerely

Full Name (First and Last): Keshia Williams

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: The Byhalia Pipeline is slated to run through a very vulnerable area of Memphis. Not only are our residents at risk, our precious water aquifer is at risk as well. It is reckless and unneeded as the residents of Memphis will receive no benefits despite these grave risks. No oil in our soil!

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

Please amplify our voices by supporting our cause. Please put a stop to this reckless pipeline that will be obsolete in less than 20 years.

Full Name (First and Last): Lisa Patrell

Name of Organization or Community: Washtenaw350 and Climate Crisis Policy

City and State: Ann Arbor, Michigan

Brief description about the concern: Many of the environmental justice struggles with the current fossil fuel and nuclear energy sectors are recognized, such as: drinking water vs mining uranium; fishing rights vs oil pipelines; air quality vs refineries. I am concerned about the unrecognized risks to water and soil posed by climate change mitigating proposals that aim at the emissions in the air, such as geoengineering and technological carbon capture systems. I am in favor of non-technological CCS, such as: preservation of mature trees, sustainable agricultural practices, et cetera. Proposed CCS into oceans has too many unknowns that would be introduced into an ecosystem that is already stressed. Many populations around the world depend on the seas for their food. I am less concerned about far inland restaurant menus. Proposed CCS directly into soil will reduce the nutritional profile of crops grown, per extant studies of soil-bound carbon. Geoengineering is similarly mono focuses on one element without regard to impact on VitD absorption, which is sunlight dependent, or effects on seasonal crop growth, which could impact food production. Net-zero is a zombie solution, as it allows emissions to continue in one area of in another area something off-setting is done. This is in direct conflict with the concept of Environmental Justice. Moreover, the offsets are not adequately measured and often subject to double-dipping. (see Yale360 article) Further, carbon pricing schemes are a permission slip for the continuation of fossil fuel extractions, refining, export, and manufacturing (much of it becomes plastic). Such schemes pose as market-solutions, but if the fossil fuel industry was serious and sincere about market-solution, then eliminating subsidies would be the real and honest market-solution. Geoengineering, CCS, net-zero calculations, carbon-pricing are lifelines to the fossil fuel and nuclear industry; they are not the lifelines to air, soil, and water on which human life depends.

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

WHEJAC must develop and drive a policy that is environmentally sound across ecosystems, where the ability of plant and animal life to thrive in their natural ecosystems is the metric. Ensure that and humans will thrive too. Technology has its place in retrofitting mines for geothermal, designing a redundant grid (distributed grids linked with underground high-voltage direct current lines); retrofitting HVDC in easements where fuel pipelines once were; creating wild-river friendly pseudo tidal systems in rivers in place of hydro dams: the next generation of batteries for energy storage and vehicles to supplant the current toxic batteries. Legislation is needed to correct a utility's dominance in any municipality's or state's ability to transition green renewable energy (cite DTE's 1% cap on homeowners who can install solar). Legislation is needed to make the HVDC grid owned by the federal government. Municipalities and states should be free to build and own their grids that then connect to the larger grid. Utility companies should stay in their lane of producing a product, without direct subsidies, that grid owners want to buy. Legislation is needed to eliminate the subsidies paid to the fossil fuel and nuclear industries. Taxpayer dollars are needed for the solutions for tomorrow.

Full Name (First and Last): sophia mason

Name of Organization or Community: City of Memphis

City and State: Memphis

Brief description about the concern: Please monitor Plains All American and Valero's attempts to route the Byhalia Pipeline over the natural aquifer that provides Memphis and parts of surrounding states their drinking water.

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

Please monitor Plains All American and Valero's attempts to route the Byhalia Pipeline over the natural

aquifer that provides Memphis and parts of surrounding states their drinking water. This has brought Al Gore to rally with us and National News coverage through the Washington Post. Thank you for the work you are embarking on! we know it means a lot of drawn out fights!

Full Name (First and Last): Amy Murrell

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Cordova, TN

Brief description about the concern: The Memphis aquifer has provided clean water to all Memphians for many years. This is one of the few areas in our community that equalizes us across race, ethnicity, and socioeconomic status. The Byhalia Pipeline threatens that.

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

Form committees that allows for studies on the intersectionality on inequalities and environmentalism and that put money behind our children's rights to exist safely in the future, no. Help all citizens vote for racial and ethnic liberty and justice in the context of environmentalism. Help us to stop projects like the Byhalia Pipeline in our community, and others, by supporting us with science.

Full Name (First and Last): Sarah Taylor

Name of Organization or Community: NA

City and State: Memphis

Brief description about the concern: Byhalia pipeline proposal in Memphis TN

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

PLEASE STOP the Byhalia pipeline from going through under-represented and under-served communities in Memphis. Environmental justice is needed here. Memphis has amazing water and this proposal threatens that for the entire community, not to mention the damage it will do to the communities it's construction would tear through. PLEASE STOP THIS PROPOSAL.

Full Name (First and Last): Jason Pearson

Name of Organization or Community: Memphis Community Against Pollution

City and State: Memphis Tennessee

Brief description about the concern: I am concerned about the pipeline plans of Plans All American to run a pipeline through my community in Memphis Tennessee.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? To retract all permits that the previous administration gave them to place this pipeline in our community

Full Name (First and Last): Gale Gordon

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: Please withdraw ACE approval of the proposed Byhalia Pipeline in Memphis, TN. This is to go over the wellhead of our natural sands aquifer, endangering the only water supply for one million people. The proposed companies have a history of polluting the air we breathe with blow outs from their refinery.

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

Stop the building of the Byhalia Oil Pipeline being built over our water supply.

Full Name (First and Last): Danielle Bownes

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Cordova

Brief description about the concern: I am concerned about the Byhalia Pipeline poisoning our drinking

water.

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

Please help us stop the Pipeline.

Full Name (First and Last): Sally Raburn

Name of Organization or Community: Memphis Community

City and State: Memphis, Tn. 38117

Brief description about the concern: Running a pipeline through neighbors that are predominantly African Americas is a true injustice. Also, we sit on an Aquifer and this is our drinking water, our water from the Aquifer is precious and we do not want a leak of oil to cause another Flint, please help us.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? To help with our situation regarding our Aquifer, thank you.

Full Name (First and Last): Uele Siebert

Name of Organization or Community: Memphis Citizens Against the Pipeline (MCAP)

City and State: Memphis, TN

Brief description about the concern: As a citizen of Memphis, TN, I am deeply concerned about the proposed Byhalia Oil Pipeline and the significant risks it poses to the Memphis Sands Aquifer. Our community has rallied the support of our city council and county commission to stand with us in opposition to this pipeline, but like so many corporate entities, Plains All American intends to disregard our rights by suing the City of Memphis and invoking eminent domain to seize the property of the rightful landowners who have refused to sell to the company.

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

implore the council to review the antiquated permitting processes which favor the fossil fuel industries, and immediately halt any further allowances for oil pipelines and gas extraction (fracking). It is imperative that we implement policies that rely on renewable methods of energy now. It is time for action, not talks and more studies.

Full Name (First and Last): Laura McArtor

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: The proposed Byhalia Pipeline is threatening the clean drinking water in Memphis as well as the rights and well-being of property owners. Please help our community protect the Memphis Sands aquifer and the future of our water and health. THE PROPOSED BYHALIA CONNECTION PIPELINE WOULD BE SITED OVER THE DRINKING WATER AQUIFER FOR A MAJOR CITY IN AN EARTHQUAKE ZONE.

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

Rescind the federal permit awarded to the Byhalia Pipeline owners.

Full Name (First and Last): Timothy Harris

Name of Organization or Community: Memphis Empowerment Initiative

City and State: Memphis

Brief description about the concern: As a lifelong resident of Memphis, TN, I humbly request an immediate stop order for the Byhalia Pipeline via the Valero Oil company. They are planning an oil pipeline in my RESIDENTIAL community. Our entire city gets drinking water from an underground aquifer, and this pipeline directly endangers that fresh water source. .

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

Please rescind and/all federal allowances and permits for this project. This partnership between Valero and a Texas-based developer, is currently abusing the imminent domain ordinances to obtain residential property for this ill-advised effort. Please help us save our neighborhood, community, and our drinking water.

Full Name (First and Last): Sherry McBee

Name of Organization or Community: Midsouth area of Memphis TN

City and State: OLIVE BRANCH

Brief description about the concern: Stop the Byhalia Pipeline that's a danger to our aquifer!

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

Stop the pipeline. It isn't needed. It's racist, reckless and wrong!

Full Name (First and Last): Katherine Cozzens

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN Telephone

Brief description about the concern: The Byhalia pipeline, planned for construction in Memphis, will have a negative impact on the health and safety of the neighborhoods surrounding it. It will also cause long-term environmental damage and will compromise the purity of the aquifers that supply Memphis with clean drinking water.

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

implore you to help the Memphis Community Against the Pipeline group to halt production of the Byhalia Pipeline.

Full Name (First and Last): sara cornwell

Name of Organization or Community: Memphis community against the pipeline

City and State: Memphis

Brief description about the concern: Oppose Byhalia Pipeline and stop environmental racism.

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

am a Shelby county resident. I live in midtown. I am respectfully asking that you please help stop/oppose the Byhalia pipeline. Please help us decline to sell land or easements to the pipeline company. Please do not let big oil put our water at risk. We do not want this pipeline. Our county's safety and future depends on you, to oppose this pipeline.

Full Name (First and Last): Ben David Freeman

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: Valero Oil Company and Plains All American pipeline, under the joint-venture Byhalia Pipeline LLC, are attempting to construct a high pressure crude oil pipeline on top of the Memphis Sands Aquifer in a historically disadvantaged section of South Memphis. They are utilizing all sorts of unethical tactics to secure the land and convince Memphians that this pipeline does not endanger our water supply, which of course it does.

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

Please rescind the Federal fast-track approval for the Byhalia Pipeline and support the City of Memphis and its residents in combatting Byhalia Pipeline LLC. Memphis does not want Valero Oil to contaminate our incredible aquifer so that they can reap Billions of dollars in additional annual revenue. The pipeline endangers our water supply, is a classic case of environmental racism, and should be prohibited at the Federal level.

Full Name (First and Last): Max Sarinsky

Name of Organization or Community: Institute for Policy Integrity at New York University School of Law

City and State: New York, NY

Brief description about the concern: Good afternoon and thank you for this chance to speak on improving the government's efforts to address environmental injustice. I'm an attorney at the Institute for Policy Integrity, a non-partisan think tank at NYU Law School that focuses on environmental regulation and administrative decision-making. While the government should address environmental injustice using all available levers, I focus these comments on Policy Integrity's areas of expertise: agency regulation and project-level assessment. Until now, environmental justice considerations have rarely been a decisive factor in agency regulations and project-level decisions. While agencies assess disproportionate impacts on low-income and minority communities under E.O. 12,898, that analysis is normally far less robust than the cost-benefit analyses and environmental impact statements that agencies prepare. EJ analysis is also typically separate from a consideration of other regulatory impacts and not a key factor. To ensure consistently robust analysis, the White House should provide comprehensive guidance and oversight to regulatory agencies. I offer five recommendations here. Several of these recommendations find support in EPA's 2016 Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, which can serve as a foundation for future efforts. First, Circular A-4's section on distributional impacts should provide clearer advice on how agencies can incorporate equity into a cost-benefit analysis. EPA's technical guidance recommends that analysts, in addition to reporting total costs and benefits, also analyze and report costs and benefits on discrete population segments such as income groups. Putting this into regular practice would be a huge step. Second, agencies should receive stronger guidance on how to incorporate distributional analyses into their decision-making. With cost-benefit analysis, for instance, agencies are advised to promulgate a rule only if the benefits justify the costs. But no similar maxim exists for distributional analysis. How, for instance, should agencies weigh the sometimes-competing goals of equity and efficiency? Third, the White House should coordinate with scientific and economic experts throughout the federal government to better assess effects on frontline communities. For instance, more granular spatial modeling that has recently become available would allow agencies to better assess pollution at local levels and incorporate disparate demographic risk factors. And more monetization of localized air toxins would enable agencies to better quantify the costs of pollution in frontline communities. Fourth, the White House should consider providing additional coordination and review of EJ analyses. Cost-benefit analysis is once again a good model, as review by OIRA has ensured consistent best practices over decades. A similar structure for EJ analysis could do the same. Finally, the White House should facilitate interagency coordination to address inequities that may arise through regulation. While the adverse effects of some regulations will inevitably fall on some communities more than others, agencies should collaborate so that those inequities are effectively addressed through other means. Thank you once again for this opportunity to comment. I look forward to seeing the Council's work progress.

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

See above.

Full Name (First and Last): Hilary Hahn

Name of Organization or Community: Elevate Policy Lab, Yale School of Public Health

City and State: New Haven, CT

Brief description about the concern: My name is Hilary Hahn. I'm Executive Director of Elevate Policy Lab at the Yale School of Public Health. Congratulations on establishing the White House Environmental Justice Advisory Council. I offer a specific area of focus: BIPOC women and mothers living in poverty and unsafe environments. Over the past year, the public health crisis of the COVID-19 pandemic has resulted

in a devastating loss of life. There have also been tremendous economic costs that we won't be able to fully calculate for some time to come. Additionally, the pandemic is exposing and deepening pre-existing inequalities and vulnerabilities in social, political and economic systems. Communities already bearing the burden of pollution, disease, poverty and crime have been disproportionately impacted. Many have people faced extraordinary challenges this past year, but we know that to a great extent, women have shouldered the load. Women bear the brunt of both the economic and social fallout of COVID-19. Poor and marginalized women have fared the worst of all. They face higher risk of COVID-19 transmission and fatality, higher chance of lost income, and fewer safeguards to protect them against risks. Evidence shows that women earn less, save less, hold less secure jobs and are more likely to be employed in the informal sector. Women are the majority of single-parent households and they have less capacity to absorb economic shocks such as those presented by the global pandemic. It is well-established that these stressors can adversely impact women's mental health. Maternal depression, in turn, leads to reduced earnings, to lower wages and to loss of employment. The pandemic is exposing and deepening pre-existing inequalities and vulnerabilities. Within the momentum for EJ, it is important to recognize the needs of women in the communities already bearing the burden of pollution, disease, poverty and crime, and now disproportionately impacted by COVID-19. We must listen to the women with lived experience to address maternal mental health as a pathway to social/economic mobility and simultaneously provide new economic opportunities for women and families. Specifically, we need to address basic needs (e.g. food sovereignty, safe housing, clean drinking water,) and safety (e.g. violence, pollution, climate). Elevate works with mothers who are low-income and of color and is always informed by those with lived experience. Mothers help us design our programming, and mothers with lived experience are part of paid MOMS Partnership staff. Our work at Elevate is designed to simultaneously address three aspects of health --- environmental, economic and maternal mental health. These are the critical pathways to both well-being and economic mobility. We call this Triple Bottom Line Justice, and it can't come soon enough. One of the ways we are working actively towards Triple Bottom Line Justice is through the MOMS Partnership®. The mission of the MOMS Partnership is to reduce depressive symptoms among over-burdened, under-resourced mothers. When mothers do better, their children are supported in their emotional and cognitive development. When mothers do better, generations of families are supported to flourish.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? As you co-create your Theory of Change, I commend the White House Environmental Justice Council for its commitment to engaging those with lived experience to shape federal policy and place-based practice. As you do so, we strongly recommend that you elevate attention on maternal mental health of those at greater risk in communities of color, low-income communities, and tribal-indigenous populations. The Biden-Harris Administration must include this priority as a core component and require all federal agencies to contribute to policy and place-based solutions in order to ensure safe, healthy and thriving communities for children, caregivers, and families. Elevate would appreciate the opportunity to work with WHEJAC on this vital area of focus.

Good afternoon, In preparation for the Advisory Council session this afternoon, please find attached herein, a copy of a letter that was forwarded to the President yesterday asking that he consider a criterion for qualified candidates for the position of federal co-chair to the Southeast Crescent Regional Commission. Regional federal commissions play an important role in alleviating persistent poverty and can be vital to creating economic parity for vulnerable regions and marginalized populations. We hope that the Council will support our efforts to see that the commission is activated by the presidential appointment of a federal co-chair in the near future.

Kindest regards,

A. Gabrielle-Wise

Full Name (First and Last): Desmond Ondatje

Name of Organization or Community: Private citizen

City and State: los angeles

Brief description about the concern: With science providing the data confirming that we already are in a "climate crisis", why is the timeline 2050? If we are to avert climate catastrophe with any hope of recovery, if it is still possible, shouldn't the aim be towards a more immediate timeline, 2030? What say will the common citizen and Indigenous peoples have in the decision-making process, or will it be only the corporations and the wealthy that dictate final policy? Finally, we see the immediate need for change and have the ability to do so, is government going to lead the way by acting swiftly ,doing what is necessary, informed by the latest findings of science as well as Indigenous knowledge, or will it be coerced by business with its "market based approach" and profit being the motive?

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

Heed science, utilize Indigenous knowledge, EDUCATE IMMEDIATELY, don't allow profit to be the driving force.....encourage simplicity.

Full Name (First and Last): Phyllis Gay

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: My concern is the construction of the Byhalia Connection Pipeline by Plains All American and Valero refineries in southwest Memphis, TN. This 49-mile pipeline is a connector for two other pipelines transporting crude oil to the Gulf Coast for export. The pipeline smacks of environmental racism as it is being built in a predominantly Black community. In addition, it poses a dire threat to the Memphis Sand Aquifer from which Memphis and surrounding areas draw our pristine drinking water. Allowing a pipeline to be built over the Memphis sand aquifer risks an oil spill that would endanger our drinking water and is an unnecessary gamble with our community's future.

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

Please support the opposition to the construction of the Byhalia Connection Pipeline. In addition, the project secured a Nationwide Permit 12 from the U.S. Army Corps of Engineers. The permit is available for projects that meet certain environmental requirements. It appears that the Corps of Engineers' review focused on the project's potential impact on surface water - lakes, rivers, and streams - not the underground aquifer. We ask that the USACE rescind this permit which could further halt the companies' plans. Thank you for your consideration.

Full Name (First and Last): Teena Halbig

Name of Organization or Community: United Nations Association of the USA Kentucky Division

City and State: Louisville, KY

Brief description about the concern: Per - and polyfluoroalkyl substances (PFAS) known as 'Forever Chemicals' in drinking water, wastewater, air emissions and industrial sites where fire-fighting foam used. Concentration in the West End of Louisville known as "Rubbertown" with many illnesses and cancer.

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

Please get U.S. EPA Administrator to promulgate regulations for these unregulated chemicals to protect the health and welfare of citizens all over the United States - which includes Kentuckians. Mr. Michael Regan is quite familiar with these PFAS chemicals when Director of North Carolina's Environmental Quality where a federal consent decree was put in place to address PFAS pollution.

Full Name (First and Last): Tanner Pettit

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Poway California

Brief description about the concern: The installation and consequent usage of the pipeline will adversely affect the people and water supply of the surrounding area in a needless manner.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I would ask WHEJAC to advise the White House Council on Environmental Quality to stop the pipeline from negatively affecting valuable water for the city. I would also ask that no natural landscape be ruined for the sake of an unnecessary pipeline.

Full Name (First and Last): Jean Brown

Name of Organization or Community: Memphis Community Against the Pipeline - MCAP

City and State: MEMPHIS

Brief description about the concern: "This crude oil pipeline is a textbook of environmental racism, injustice and environmental degradation. In targeting the Southwest Memphis neighborhood and the greater Memphis area this project hopes to force low-wealth Black communities to carry this Billion Dollar corporation's oil barrels on their back with no public benefit."

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? Stop the Byhalia Pipeline

Full Name (First and Last): Christine Fox

Name of Organization or Community: Overton Park

City and State: Memphis

Brief description about the concern: The relocation of the pipeline will adversely impact the Memphis community.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? Stop the pipeline relocation.

Full Name (First and Last): Kilby Yarbrough

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: As I'm sure you know, the Byhalia Pipeline is trying to use (and thereby endanger, and almost certainly devastate) land in South Memphis. They are trying to exploit natural resources to benefit themselves, effectively raping our beautiful aquifer and writing off the detriment to the (largely black and brown) community as acceptable collateral damage. It's sickening, unconscionable greed.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? We KNOW that pipelines are not safe. Use your influence to bolster investment in renewable energy. You must stop big oil companies from pillaging our natural resources in their desperate attempts to squeeze every cent out of their dying, shameful industry.

Full Name (First and Last): Margaret Holland

Name of Organization or Community: Yale University

City and State: New Haven, CT

Brief description about the concern: Elevate attention to the mental health impacts of climate change on children and families

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

Thank you for this opportunity to participate in this historic inaugural meeting of the White House Environmental Justice Advisory Council. My name is Maggie Holland, PhD, and I am a research scientist at Yale University, Child Study Center. As we know, climate change poses a range of threats to public health and wellbeing— including pollution, increased range and intensity of infectious disease transmission, and compromised mental health. As part of your charge to protect public health with respect to climate change, I urge you to include an explicit focus on children, mental health, and the health of populations at greater risk due limited resources and other social determinants of health, including racism and discrimination. These areas have been historically underfunded and inadequately addressed but are critical to a comprehensive environmental, health, and economic response. As a health services researcher focused on maternal and child health for 10 years, I see the executive order that created your council as a great opportunity to expand our country’s response to, and preparation for, climate change. Although children are often remarkable resilient, they can also be vulnerable to various exposures during development, resulting in life-long repercussions. These repercussions are not only to physical health, but also mental health. We need systems to respond to immediate needs following climate-related acute disasters, to support families over longer periods of time after such events, and to support families facing challenges related to less acute impacts of climate changes. Research is needed to determine the best strategies for these systems. Experts from a range of fields, such as public health, psychology/psychiatry, and climate science, should be included in this work to ensure the best results. Representatives of communities that are likely to be impacted should also be included in this work, to ensure their needs will be met with strategies that will be accepted. One example of an area to consider is the venue through which physical and mental health services are provided. Recently, the use of telehealth increased rapidly when in-person visits were difficult due to COVID-19. A next stage should be developing systems to support a smooth transition to telehealth during times of crisis, to allow and encourage coordination of services across programs and providers, to provide high-quality continuity of services to potentially transient victims of a disaster, and to ensure appropriate compensation to providers for these services which is crucial for sustainability. Research should be supported to develop these systems, evaluate them, and ensure they are updated and effective. Ultimately, I urge the White House Environmental Justice Council to elevate attention on the mental health impacts of the climate crisis on children, especially those at greater risk in communities of color, low-income communities, and tribal-indigenous populations. The Biden-Harris Administration must include this focus as a core component of its Climate portfolio and require all federal agencies to contribute to policy and place-based solutions in order to turn disadvantaged communities — historically marginalized and overburdened — into healthy, thriving communities, for children, caregivers, and families.

I am Teena Halbig, Clean Water Chair for United Nations Association of the USA Kentucky Division and Floyds Fork Environmental Association addressing UN SDG #6: Cleaner water for better health EXPOSURE by attorney Rob Bilott is a book exposing DuPont. DuPont spun off Chemours after Bilott won a \$671 Million dollar lawsuit from DuPont. There are only 2 Chemours in the U.S. and one is right here in Louisville, KY and adjacent to Louisville’s Chemours is DOW DuPont. This is in the West End’s Rubbertown where citizens live 10 years less than citizens in Louisville’s East End. See the documentary movie, Dark Waters, (on Netflix or Amazon) produced by Mark Ruffalo (actor/producer/director) who plays attorney Rob Bilott. This movie will provide a lot of information about these dangerous chemicals: per- and polyfluoroalkyl substances (PFAS) known as ‘Forever Chemicals’. These chemicals do not break down readily and some can persist for thousands of years in the environment. CDC has tested human blood in the United States to reveal 98% of us have these chemicals in our blood – even in the blood of newborns! 3M created PFAS; PFOA and PFOS are the most studied. However, there are now as many as 500 and with changes in chemistry, perhaps 5,000 of these chemicals. In our everyday lives, we come

into contact with these chemicals which are linked to serious illnesses and cancer. In fact, this is A MASSIVE PUBLIC HEALTH CRISIS! CDC reports that PFAS is linked to cancer, liver damage, decreased fertility and increased risk of asthma and thyroid disease. The Environmental Working Group (www.EWG.org) reports: testicular, kidney, liver and pancreatic cancer; weakened childhood immunity; low birth weight; endocrine disruption; increased cholesterol; weigh gain in children and dieting adults. It has been proven that PFAS chemicals are in Louisville’s Drinking Water but the Louisville Water Company does not want to use granular activated charcoal filtration all year long, but only on an “as needed basis”. Additionally, Reverse Osmosis (RO) is needed to remove DuPont’s trade name chemical, GenX. GenX is the replacement for C8 which was banned in the U.S. Louisville was found to have the 2nd highest level of GenX out of 40 cities studied by EWG. After DuPont paid for water infrastructure in North Carolina, the levels of PFAS decreased in the blood of resident’s living close to Chemours. DuPont also paid for a Thermal Oxidizer to remove PFAS air emissions 99.99% in North Carolina. Not much of anything is the answer to the following questions:

- What is Louisville doing?
- What is Louisville Water Company doing?
- What is Air Pollution Control District doing?
- What is Metropolitan Sewer District doing?
- What is the state doing? I was told the state is “not working on any regulations at this time”. We got HB559 and HR 82 in the KY General Assembly but even the Resolution was stopped!
- What is the federal government doing? (see below)

H.R. 535, PFAS Action Act of 2019 passed the U.S. House Jan. 2020 but the U.S. Senate has never acted.

H.R. 2377 Protect Drinking Water from PFAS Act, would amend the Safe Drinking Water Act to require the Administrator of the U.S. EPA to publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for PFAS. Call 1- 202-225-3121

H.R. 2605 PROTECT ACT = Prevent Release of Toxics Emissions, Contamination, and Transfer Act of 2019 requires U.S. EPA to issue a final rule adding PFAS to be “hazardous air pollutants and to revise the list of air pollution sources. Please make removal of PFAS from public drinking water, industrial air emissions, wastewater and fire-fighting sites a priority. Please have blood testing done on residents near Chemours.

Teena Halbig
Vice President and Clean Water Chair
United Nations Association of the USA Kentucky Division

Full Name (First and Last): Leah Hartung

Name of Organization or Community: Clean Power Lake County

City and State: Lake County, IL

Brief description about the concern: My name is Leah Hartung, and I have lived in Lake County, IL my whole life, but it wasn’t until I joined the grassroots, environmental justice organization, Clean Power Lake County, that I learned fully of the environmental injustice plaguing my community. Lake County has two facilities that emit Ethylene oxide. Until the Chicago Tribune published a story about these facilities, no one in the nearby communities was aware of this threat to their health. Federal, state, and local officials knew about the carcinogen being released into our air but failed to warn their constituents about the hazard. Our county health department, along with the two municipalities where the facilities are located, had to conduct their own EtO monitoring after they determined that the U.S. EPA would not do the necessary testing and found the concentration of EtO to be well above acceptable levels. In one spot near an elementary school, the cancer risk posed by EtO was more than 5,000 people per million,

which is thousands of times higher than the EPA’s determined acceptable levels. Ethylene oxide is a class 1 carcinogen. We need the U.S. EPA to fund ambient air testing in Lake County. We need the EPA to find alternatives to EtO and phase out this killer.

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

Yet, Ethylene oxide is not the only killer in Lake County. Our county is home to one of the oldest operating coal plants in the country and is the largest point source of air and water pollution in the entire County. Year after year the American Lung Association gives Lake County’s air quality an “F” because of the toxic pollutants emitted by the coal plant. One in three children who live in Waukegan, the city where the plant is located, suffers from asthma or asthma-like symptoms; inhalers are a common sight on the playground. Emitting 90 pounds of mercury and 4,472 pounds of lead annually, according to EPA’s Toxic Release Inventory, the coal plant also threatens our drinking water and our wildlife. Additionally, the plant has two coal ash ponds next to Lake Michigan. These ponds contaminate our groundwater and have shown elevated levels of several pollutants in violation of Illinois state law. We need strong coal ash regulation that prevents ash from leaching into our groundwater. Coal ash cannot be capped-in-place. Over time it erodes the clay liners and continues to pose a threat to health and safety of community members. Yet, this toxic burden is not shared equally by people across Lake County, which is one of the wealthiest in the country. It is working-class, immigrant, Latinx residents who are statistically more vulnerable to health problems, disproportionately lack access to quality health care, and live nearest to the coal plant, who are exposed to these toxins. Once a flourishing city, and still the largest in Lake County, factories abruptly abandoned our lakefront, leaving Waukegan to deal with serious consequences, including lack of employment, a devastated tax base, and a legacy of contaminated sites. We need a just transition from this dirty, polluting coal plant to a vibrant, green economy. We need jobs that don’t make us sick. Coal plants are not profitable. They will close down. Our federal legislators must ensure that when they do, communities like Waukegan are not once again left to face increasingly expensive and hazardous clean up with fewer resources, especially money, for the community. All of the issues afflicting Lake County are exacerbated by the fact that for many of the residents most impacted, English is not their primary language. How can we explain the hazards in our community, if our people cannot understand the information released by the government? We need all documents to be translated into Spanish, or the other languages used in a community, as well as real time translation at all events.

Full Name (First and Last): Todd Fernandez

Name of Organization or Community: Climate Crisis Policy - Volunteers

City and State: New York

Brief description about the concern: We need to make sure to include 100% Clean Energy and Vehicle standards in any moving legislation, with enforcement mechanisms. In seven more years, our pollution levels will lock-in 1.5 degree warming, after which tipping points begin. We must act fast for the future. 2030 should be the deadline.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? To include enforceable, industry standards to stop the pollution that is harming environmental justice communities most directly. And to make sure there is a counting of expected GHG reductions from all proposed legislation, on a timeline. And, we need a clear plan to build 100% renewables in the timeframe required by the emergency. Too late, is too late.

Full Name (First and Last): Robert Mitchell

Name of Organization or Community: Muck City Black Lives Matter/Stop The Burn Go Green Campaign

City and State: Belle Glade, FL

Brief description about the concern: Hello, my name is Robert C Mitchell the Founder of Muck City Black Lives Matter group made up of grass root residents. The Pre-harvest sugar field burning currently in our community is a toxic and outdated harvesting practice that takes place every year from October through May over the approximately 400,000 acres of sugarcane fields in and around the Everglades Agricultural Area (EAA). Farmers burn sugarcane crops before harvest to remove the leaves and tops of the sugarcane plant leaving only the sugar bearing stalk to be harvested. This unnecessary harvesting practice negatively impacts the health, quality of life, and economic opportunity of residents living in and around the EAA. Residents health impacts are severely exasperated during this intense burning season and our properties are damaged with no incentive or accountability to the Sugar Mills who supply 19 percent of the jobs in the 3 impacted low-income Black and Brown communities. Discriminatory burn regulations based on wind direction ensure more affluent communities to the east are spared when the wind blows their way, while residents in and around the Glades, predominantly lower-income communities of color, remain unprotected from the smoke and ash; when the wind blows toward them, burning permits are granted. The discriminatory burning regulations are under the authority of Florida's Agricultural Commissioner, Nikki Fried, who oversees the Florida Forest Service; the agency that hands out pre-harvest burn permits. The Muck City BLM has partnered with the Stop The Burn/GO GREEN Campaign a grassroots environmental justice campaign to replace pre-harvest sugar field burning with modern, sustainable, burn-free green harvesting. Green harvesting is practiced by major sugarcane producers around the world, including growers in Louisiana. Florida growers even green harvest, but only when it is convenient for them. Where green harvesting has been embraced large-scale, the sugarcane leaves and tops, instead of going up in smoke, are utilized to create additional sources of income or savings for the growers and more sugar-related jobs. The leaves being burned can produce Biofuel, Plastic products, Electricity, and Mulch to name a few benefits. In addition, stopping the burn also means less climate impacts, less water pollution, and more soil regeneration — all critically important for the restoration of the Everglades. Green harvesting is a Win, Win, Win situation for the industry and the community. Thank you for your time and consideration.

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

*Include the Glades communities of Western Palm Beach County (including Belle Glade, South Bay, Pahokee, as a designated frontline community of color who will be eligible for Justice40 funds meant to benefit disadvantaged communities of color impacted by environmental justice issues. *Please allocate funds directly to grass root efforts such as Muck City BLM group as well as organizations, and other movements of positive change outside of the City Government to ensure balance and fairness within the communities of need. *Make sure to identify the sugarcane growing region in Florida within and around the Everglades Agricultural Area as eligible for the funding of programs aimed at promoting the sustainable burn-free practice of green mechanical harvesting which is the alternative to the environmental injustice caused by pre-harvest sugar field burning. *Green Mechanical Harvesting allows for the leaves and the tops of the sugar cane plant to be utilized instead of being burnt in a manner that can provide valuable natural resources to produce renewable biofuels, tree-free paper products, and can also be used for mulching in a manner that can help sequester carbon, improve soil health to reduce reliance on chemical fertilizers and pesticides as is the practice currently used by Native Brand's Green Cane Project in Brazil which uses green harvests sugarcane and is the world's largest organic regenerative agricultural operation *I implore the WHEJAC to advise the White House Council on Environmental Quality to find ways to push the sugar industry to abandon the toxic outdated, and unnecessary farming practice of pre-harvest burning and adopt Green Harvesting *This will eliminate public and environmental health issues and a blatant example of environmental racism in practice all while promoting a solution that will help mitigate climate change and create green jobs which is exactly in line with the stated goals of the new administration. Thank you so much again for your time and consideration. We genuinely appreciate your attention to these important matters. Muck City BLM

Founder/Stop the Burn GO GREEN campaign Leader Robert C. Mitchell

Full Name (First and Last): Patrick F Ferguson

Name of Organization or Community: Sierra Club's "Stop The Burn Go Green Campaign"

City and State: Lauderdale-by-the-sea

Brief description about the concern: Pre-harvest sugar field burning is a toxic and outdated harvesting practice that takes place every year from October through May over the approximately 400,000 acres of sugarcane fields in and around the Everglades Agricultural Area (EAA). Farmers burn sugarcane crops before harvest to remove the leaves and tops of the sugarcane plant leaving only the sugar-bearing stalk to be harvested. This unnecessary harvesting practice negatively impacts the health, quality of life, and economic opportunity of residents living in and around the EAA. Discriminatory burn regulations based on wind direction ensure more affluent communities to the east are spared when the wind blows their way, while residents in and around the Glades, predominantly lower-income communities of color, remain unprotected from the smoke and ash; when the wind blows toward them, burning permits are granted. The discriminatory burning regulations are under the authority of Florida's Agricultural Commissioner, Nikki Fried, who oversees the Florida Forest Service; the agency that hands out pre-harvest burn permits. The Stop the Burn Campaign is a grassroots environmental justice campaign to replace pre-harvest sugar field burning with modern, sustainable, burn-free green harvesting. Green harvesting is practiced by major sugarcane producers around the world, including growers in Louisiana. Florida growers even green harvest, but only when it is convenient for them. Where green harvesting has been embraced large-scale, the sugarcane leaves and tops, instead of going up in smoke, are utilized to create additional sources of income or savings for the growers and more sugar-related jobs. In addition, stopping the burn also means less climate impacts, less water pollution, and more soil regeneration — all critically important for the restoration of the Everglades. Green harvesting is a win-win situation.

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

Include the Glades communities of Western Palm Beach County (including Belle Glade, South Bay, Pahokee, as a designated frontline community of color who will be eligible for Justice40 funds meant to benefit disadvantaged communities of color impacted by environmental justice issues Make sure to identify the sugarcane growing region in Florida within and around the Everglades Agricultural Area as eligible for the funding of programs aimed at promoting the sustainable burn-free practice of green mechanical harvesting which is the alternative to the environmental injustice caused by pre-harvest sugar field burning. Green Mechanical Harvesting allows for the leaves and the tops of the sugar cane plant to be utilized instead of being burnt in a manner that can provide valuable natural resources to produce renewable biofuels, tree-free paper products, and can also be used for mulching in a manner that can help sequester carbon, improve soil health to reduce reliance on chemical fertilizers and pesticides as is the practice currently used by Native Brand's Green Cane Project in Brazil which uses green harvests sugarcane and is the world's largest organic regenerative agricultural operation see: <https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.global-organics.com%2Fcane-sugar.php&data=04%7C01%7CNejac%40epa.gov%7C273eabdd926549e9db9908d8f3a05955%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527217329669490%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C1000&sd=59%2FYovzGZncwhRNlypfX5Dx5yM%2BfEI8ff48ot35HN7A%3D&reserved=0> I implore the WHEJAC to advise the White House Council on Environmental Quality to find ways to push the sugar industry to abandon the toxic outdated, and unnecessary farming practice of pre-harvest burning and adopt Green Harvesting This will eliminate public and environmental health issues and a blatant example of environmental racism in practice all while promoting a solution that will help mitigate climate change

and create green jobs which is exactly in line with the stated goals of the new administration. Learn more about green harvesting here:

<https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fstopsugarburning.org%2Fgreen-harvesting-solution%2F&data=04%7C01%7CNejac%40epa.gov%7C273eabdd926549e9db9908d8f3a05955%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527217329669490%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdta=vBRuWlxDJq%2FNsAoV5y5MiAyLTzpraLVImfiQelgX7cY%3D&reserved=0>

Full Name (First and Last): Mary Shesgreen

Name of Organization or Community: Save Our Illinois Land

City and State: Elgin

Brief description about the concern: The Fossil Fuel Industry has brought humanity to the brink of extinction. They continue to make billions of dollars while their actions cause massive human dislocation, suffering and death to the poorest of the poor throughout the whole world. In the US, we must protect and support communities that have been contaminated by mining, fracking, leaks and spills from oil and gas, and exposure to particulate matter from industry and traffic. They need funding and restoration. Workers from the fossil fuel industry need good-paying jobs in industries that heal the earth, instead of contaminating it.

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

Please end all subsidies of fossil fuel industries, please say no to new demands for subsidies for bogus solutions like Carbon Capture and Storage. Please support clean, safe, convenient, and free public transport. Create high-paying jobs in wind and solar energy, battery storage, retrofitting homes and public buildings, and advancing energy conservation and energy efficiency. Please support a new Civilian Conservation Corp for young people, especially those from communities of color and low-income communities, to be employed upgrading our National Parks.

Full Name (First and Last): Duffy-Marie Arnoult

Name of Organization or Community: The Climate Reality Project: Memphis and Mid-South Chapter

City and State: Memphis, TN

Brief description about the concern: Please do everything you can to stop the Byhalia Pipeline. Texas oil companies, Valero and Plains All American, stand to make billions in profit and our Mid-South community, especially our South Memphis and North Mississippi neighbors, hold the health and environmental risks. The Army Corps of Engineers granted the Nationwide 12 permit, however they noted that "oil spills are reasonably foreseeable future actions." This permit was also issued without having to do a study on the risk of the water below the surface, especially endangering our Memphis Sands Aquifer that supplies our greater community with life-giving, safe drinking water. This pipeline will cut right through the aquifer and protected Davis Wellfield where there are known areas of thinner clay and it is also in an earthquake zone. Emissions from fossil fuels are the dominant cause of global warming. Environmental injustice and new fossil fuel infrastructure have no place here today or in the future and we need to stop the Byhalia Pipeline and all future pipeline builds. Congressman Steve Cohen has spoken out about this and has been working with the Southern Environmental Law Center to create awareness and appeal to the Biden administration for help to rescind fast track approval for the Byhalia Pipeline. Thank you to Congressman Cohen, Catherine Flowers, Dr. Bullard and everyone joining together with Memphis Community Against Pollution to stand up to this pipeline.

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

am asking the council to please appeal to President Biden and Vice President Harris to look into this matter and rescind the Nation Wide permit 12 granted by the Army Corps of Engineers to the Byhalia

Pipeline construction company to stop this pipeline project and not allow it to be built period. This Nation-Wide permit 12 is also creating a loophole being used by multiple pipeline projects across the country to avoid responsibility and fast track approval process and this needs to be addressed. Thank you for taking the time to read and consider my comments.

Full Name (First and Last): Martin N Hurley

Name of Organization or Community: South Memphis

City and State: Memphis

Brief description about the concern: We are against this pipeline coming through our community.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Shut down this project!

Full Name (First and Last): Melissa Martin

Name of Organization or Community: Center for Democratic and Environmental Rights (CDER) Rights of Nature Campaign Team

City and State: Eugene, Oregon

Brief description about the concern: Due Process for Environmental Justice

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

My comment: If injustice is a violation of rights, and justice is the court-ordered restoration of what was lost, ideally preventing future wrongs, then environmental justice requires we reconsider our legal approach to nature. If we look at our origin story, we find the concept of natural rights hoisting the very brand of America -- inalienable rights to life, liberty and the pursuit of happiness, or property, as it was implemented in our Bill of Rights. And we know how the law has treated nature as a function of property, but isn't nature also a pretty important function of our rights to life and liberty? Isn't our right to life dependent on the right to clean water, clean air, nutritious food grown with healthy natural systems to include pollinators? Aren't the blessings of liberty secured by first being safe from extreme weather, fires, floods or sea level rise? Why does it seem our natural rights to life and liberty have been alienated? As many environmental lawyers will tell you, because it's the law. It currently protects the developers and the pollution industries and immunizes politicians from liability for failing to maintain such things as wastewater infrastructure. It props up state preemption power to keep health, safety and well-being standards low. It traps environmental advocates into a well-regulated loop of protests, public comments and hopes for better election results. But the legal imbalance of rights remains. We currently lack the legal tools to do anything about this. So, to fix a systemic wrong, we must ask a fundamental question: What process is due? How do we ensure our rights to life and liberty are properly enforced? Three things: 1. We need to acknowledge rights to/of healthy, natural systems; that they must be able to exist, flourish, support ecosystems and be free from harm by human activity, 2. We need legal standing to enforce such rights in a court of law, and 3. We need the legal remedy of restoration. To find systemic environmental justice, this is what process is due; to hear the voices of those whose natural rights were violated, to understand the best available science on the matter, and to solve problems through restorative means, righting what was wronged and preventing future harm. It's a necessary procedural safety net should the current regulatory system miss the mark in environmental protection. It encourages responsible government and business activities. It sidesteps politics and brings these issues to bear through relevant, reliable evidence in a court of law; exactly where the problems and solutions of environmental justice belong.

Full Name (First and Last): Anna Morris

Name of Organization or Community: MCAP

City and State: MEMPHIS

Brief description about the concern: Memphis and surrounding areas reject the Byhalia Pipeline but Plains All American Pipeline ignores the people.

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

Do NOT allow any company to build a pipeline over any aquifer! Do NOT allow any company to build a pipeline through neighborhoods that rejects it!

Full Name (First and Last): Kizzy Jones

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: Byhalia Pipeline: What is going on? Two companies, Plains All American Pipeline, L.P. and Valero Energy Corporation, are trying to build a pipeline through southwest Memphis neighborhoods to transport crude oil for export. How does it impact my community? The Davis Wellfield, an area where water is pumped from the aquifer, supplies drinking water to areas of southwest Memphis, including Westwood, Boxtown, and White Chapel. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has recorded over 4,000 oil and fuel spills just since 2010. Even though pipeline companies are now required to install leak detection systems, these do not always work as planned. Only about 7% of the recorded spills were discovered because Alarminglly, the proposed route lies within a known earthquake zone. The New Madrid Seismic Zone is the most seismically active area in the central and eastern United States,13 yet the companies still plan to construct an underground pipeline through residential areas over a crucial drinking water source. Also, in 2016 then Attorney General and now Our Vice-President Kamala Harris sued this very company. This very company who wants to jeopardize our drinking water...

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

Pull the USACE permit...HELP!!! Stop Byhalia Connection Oil Pipeline and Plains All American Oil Pipeline

Full Name (First and Last): Bridget McGregor

Name of Organization or Community: Virginia League of Conservation Voters

City and State: Fredericksburg, Virginia

Brief description about the concern: Wegmans is seeking to build a distribution center in Hanover County, Virginia, which if completed will impermissibly compound upon the environmental injustices that have splintered the Brown Grove community. During Reconstruction, freed slaves settled near the Air Park site and thus created Brown Grove. It remains a predominantly African American community today, and has been significantly displaced by industrial encroachment, including Interstate-95, Hanover County Airport, a landfill, and a concrete plant. The proposed development will contribute to the pollution generated by these other industrial sources and accelerate the degradation of Brown Grove. Moreover, the development will eviscerate possible graves and historic markers unless Brown Grove has an earnest opportunity to inspect the site and provide insight; several members of the community have invaluable oral histories and can recount seeing graves on site. Wegmans' wetlands delineation also does not comply with the federal and state wetland program requirements because it excludes data necessary to identify all wetlands onsite (over 15 acres). The Corps' public notice also contains numerous errors. It fails to note the existence of the segregation era Brown Grove School. The notice continues to state the Corps is waiting for VA DEQ to complete its Coastal Zone Management Act Consistency Review, which was completed in error due to the aforementioned misleading information provided by Timmons in late 2019 and early 2020. DEQ has stated they do not plan to conduct another CZMA review. The Corps prematurely determined that no Environmental Impact Statement was necessary under the National Environmental Policy Act, indicating without further explanation that the agency believes that this project poses no significant environmental impact. However, DEQ's records show that this permit, if approved, will be both the largest destruction of wetlands outside of the

Hampton Roads area and the second largest destruction of non-tidal wetlands in Virginia over the last five years. In consideration of the extensive community concern, ongoing and uncorrected critical flaws in the delineation, unaddressed environmental justice failures, and sheer volume of wetlands to be destroyed, this project will significantly affect the quality of the human environment, and therefore must be classified as a major federal action under the NEPA. Permitting action should not progress unless and until an appropriate and comprehensive EIS is performed. These issues cannot be continued to be ignored, as they already have been by the local board of supervisors and the State Water Control Board.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? As of now, the permitting process has been moved along as the Army Corps of Engineers NEPA review process continues. If possible, we would like the WHEJAC to engage in this process and monitor its progression to ensure the protection of the Brown Grove community and environment. While we understand the need for a Wegman's distribution facility in Virginia, there were multiple other locations to choose from that did not pose nearly as many environmental and social justice threats but were ignored. The permit for the Brown Grove sight needs to be denied and this project needs to be built elsewhere.

Good afternoon!

Thank you for the opportunity to contribute today. I won't have the time to mention this, should I have the honor of a 3-minute public comment, but there is quite a lot to this conversation as it does entail a certain paradigm shift (legally and relationally). We stand ready to answer any questions and concerns. Specifically, Thomas Linzey of the Center for Democratic and Environmental Rights (CDER), cc'd, should be your first stop. Also, I don't believe I answered the pointed question of "what I'd like WHEJAC to advise the White House Council on Environmental Quality to do." Simply, I'd like the discussion to gain prominence in any real debate for legislative/policy change. The fundamental problem is that all interests (such as true health of a water body or interdependent species for example) are not being effectively considered in our current system, along with the false belief that nature can "take" what we give it, which has been clearly held untrue -- scientifically and anecdotally. My ask is that we take a hard, refreshed look at the health of our legal roots before deciding what to prune. I believe the addition of these three procedural measures will provide the as-needed legal tool to fight whatever pests or diseases may come -- organically. Again, thank you for this window and for your hard work with these critical matters.

Respectfully,

Melissa Martin

CDER Rights of Nature Campaign Team

Full Name (First and Last): Clara Marie Hogan

Name of Organization or Community: Shelby County

City and State: Cordova

Brief description about the concern: This pipeline is an environmental danger to our community and the future of our kid's health. This pipeline poses an immediate threat to the drinking water in our great city. I oppose this pipeline.

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

Vote against this

Full Name (First and Last): Jameson Christopher Davis

Name of Organization or Community: Environmental Justice Law Society @ Vermont Law School

City and State: South Royalton, Vermont

Brief description about the concern: Congratulations!

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

On behalf of the Environmental Justice Law Society (EJLS), we would like to congratulate the inaugural committee of the White House Environmental Justice Advisory Council.

Full Name (First and Last): Prashant Singh

Name of Organization or Community: Asian American

City and State: Bethesda, MD

Brief description about the concern: Hello WHEJAC, Good afternoon. Please consider rural communities in infrastructure investments an example is Indian Tribes who face quite a negative externality due to the geographic region in which they live.

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

Update benefit cost analysis in regulations to factor in more in-depth analysis of impacts to minority and disenfranchised communities. Current Benefit cost analysis utilizes quite a bit of rote boilerplate templates without looking at granularity. This creates a filter that weeds out the effect of outliers and thus creates a systemic deficiency in policy decisions.

Full Name (First and Last): Simone Sagovac

Name of Organization or Community: Southwest Detroit Community Benefits Coalition

City and State: Detroit, MI

Brief description about the concern: Improved accountability in air and other permitting and federally funded infrastructure projects, to assure equal protection of public health for all residents. Our organization engages in air and health monitoring and concerns related to border and other truck traffic pollution and other industrial sources, including work mitigating a current federal project.

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

Four asks: 1) Cumulative impacts must be accounted for in all air permitting processes, using an EJ screening tool, health impact assessment or other proven and available tools. 2) Hotspot areas within nonattainment zones must be given priority for mitigation and resources. Current ambient monitoring on a county-wide determination scale does not reflect the highest exposures in hotpot EJ areas. Finer-scale air monitoring is necessary and possible to provide equal health protection to all residents. 3) No permits should be granted to increase pollution emissions in nonattainment areas where that same pollutant is being exceeded, and highest caution taken where any nonattainment exists. Detroit/ Wayne County has been in continuous nonattainment for over a decade and there is no accountability in the State Implementation Plan process to achieve resolution: The disparate costs are paid in our public health. And clear goals must be set to require Best Available Technologies for emissions reduction in all permitting. 4) Infrastructure projects at the federal level and any level using federal dollars must not disparately impact EJ communities, and processes need to make residents whole. In areas where population density is declining, density level should not affect appropriate mitigation for impacts upon each residence or vulnerable entity affected, like protections of noise walls and other buffering. The focus on new infrastructure investment must take actions to provide equal health protections for all. Thank you for your strong consideration of these recommendations that can improve health for all in our community for generations to come.

Full Name (First and Last): Marva Maples

Name of Organization or Community: Delta Sigma Theta

City and State: Cordova, TN

Brief description about the concern: My concern about the Byhalia Pipeline in Memphis, Tennessee is the devaluation of homes, eminent domain, and impacting drinking water.

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

Need you support in opposing and restricting companies from building a pipeline.

Full Name (First and Last): John Mueller

Name of Organization or Community: Private citizen

City and State: Tulsa, OK

Brief description about the concern: Drinking water quality and its impact on EJ.

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

Recommend an immediate moratorium, with full justification details published in the Federal Register, on Community Water Fluoridation until such time that safe levels of exposure, with adequate margin of safety, are determined by a proper Risk Assessment.

Full Name (First and Last): Arthur Gardo

Name of Organization or Community:

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.memphiscap.org%2F&data=04%7C01%7CNejac%40epa.gov%7C28659166257b4b86627508d8f3ab4fda%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527264859104057%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAilCJQljoiv2luMzliLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%3D%7C3000&data=pFVXP6%2FHjSxkwkY%2Bl4eT5p9t46jyz17vGjipXcOzPtU%3D&reserved=0>

City and State: Fort Walton Beach, Florida

Brief description about the concern: This pipeline is a danger to the residents where this pipeline is planned!

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

Stop the Byhalia Pipeline! We thank you!

Full Name (First and Last): Jasmine Hall

Name of Organization or Community: BM4F

City and State: Flint, Michigan

Brief description about the concern: I'm grateful to see this advisory committee convene and how important EJ appears to be to this administration. I am Jasmine Hall (@jaspublichealth,) a millennial local public health leader in Flint Michigan, where we are seven years into the horrific Flint water crisis. I am also a recent graduate of the Epidemiology program at Harvard University. As you know, our democracy was stolen through Emergency Managers and government failed at every level to provide safe drinking water for over 18 months. Our community is still dealing with the impacts of being poisoned, retraumatized, and consistently not being heard. Just yesterday, the Flint Water Crisis had a settlement deadline where residents faced pressure to join without being informed of the details of the settlement including the potential claim amount and the option to opt-out. In this settlement, there are major concerns from residents (bit.ly/fwcsobjections) and barriers to accessing proof of medical documentation including: only 1% of neuro developmental exams have been completed and residents are asked to complete a bone lead scan, which has not been approved by the FDA for use in humans. Without blood levels, medical documentation, or the exams listed above, adult Flint residents would receive less than 1000 per household and children receive ten times less than they would if they had access to proof. While the community is raising our voices as loud as we can, our officials are not

listening and not speaking up. We are, once again, not being heard. I could not help but notice that not one person from Flint is named on this [WHEJAC] council. In the 21st century, there is no EJ without mentioning the Flint Water Crisis.

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

urge you to pay attention to how Flint is being treated in this settlement, ensure that Flint receives justice from the Water Crisis including Medicare for All. I also encourage you to give Flint, Michigan a seat at this Environmental Justice table. There are folks like Nayirrah Sharif, Dr Pam Pugh, Dr. Reynolds, Karen Weaver, myself and many more who could serve on this advisory committee as Flint representatives to help elevate the voices of the Flint community. If there is no room, please allow us to bring a chair. We deserve to have our voices heard. Thank you.

Full Name (First and Last): Murilo Alves Zacareli

Name of Organization or Community: University of Wisconsin-Madison

City and State: Madison, Wisconsin

Brief description about the concern: New and old fossil fuel developments violate Indigenous sovereignty, threaten ecosystems, pose many dangers to Native and non-Native communities, and challenge efforts to establish a clean and sustainable economy/society. While climate change affects all of us, scientific evidence, as well as experiences shared by underrepresented communities, clearly show that Black, Indigenous, and people of color are disproportionately affected. Climate justice is racial justice.

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

Dear Members of the WHEJAC, I would kindly urge you to advise the WHC on EQ to consider climate justice as racial justice. In this sense, and in order for our country to foster a sustainable, clean, equal, inclusive, and equitable society, the economy needs to move away from fossil fuel-based resources. As aforementioned, fossil fuels violate Indigenous sovereignty, threaten ecosystems, pose many dangers to Native and non-Native communities, and challenge efforts to establish a clean and sustainable economy/society. I appreciate the opportunity to share my thoughts. Best regards, Murilo Alves Zacareli

Full Name (First and Last): Genna Mastellone

Name of Organization or Community: MN350

City and State: Minneapolis, MN

Brief description about the concern: The Line 3 tar sands pipeline is currently being constructed across Northern Minnesota on treaty land. It is currently being fought in court and the company is trying as hard as it can to finish construction before court cases are decided.

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

a concern of the WHEJAC is Indigenous issues, as well as clean water and climate change mitigation, then stopping Line 3 must be high priority. The Army Corps permit, given by Trump without an EIS being conducted, must be revoked by President Biden. You should look into this issue and direct the president to do so.

Full Name (First and Last): Alyssa Garza

Name of Organization or Community: Sunrise El Paso

City and State: El Paso, TX

Brief description about the concern: Air and water quality in El Paso, Texas. El Paso's electric company (EPE) is privatized and tied to JP Morgan and proposed a new generating station to continue fracking. I propose the whole station should be solar energy considering El Paso is the 10th sunniest city in the world. We should transition to renewable energy.

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

want the WHEJAC to start regulating big companies and stop the privatization of public utilities that communities depend on to survive. I want to see strong action towards the country's transition to renewable energy. Once again, I want action! I want the council to address environmental justice and implement that into their policies. I want action and not words. Words will not save us from the climate crisis.

Full Name (First and Last): Christine Popowski

Name of Organization or Community: MN350

City and State: Minneapolis

Brief description about the concern: Line 3 and environmental justice.

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

would strongly encourage the stoppage of the construction of line 3. I prefer to call it destruction. First of all, it is breaking the treaties we signed with the Native Americans back in the 1800s. This is literally breaking the law. I guess the government can get away with that. Secondly, it makes no sense to build an oil pipeline under 200+ bodies of water and the Mississippi River considering Enbridge's 200+ record of past spills. The Mississippi River is where we get our drinking water. Third, we certainly should not be transporting

Full Name (First and Last): Robert Hendrickson

Name of Organization or Community: MN350

City and State: Minneapolis, Minnesota

Brief description about the concern: As a lifelong Minnesota resident, I have so many fond memories exploring the wilderness and waters of back country Northern Minnesota. It troubles me that our state has allowed construction of Enbridge's Line 3 reroute and expansion to commence and threaten our state's natural beauty. This pipeline will create carbon emissions equivalent to 50 coal plants or 38 million additional cars on our streets. On top of this staggering statistic is the inevitability that Line 3 will spill and contaminate countless watersheds, poisoning the fish, the wild rice, the birds, the people. Already, miles and miles of our pristine forest have been clear cut to make way for this tar sands pipeline. Now, as workers prepare to drill underneath the rivers (including the Mississippi twice), indigenous women, children, and two-spirits face increased harassment from law enforcement and pipelayers. Every day this continues is another day our nation says a Canadian oil company is worth more than the well-being of our Native American communities. So much is threatened by this archaic infrastructure, perhaps our next generations most of all. They cannot afford this pipeline, and we need to take action for their sake.

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

Revoke the Trump-Era permits that allowed construction of this pipeline to move forward. At the very least, halt construction until the Minnesota Court of Appeals have finished considering various indigenous communities' and environmental groups' concerns (mid to late June).

Full Name (First and Last): J.D. Ruybal

Name of Organization or Community: Northern Colorado Community Rights Network

City and State: Windsor

Brief description about the concern: As We The 'marginalized' People have always been aware of the harm inflicted upon us and the environment in the pursuit of profit (for example see: Dodge v. Ford Motor Co. and corporate person-hood). We collectively are now becoming aware of the power and influence of the corporate oligarch. As I here words like this group giving "recommendations" ...This

does 'Not' give one confidence. And as I hear the goal is 'Economic' growth how does that equate to justice? Is it economy or justice? Please note the latest examples of politicians giving into politics instead of truly representing the people. Please know, from the bottom of my heart, I want to have faith however, being a longtime person involved in the community of people I have little to no confidence in our governmental process...Incremental change in this day is not an option. (please don't dismiss me simply because I talk in truth). See: House Bill 1115 and House Bill 1189 are just other examples of politicians giving in to the pressures of other politicians—instead of duly elected officials holding their ground for the Health and Wellbeing of the people.

https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.coloradopolitics.com%2Flegislature%2Fbill-to-separate-county-commissioners-and-boards-of-public-health-advances-but-with-less-power%2Farticle_ef955f78-8c29-11eb-a9f5-c75295d2a2f3.html&data=04%7C01%7CNejac%40epa.gov%7Cdb117ae124f144c6ac3e08d8f3b1a8bb%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527291749716899%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C1000&reserved=0
<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcoloradosun.com%2F2021%2F03%2F30%2Fcolorado-air-pollution-whistleblowers-complaint%2F&data=04%7C01%7CNejac%40epa.gov%7Cdb117ae124f144c6ac3e08d8f3b1a8bb%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527291749726784%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C1000&reserved=0> In Solidarity

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

Move from an advisory position into a more 'binding recommendation's position ***There are key issues that MUST be addressed***

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<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcoloradosun.com%2F2021%2F03%2F30%2Fcolorado-air-pollution-whistleblowers-complaint%2F&data=04%7C01%7CNejac%40epa.gov%7Cdb117ae124f144c6ac3e08d8f3b1a8bb%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527291749726784%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C1000&reserved=0> In Solidarity

Full Name (First and Last): Arnold London

Name of Organization or Community: MN 350.org

City and State: St. Paul MN

Brief description about the concern: Climate destruction is a social justice issue. The administration MUST stop construction of the Line 3 tar sands pipeline before it is too late to stop cancelling out all MN conservation work into the future. We must transition NOW to renewable energy and leave the carbon IN THE GROUND!!!!!! I'm a physician for 44 years and this carbon bomb must not go off! President Biden stopped KXL and he must do the same for line 3.

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

Stop Line 3

Full Name (First and Last): Christine Popowski

Name of Organization or Community: MN350

City and State: Minneapolis

Brief description about the concern: Environmental injustice

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

would like to see the Council stop construction of Line 3. I call it destruction. Here are my reasons. First, we signed a treaty with the Native Americans in the 1800s that would give them fishing and hunting rights. This pipeline is breaking that treaty which is literally breaking the law. Is our government above the law? Second, it makes no sense to build a pipeline carrying tar sands oil under 200+ bodies of water plus the Mississippi River given Enbridge's spill record. Third, we should not be transporting oil in any way during a climate crisis. We instead should be creating renewable energy jobs and replacing lead pipes contaminating drinking water all over the country. So please advise them to stop line 3.

Full Name (First and Last): Valentia Taylor

Name of Organization or Community: Memphis and Shelby County

City and State: Cordova, TN

Brief description about the concern: This pipeline will affect all parties residing in this area. The drinking water will be very harmful to all individuals and their health. Additionally, this will not be beneficial to any families to risk their lives.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? To locate another area for that will not mean stealing someone land and not harm an individual's health.

Full Name (First and Last): Eleanor Dvorak

Name of Organization or Community: Volunteer with MN350 (but do not speak for them); supporter of UCS, Sierra Club, Greenpeace, NRDC, FOE, Earthjustice and more.

City and State: Minnetonka

Brief description about the concern: My concerns include these areas: (1) Treaty rights; (2) Making private industry pay for their pollution (not the government, i.e. the public); and (3) Climate justice.

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

My request is that the US government works to do the following: (1) Uphold and honor treaty rights - this includes stopping Line 3 pipeline in Minnesota, which violates federal treaties that have previously been upheld in court. This unnecessary pipeline threatens the Anishinaabe people's homes, culture, livelihood, and water that is used to grow their sacred wild rice, which is threatened also by climate change. The facts are that NEW pipelines have more frequent and larger spills than old ones. (Line 3 also threatens the Mississippi River, the longest river in North America.) (2) Make private industry AND their executives responsible for the pollution they create in our communities, including the air, water and land--and climate change, which execs knew about decades ago. Corporations must own and pay the total cost of the production, distribution, use and disposal of their products -- this is not the public's job, i.e. the government should not pay for toxic site cleanups. (3) Ensure climate justice as you develop programs to slow climate change and mitigate its effects that we can't stop. Examples include helping marginalized communities -- offer training and jobs for installing solar panels or building electric charging stations; bring alternative energy to poorer areas, fund the creation of vegetable gardens in urban areas and support small, traditional farming methods that are regenerative, improve bus routes, and address health risks to poorer communities that get put in bad locations, like near highways or incinerators--by offering free medical care and moving assistance, and shutting down the polluters.

Thank you for working for the people!

Full Name (First and Last): Thomas Middleton

Name of Organization or Community: Memphis Community Against the Pipeline (Byhalia Pipeline)

City and State: Memphis, TN

Brief description about the concern: The Byhalia Pipeline project is trying to go through one of the lowest socio-economic areas in Memphis, TN (Boxtown area) and is a major threat to our Sparta-Memphis aquifer which is a part of the Mississippi Embayment. We have long laid claim to some of the best water to drink in the world and the pipeline puts that at risk.

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

Stop the Byhalia Pipeline project in Memphis, TN

Full Name (First and Last): Bonnie Beckel

Name of Organization or Community: Volunteer with MN350

City and State: Minneapolis, MN

Brief description about the concern: The Enbridge tar sands oil pipeline is a climate and an environmental disaster in the making. Most of us know that we are at a pivotal point in earth history, when we must move rapidly toward a fossil fuel free future. Building fossil fuel infrastructure has not been a rational choice for 40 years. The risks of this and other pipelines to our precious water resources are unacceptable. A look at the history of pipeline leaks and spills tells the story - oil pipelines always leak, some right after they are built, some years later. The toxic mix of solvents required to push tar sands sludge through pipelines is dangerous to the health of eco-systems and living beings. And finally, the threats to our treaties with our indigenous relatives must stop here. The healing of our genocidal treatment of native peoples on this native land can be a blessing to us all.

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

Please advise our leaders to revoke the federal permits that allow Line 3 to continue to be built and used.

Full Name (First and Last): Sarah Harper

Name of Organization or Community: MN350

City and State: Minneapolis

Brief description about the concern: My name is Sarah Harper. I live in Minneapolis, Minnesota, and I have been trying to stop a tar sands oil pipeline for 5 years. The Line 3 pipeline is currently under construction, cutting through untouched treaty lands and over 200 bodies of water in northern Minnesota. This pipeline is set to be drilled under the Mississippi River Headwaters in northern Minnesota as soon as the ice cover thaws. Emissions from this project will be equivalent to building 50 new coal fired power plants. That's more emissions than the entire state of Minnesota produces every year. The tar sands oil that Line 3 will carry comes from the most destructive oil operation on earth in the tar sands region of Alberta, Canada. The first nations living there were displaced and a portion of the boreal forest greater than the size of Florida has been skinned to extract toxic tar sands oil. This type of oil is the dirtiest, most polluting kind on earth. Enbridge, the company behind Line 3, was responsible for the largest inland oil spill in US history right here in northern Minnesota just 30 years ago as well as the Kalamazoo River disaster in 2010 – where over 1 million gallons of tar sands oil leaked into the river. Now, over a decade later, it still hasn't been fully cleaned up. These spills have devastated and poisoned their surrounding communities to this day. All of this destruction is for oil that isn't even needed. Right now, the Minnesota Department of Commerce along with 3 Native tribes and other advocates are appealing the decision to approve this pipeline. We are in pandemic – demand for fossil fuels has

changed, and climate policies are rapidly shifting as you all mentioned. This pipeline will not benefit society and we can say no to it. Biden can also say no to it by revoking federal permits for Line 3 just like he did for the Keystone XL pipeline. We must demand him to do so. When I learned the dangers of Line 3 and the brave Indigenous leaders fighting it, I couldn't turn away. And none of you should be able to turn away either – I hope that you won't. I hope you will carry this message and do what you can to stop Line 3. Thank you.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Stop Line 3.

Full Name (First and Last): Anshul Gupta

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Valhalla, NY

Brief description about the concern: There are grave environmental justice concerns around the Byhalia Connection pipeline (being routed through already pollution-burdened black neighborhoods over a wellhead protection zone of the Memphis Sand Aquifer, the sole source of drinking water for the region), Enbridge Line 3, and Dakota Access Pipeline (both these have similar problems to the Byhalia Connection, affecting the indigenous population in these cases).

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Please cancel the USACE NWP 12 permits of the Byhalia Connection Pipeline and Enbridge Line 3. Also, please shut down the illegal Dakota Access Pipeline, which is operating without a permit!

The President's Council on Sustainable Development under President Clinton had big goals, 5 Cabinet Secretaries, corporate and "Big Green" CEO's ; only two of us could be considered as Long term EJ activists and only Ted Strong was directly from the rich community of Tribal communities. We worked amazingly hard over the six years and were rightly proud of work across this land.... but it was barely a dent in the fundamental framework of INJUSTICE and lack of power distribution in the US at the end of the 20th century. You have an OPPORTUNITY and RESPONSIBILITY in 2021 to do better and do differently! This is the JUSTICE Century, we stand on the shoulders and hopes of our ancestors and those as yet unbornI stand ready to support you and pray for your work and our country! Peace, Dianne Dillon-Ridgley

Full Name (First and Last): Madeleine Hallberg

Name of Organization or Community: MN350 Volunteer

City and State: St. Paul, MN

Brief description about the concern: As a white Minnesotan with European ancestors who depends on the Mississippi for water, I am very concerned about the construction of Enbridge's Line 3 in northern MN. This pipeline violates treaty rights and perpetuates colonialism and all its harms, is causing massive environmental violence, puts the water of millions at risk, will massively contribute to CO2 emissions, and does not have a certificate of need for the MN Dept. of Commerce. Advocating for stopping Enbridge's new Line 3, as well as the total decommissioning of existing Line 3, is completely within the scope of WHEJAC's purpose, and I encourage you to take this on as your first issue. Stopping Line 3 is a multifaceted issue and involves most of your environmental justice areas of work, so it is a great place to start, in addition to being an urgent issue.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I would appreciate advocacy and guidance on radical and innovative change to repair harms (both to people and environment). We really need investment, research and development, and mobilization on par with the New Deal and WWII production to reverse climate change and establish a hopeful future. It

will also be important to listen, include, and educate people and corporations who may not be supportive of resulting policies and frame issues in ways that are relevant to them. (Example: farmers in Chisago County, MN make more money having solar panels in their fields than crops, so economic advantage is positioned ahead of clean energy.) Thank you all so much for your time and energy. I appreciate you.

Full Name (First and Last): Kristen Jones

Name of Organization or Community: private citizen

City and State: Annandale, Virginia

Brief description about the concern: industrial pollution, especially chemical pollution, and coal ash pollution from Alabama Power

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? punish polluters so severely that they are disincentivized from polluting, e.g., huge fines, prison time

Full Name (First and Last): Mary Dylkowski

Name of Organization or Community: Human Beings

City and State: Stacy

Brief description about the concern: Line 3 - Environmental Justice.

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

The council should apply pressure on any decision makers that have authority to Stop Line 3. This pipeline is an environmental disaster from start to finish. It is damaging the livelihoods of indigenous people across MN. The wild rice beds and maple trees that provide basic income to so many are disappearing at an alarming rate due to climate change and pipeline construction. When the pipeline spills, and it will, the clean water for millions of people we be in jeopardy.

Full Name (First and Last): Brenda Bell Brown

Name of Organization or Community: Memphis Community Against Pollution (MCAP) / G6PD Education Front & Scholarships Fund

City and State: Santa Clara, California

Brief description about the concern: The community where I was born and raised took on Big Oil and Won - More lessons to be learned from the fight waged by South Memphis, TN against the Byhalia Connection Pipeline

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

My voice was raised in solidarity with the people who opposed the installation of the Byhalia Oil Pipeline in South Memphis, TN. Know that the force behind the win in this very recent battle is the Memphis Community Against the Pipeline (MCAP). I was born and raised in this community that has been assailed time and time again with blights to the health and human welfare of its residents. Know that we stood firm in opposition to the installation of the Byhalia Oil Pipeline—enough is enough! This legacy of man-driven environmental assault on land and people must end. Across this nation, all around the world corporate greed has driven the assault on the water, land, and air of places and spaces predominantly inhabited by people of color. Victims of this assault have spanned generations. I know. I am a survivor of this legendary assault on my homeplace—Walker Homes—in South Memphis, Tennessee. I remember as a child playing in the backyard of our neighbors across the street. The woods behind those homes was the ultimate playground. We were children. We did not know that we were actually playing on hills of trash. And that was not the only ill-aspect of the place that we called home. Every summer, the mosquito fogger would come through our neighborhood. The billows of smoke would leave dead disease-carrying mosquitos and larvae in its wake, along with dozens of sick children who loved to play

in the fogger's white clouds. As children, we had no clue just how detrimental these aspects of our play were to our health. Over time, my mother figured it out. As a child, I had asthma. There are many triggers for this respiratory ailment that has a higher prevalence and incidence of morbidity in Blacks than any other race in America. After many years of not-knowing, I now know without a doubt what lies at the root of my health ailments from which my mother fought to protect me. I am one of over 400 million people worldwide with a genetic predisposition known as G6pd enzyme deficiency. Those who are knowledgeable of G6pd enzyme deficiency triggers—most especially, how those triggers assault the body through what is breathed, ingested, and touched—are very wary of the environmental dangers like the ones posed by the pollutants directly connected to the Byhalia Oil Pipeline. Give time, energy, and focus to the study of genetic predispositions prevalent amongst affected populations experiencing the highest incidence of health disparities in response to weaponized water, soil, and air.* *weaponize (verb) - make into or use as a weapon or a potential weapon.

Full Name (First and Last): Dr Sonja Brookins

Name of Organization or Community: Soil and Water Conservation District

City and State: Tampa, Florida

Brief description about the concern: How are conservation agencies merging to enhance environmental justice? There seems to be a disconnect when conversations occur around ejected communities. What can be done on a local level to change the narrative on this movement towards acceptance for all.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? To emphasize the importance of connection between the agencies within the local community and assist with profit and non-profit businesses with financial assistance to help educate community regarding environmental justice.

Full Name (First and Last): Tara Widner

Name of Organization or Community: individual

City and State: Minneapolis, MN

Brief description about the concern: I am Pembina Band Anishinaabe (Ojibwe) from the White Earth Reservation. My ancestors have been on the land called Minnesota since well before it was recognized as a state or even a territory. Like my ancestors, I am a ricer. I canoe through the clean lakes and rivers of Minnesota to hand harvest manoomin/wild rice each autumn. Manoomin is sacred to the Ojibwe. The manoomin harvest continues to be central to Ojibwe families for it's spiritual, nutritional, and economic value. The Enbridge Line 3 replacement, which is an expansion and reroute, run through the 1855 Treaty areas in Minnesota. Treaties are recognized as the highest law of the land in the 6th Amendment to the U.S. Constitution. The Treaties guarantee that the Ojibwe retain the right to hunt, fish, trap and gather within the boundaries of both the unceded land on the Reservations and the ceded land. In order to maintain healthy harvest, the water and land must remain unpolluted. A bitumen spill from this pipeline would prevent the Ojibwe from exercising those rights by destroying whole ecosystems supporting those harvests.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? Enbridge Line 3 Mississippi River crossing must be revoked. This pipeline violates Treaty Rights as well as threatening the water supply of millions of people downstream.

Thanks for this opportunity. I would like to know what are the provisions for addressing the challenges and the tensions on the social fabric on black and brown communities as usually those are the one that host climate refugees.

Beatriz Jaramillo

Full Name (First and Last): Jayeesha Dutta

Name of Organization or Community: Another Gulf Is Possible

City and State: New Orleans

Brief description about the concern: The "world's richest man," billionaire Elon Musk, wants to expand his private SpaceX facility at Boca Chica Beach in Brownsville, TX. Nearby residents have been speaking out against the destructive operations of the SpaceX facility for years. Since the facility began operations in 2019, Elon Musk's SpaceX rocket testing has caused numerous fires and explosions that threatened the people of Brownsville's safety and have caused wildfires. Monthly operations have also displaced people from their homes at Boca Chica Village, and monthly operations have stripped locals' access to the pristine beach. If the expansion goes forward, the gentrification and damages will only increase in size and scale. Facing the direct threats of this facility's operations are many low-income communities of color, national wildlife refuges with endangered species like the Aplomado falcon and ocelot, and two proposed fracked gas (LNG) plants that would pose extreme safety risks on their own -- all within a 6-mile radius. The SpaceX facility is currently located and planning to expand on sacred land to the Carrizo Comecrudo Tribe of South Texas and is being built without their consent.

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

Stop Space X and Elon Musk's colonization of already vulnerable border communities on indigenous lands in Brownsville.

Full Name (First and Last): Karen Hulstrand

Name of Organization or Community: On behalf of Minnesota and all our future children

City and State: Stillwater, Minnesota

Brief description about the concern: I am very concerned about the Line 3 pipeline and the dirty tar sands oil is going to transport through the northern part of my state. This will exacerbate climate change, endanger our water through leaks from the pipe and break the Native Peoples treaty rights. This is process that has been racist and very short sighted for the future of our world.

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

would like President Biden to revoke the permits for Line 3 and find better ways than toxic tar sand oil to supply the world's energy needs. I would like our country to stop breaking treaties with the Native Peoples of this land. I would like our water and wild rice protected in Minnesota.

Full Name (First and Last): Juan Elizondo

Name of Organization or Community: Furr High School

City and State: Houston, Texas

Brief description about the concern: Please help us, Furr High School. We are the first high school in the nation to focus on Environmental and Social Justice, and with our elders and mentors at Tejas, together we have been able to uplift and empower our youth. We need help with sustainability and support to be able to pay volunteers and youth to uplift their cities and communities.

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

Empower high schools and grass roots organizations to be able to work together and uplift social and environmental justice work together. In Houston, Furr High School works closely on the daily with Tejas to implement lesson plans with teachers, field trips, internships and partnerships with universities.

Full Name (First and Last): Beatriz

Name of Organization or Community: Jaramillo

City and State: Los Angeles California

Brief description about the concern: I would like to know what are the provisions for addressing the

challenges and the tensions on the social fabric on black and brown communities as usually those are the one that host climate refugees.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I consider this an important aspect of climate change that is affecting our communities and I would like to see that it is included in the agenda

Full Name (First and Last): Salote Soqo

Name of Organization or Community: Unitarian Universalist Service Committee (UUSC)

City and State: Cambridge, MA

Brief description about the concern: There is a lack of a governance framework to address climate-forced displacement in the US. Yet, many Indigenous communities and communities of color are being disproportionately affected by the climate crisis and are being forcibly displaced from their homes due to a combination of climate-induced events. Current government responses are inadequate and inequitable.

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

WHEJAC should advise the WHCEQ to (1) increase federal funds that target the most affected communities, (2) grant federal funds directly to frontline communities or their designated representatives, (3) make FEMA equitable (4) establish a multidisciplinary, multi-jurisdictional working group that includes frontline community groups to guide the federal government in developing the institutional capability required to support communities' in their self-determination to adapt in place, relocate or retreat in a dignified manner. UUSC will be sharing these policy recommendations in more detail on April 7th and we will be happy to share it with the WHEJAC. Since the entire country is being spotlighted on its unethical and discriminating practices, and now we realize that accountability measures and policy change need to happen. Please make the new EPA Administrator Mr. Michael Reagan, require all his appointed regional administrator associates be held accountable in their performance agreements, and project management, thus accountability to regional staff. Policy change is needed along with a full blown "policy audit," if there is such a thing. This needs to be conducted, implemented, and prioritized as soon as possible. Thanks, -Tyler Hill

Full Name (First and Last): Nalleli Hidalgo

Name of Organization or Community: Texas Environmental Justice Advocacy Services

City and State: Houston Texas

Brief description about the concern: Increase investments in youth programs that inform youth about environmental justice issues and a JUST TRANSITION from fossil fuels to green and clean energies.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? As an Education Liaison for Texas Environmental Justice Advocacy Services, I would like for WHEJAC to provide more youth programs, internships, and trainings for EJ youth at the frontlines. We need more outreach and educational programming at the frontline around JUST transition from fossil fuels and green, clean and safe jobs. There is a need for jobs and lack of job opportunities for our frontline youth. We need to create a pipeline to clean and safe jobs for EJ communities and youth.

Full Name (First and Last): Manuel Reyes-Leon

Name of Organization or Community: Houston Independent School District

City and State: Houston

Brief description about the concern: I want to bring to the table the fact that there was no representation from youth. It would be beneficial to hear the point of view and take from a younger perspective. The examples and efforts from different organizations was awesome to hear about but we

also need the next generation to keep up with us in our present efforts. This way someone can act as a leader in our own position if one day we are no longer here. Do not undermine youth in conferences or meetings.

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

Assign different and more environmental councils to different bioregions to better the people on a more local level. Protect the short and long term health effects from the environment and increase list of watched chemicals released into the atmosphere

Full Name (First and Last): Mily Trevino-Sauceda

Name of Organization or Community: Alianza Nacional de Campesinas, Inc.

City and State: Thousand Palms

Brief description about the concern: Worker Protection Standards Change back the 100 feet away zone when spraying - past administration rolled back the regulations to 25 feet. Look into the use of Chlorpyrifos, Paraquat and Round Up

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

Coordinate meetings and work with various groups including Earth Justice, Alianza Nacional de Campesinas, Inc. (with 15 groups in 11 states) as well as Farmworker Justice to talk about all the impacts these bad decisions in using the three mentioned chemicals when some states have banned them already and return the decision about WPS

Full Name (First and Last): Sally Jane Gellert

Name of Organization or Community: various City and State: Woodcliff Lake, N.J.

Brief description about the concern: General commentary.

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

am glad to see this council formed with 2 strong New Jersey EJ activists, Maria Lopez-Nuñez and Nicky Sheats. I had a conflict with today's meeting at the same time as an EESI Congressional briefing, Toward an Evidence-Based Nuclear Energy Policy, and want to encourage you to watch the video of that presentation, particularly that of panelist Leona Morgan, as soon as it is posted. Ms. Morgan also gave a presentation at a May 2018 briefing; she is interviewed here:

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fbit.ly%2F3sEK5Jz&data=04%7C01%7CNejac%40epa.gov%7C3de14c193f7247f53bb608d8f3bd7e43%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527342479845285%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&reserved=0> — scroll down on that page for other speakers that day. It has been 30 years since the Principles of Environmental Justice were developed—sadly long time for such a council to be developed. I had the opportunity to attend 2 meetings of NEJAC, the EPA's National Environmental Justice Advisory Council, and was really inspired by the first meeting in Brooklyn. When I got to a later meeting, at EPA headquarters, it was substantially reduced because of budget reductions. I hope that this good start does not get similarly decreased. Best wishes for your work on moving this vast federal government toward more just environmental practices and policies, as well as consideration of EJ issues in all federal agencies.

Full Name (First and Last): Hannah Perls

Name of Organization or Community: Harvard Environmental & Energy Law Program

City and State: Boston, MA

Brief description about the concern: In President Biden's climate and environment executive orders, FEMA (via DHS) is notably absent from several key interagency working groups, including the IWG on

Coal and Power Plant Communities and Economic Revitalization, and the White House EJ Interagency Council. Yet, the vast majority of federal money available for resilience and recovery, including climate mitigation and infrastructure, comes from FEMA's Disaster Relief Fund. The amount of money spent by FEMA will only increase in the coming years due to the impacts of climate change, and new funding mechanisms like the Building Resilient Infrastructure and Communities (BRIC) fund. Yet multiple studies (many cited in the first WHEJAC meeting) have shown FEMA assistance exacerbates wealth inequality, particularly along lines of race, education, and homeownership (even after accounting for the impacts of the disaster itself). Yet the agency currently has no internal mechanisms to assess how its funding mechanisms disparately impact vulnerable populations. FEMA officials need to be a part of these conversations, both to inform FEMA policies and regulations, and to be accountable to public concerns that arise during WHEJAC and Interagency meetings.

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

Designate FEMA officials responsible for interfacing with CEQ and the WHEJAC in order to (1) receive public input, (2) provide timely and transparent updates on the agency's EJ and equity program efforts, and (3) coordinate how these recommendations are integrated into agency policies and regulations. Also, recommend to President Biden that FEMA be included as part of the White House EJ Interagency Council.

Full Name (First and Last): Bernadette Knaeble

Name of Organization or Community: MN350

City and State: Minneapolis

Brief description about the concern: My concern centers around the environmental degradation being caused right now by the construction of Enbridge Corporation's Tar Sands Line 3 Expansion in Northern Minnesota. The pipeline traverses vast areas, damaging water, air and land in violation of usufructuary rights retained by Anishinaabeg people as stated in treaties with the US government. Wild rice lakes, the Mississippi River, game and traditional plants are all at risk because a foreign corporation wants to sell tar sands oil on the international market. AND in the future this pipeline will spew CO2 amounts equal to 50 coal fired power plants. For years. And if that's not bad enough we know ALL PIPELINES LEAK causing ongoing damage to Mother Earth.

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

Ask President Biden to revoke the Army Corps of Engineers water permits for this project. Initiate a thorough EIS and complete cultural survey. Indigenous people have the right to live and practice their culture. Stop this slow genocide. Protect our Earth.

Dear WHEJAC

What is your position exporting our environmental injustices onto First Nations in Canada? Procurement of hydropower produced by mega dams built on Indigenous lands a thousand miles away is not so-called clean energy. We must not be complicit and must withdraw initiatives in Minnesota, New York, Vermont, and Maine. We must not export our environmental injustice elsewhere. For more information go to: www.northeastmegadamresistance.org

Annie Wilson

Senior Energy Policy Advisor

New York Environmental Justice Initiative

New York Environmental Law and Justice Project

Good Afternoon. I am Marilyn Hemingway, CEO/Founder of the Gullah Geechee Chamber of Commerce. Our mission is to raise global awareness, profitability and sustainability of African American businesses and other entities in the Gullah community. The Gullah Geechee community is found in the coastal

communities from Wilmington, NC, South Carolina, Georgia to St. Augustine/Jacksonville, FL. We are also located in Seminole County, OK, coastal counties of Virginia and in Texas. We are the descendants of enslaved Africans brought to the Caribbean Islands, South and North America from West Africa. We are a global community. We are an indigenous community with a rich culture embedded in the land and water. And we are a marginalized community, directly impacted by climate change, development, gentrification, rising sea levels, heir's property, and the placement of industrial plants in marginalized communities. We are environmentalists who through sheer force of will survived the worse of enslavement and incorporated reduce, reuse, recycle before they became popular terms. For our community, environmental justice is economic justice. So the Gullah Geechee Leadership Institute, the policies and issues arm of the Gullah Geechee Chamber develops leadership to advocate for policies and issues impacting the Gullah community including environmental justice, addressing Climate Change and education regarding career and business opportunities in green, renewable energy. We believe a healthy environment, leads to healthy people, healthy businesses, and healthy communities. The Gullah Geechee Chamber organization look forward to working with WHEJAC, its members and Biden Administration and to holding all entities accountable to their missions. Thank you.

Marilyn L. Hemingway
CEO & President

Full Name (First and Last): John Valinch

Name of Organization or Community: GreenRoots, Inc.

City and State: Chelsea, Massachusetts

Brief description about the concern: Coming from an environmental justice community and as an environmental justice advocate from a largely immigrant, Latinx community, I am asking WHEJAC to help uplift the demands of our communities across the country and protect our collective futures by promoting accountability, funding our movements, and protecting our communities through enforcement. We need the Biden-Harris Administration and WHEJAC to mobilize the federal government to serve as an active ally and reliable enforcement agent to amplify community demands and ensure that community participation translates into positive outcomes.

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

Good afternoon to the members of the White House Environmental Justice Advisory Council and to all tuning in today. I'm John Valinch, a Board member of GreenRoots Inc in Chelsea Massachusetts, an environmental justice organization fighting for a better quality of life for our predominately immigrant, working class, and Latinx community. I'm sending my most heartfelt congratulations to Maria Belen Power, my friend and colleague at GreenRoots, who now serves on this esteemed council. Thanks to all of you on the council for your commitment to a just world. I want to begin by thanking President Biden and Vice President Harris for making this possible—for creating a White House Environmental Justice Advisory Council, and for uplifting the voices of communities that, for decades, have borne the disproportionate burdens of environmental injustice. It is with great pleasure to witness this diverse council from across the country, including Puerto Rico, convened to address issues and make recommendations to improve the quality of life for our most vulnerable communities. I also want to praise President Biden and Vice President Harris for not only plotting a course of action on the severe climate crisis during their first few months, but also for the way in which they are approaching solutions to our collective crisis: primarily through uplifting the voices and recommendations of the people from our most impacted communities. In addition, the White House has importantly involved organized labor so that we can begin to build new green infrastructure that will offer good paying union jobs to all. This is an essential partnership that shows that we do not need to sacrifice the financial security of working people against the critical health of our one planet. Growing up in the environmental justice community of Chelsea, Massachusetts, we in the environmental justice movement have known for too long that the

confluence of racial injustice, language access injustice, and poverty combine to create tremendous pressures and health disparities on low-income people and low-income people of color seeking to live lives free from environmental pollution and free from the siting of dangerous industrial hazards in their backyards. We need YOUR help to uplift the demands of our communities and to protect our collective futures by promoting accountability, funding our movements, and protecting our communities. I am looking forward to seeing the Administration and Council mobilize the federal government to serve as an active ally and reliable enforcement agent to amplify community demands and ensure that community participation translates into positive outcomes. We have fought for years in this movement because we have known that environmental justice is racial justice; that environmental justice is economic justice; and that environmental justice will bring justice to working people across the United States.

Full Name (First and Last): Alannah Hurley

Name of Organization or Community: United Tribes of Bristol Bay

City and State: Dillingham, Alaska

Brief description about the concern: Permanent protections for the Bristol Bay watershed and the planet's last great wild sockeye-salmon fishery.

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

First, thank you for convening this exciting advisory committee. We are encouraged by this initial meeting and goals of elevating voices who have been fighting for environmental justice for decades. UTBB would like the WHEJAC to advise the WH CEQ to support EPA Clean Water Act (CWA) protections to permanently protect the Bristol Bay watershed from large-scale mines like Pebble. While the Army Corps has denied the Pebble Limited Partnership's CWA 404 permit application, the threat of Pebble transforming Bristol Bay into a toxic mining district remains. We must secure permanent & durable CWA protections to ensure our traditional indigenous way of life is protected for future generations. Please finish the work of the Obama Administration and urge the EPA to enact 404c protections and veto the Pebble Mine, anything less leaves our people vulnerable to the company who has held our region hostage for almost two decades.

Full Name (First and Last): Jamie Harty

Name of Organization or Community: MN350 Pipeline Resistance Team

City and State: Minneapolis Minnesota

Brief description about the concern: My concern is sovereignty and reverence for our indigenous communities and environmental resources! We need to stop Line 3! Our planet depends on our resources and clean water! We must stop this Pipeline.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? To stop Line 3! To consider or reverence to the land, indigenous treaties and our people! Water is life! The time is now to do the right thing!

I wanted to reach out to offer support. My firm, APEX, has supported EPA Headquarters and Regions for over 15 years in various aspects of environmental justice technical, logistical, and analytical support. I'm on the CEQ zoom call right now, listening to the discussion and concern regarding support for the work groups. I want to offer the services of APEX to help support the work groups. My team has historical knowledge of environmental justice in general and, NEJAC and its various work groups in particular. We're familiar with many of the issues and the terminology, so there would be little to no learning curve in terms of following the conversation and being able to extract critical points for recommendations. I'm aware that you probably have contracting guidelines you must follow. We're a woman, minority-owned firm, with relationships with many of the large consulting firms. I'd be happy to have a conversation with

you about how we can help support. You can reach me at 630-372-8080 (office) or 630-638-8081 (personal cell). I'm so happy to see that environmental justice is once again on the forefront of national priorities. Warm regards,
Joi Ross, CEO
APEX Direct, Inc.
A Public Outreach & Communications Company

Full Name (First and Last): Devon Cupery

Name of Organization or Community: Minneapolis

City and State: Minneapolis, MN

Brief description about the concern: I'm writing to urge the Biden Administration and EPA to do everything in their power to stop the Line 3 pipeline. It's a climate bomb, producing greenhouse gas emissions equivalent to 50 coal-fired power plants, and it should not be built. We can't afford to continue building massive fossil fuel infrastructure.

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

Please do everything in your power to stop the Line 3 pipeline.

Full Name (First and Last): Jennifer Booker

Name of Organization or Community: Delta Sigma Theta Sorority Incorporated, Shelby County (TN) Alumnae Chapter.

City and State: Memphis, TN

Brief description about the concern: Good Afternoon, My name is Jennifer Booker. I am a member of Delta Sigma Theta Sorority Incorporated, Shelby County (TN) Alumnae Chapter. With growing concern over the proposed Byhalia Connection Pipeline project, I stand in support of Memphis Community Against the Pipeline (MCAP) and ask that you oppose plans and permits to build the line through our neighborhoods. Research shows the pipeline plan poses an environmental threat and crises with its potential contamination of the Memphis Sand Aquifer. The Memphis Aquifer is heralded and nationally recognized for providing some of the best drinking water in North America; it also supports over 10,000 families and hundreds of businesses that depend on its reliability.

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

This is a bipartisan issue that should not be ignored. I ask that you join your community and stand against the Byhalia Pipeline. Please stop the issuance of the USACE Byhalia Pipeline permit NWP-12 that is under review.

Full Name (First and Last): Jan Marie Fritz

Name of Organization or Community: U. of Cincinnati/U. of Johannesburg/NEJAC

City and State: Palm City, Florida

Brief description about the concern: path forward

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

Look at how the various parts of govt. are incorporating env. justice (it is not enough a statement on the website; are advisory committees including environmental justice representation -e.g. National Petroleum Council in Dept. of Energy) When govt. environmental justice meetings are held around the country (as NEJAC does) make sure there are funds to provide local site visits (this is respectful to EJ communities and provides important information for those attending the meetings) It is important to address concerns when local communities say they are not getting adequate responses from local or region environmental agencies to local EJ issues. Who can be contacted to hear about AND deal with this? People are optimistic that mechanisms have been put in place to hear EJ concerns. We need to show short-term outcomes (to keep being optimistic) and still work on long-term goals.

Full Name (First and Last): Morgan Johnson, Esq

Name of Organization or Community: Waterkeepers Chesapeake

City and State: Takoma Park, MD

Brief description about the concern: Congratulations on a successful and important first convening on the White House Environmental Justice Advisory Council. Waterkeepers Chesapeake excitedly awaits the work that this critical group will do to make strides towards fulfilling the promise and principles of Environmental and Climate Justice. Today's meeting outlined many Environmental and Climate Justice targets for agencies across the federal government. We wanted to bring the WHEJAC's attention to another agency with significant EJ implications—The Federal Energy Regulatory Commission (FERC). FERC licenses energy projects across the nation, including pipelines, electric projects and dams. The agency has been tasked, pursuant to the Federal Power Act, with creating an Office of Public Participation (OPP). FERC is accurately regarded by many impacted communities and environmental advocates as industry-sided, and typically unwilling to fully consider direct and indirect impacts of the projects it licenses. The new OPP is one key opportunity to dismantle that status quo. As drafted, the relevant provision of the Federal Power Act requiring the creation of OPP gives FERC broad latitude to shape the scope of the office, increasing the potential that FERC can make big strides towards the objectives of Environmental Justice. FERC convened listening sessions for interested parties from March 17th to March 25th*, and the public has until April 23rd to provide written comments on the office. Importantly, the office could give a voice to interested communities and intervenors who often have less access to counsel, funds and time—in contrast to industry, which tends to have vast experience and resources with which to navigate FERC's processes. FERC is a powerful and important agency, and its decisions have major implications for many communities on the ground facing environmental racism, injustices, and cumulative impacts—yet the agency and its processes are often amorphous and even unknown to these same communities. Even the planning of the listening sessions highlighted the need for more information on EJ principles—the listening sessions occurred mid-day, during working hours for many impacted communities. Turnout level in some of the meetings indicated that communities should have brought into the conversation in a better, more meaningful manner. It is mission-critical that FERC is zealously encouraged to get this right. The shaping of this new office presents a unique and once-in-a-lifetime opportunity to make strides on the goals and principles of environmental justice within the agency. *See related notices on OPP and info on the sessions at:

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.ferc.gov%2Fnews-events%2Fevents%2Fworkshop-regarding-creation-office-public-participation-04162021&data=04%7C01%7CNejac%40epa.gov%7Cab8b8b51df17436c809c08d8f3c63791%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637527379951905409%7CUnknown%7CTWFpbGZsb3d8eyJWljoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&data=tyAhoKWMnrT5QJPY8vmoLwkJPoREuCGWlxzQZ3Hosk0%3D&reserved=0>

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

We respectfully ask that the WHEJAC advise CEQ to raise awareness of the critical role the Federal Energy Regulatory Commission plays at the fence line, and to take a close look at the development of the Office of Public Participation—from a lens of fulfilling the goals of Environmental Justice as articulated by Executive Order 12898, the Seventeen Principles of Environmental Justice as articulated in the People of Color Environmental Leadership Summit, and the Biden Administration's goals on Climate Justice. We also ask that WHEJAC advise CEQ to ensure that FERC's NEPA analyses are sufficient and that the agency's "hard look" is hard enough—in terms of how FERC's choices affect the environment as well as social, cultural, economic and natural resources. Thank you.

Full Name (First and Last): Simone Sagovac

Name of Organization or Community: Southwest Detroit Community Benefits Coalition

City and State: Detroit

Brief description about the concern: Addendum to prior comment - Improve accountability in air and other permitting and federally funded infrastructure projects, to assure equal protection of public health for all residents.

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

(#1-4 in prior submission; adding 5&6 here) 5) Incentivize Local policies that mitigate pollution impacts: Federal programs can provide incentives in grant-making and other avenues to affect more supportive local zoning that reduces EJ impacts, like: Lower zoning between residential and industrial activities (as buffers); Provide buffer infrastructure with developments (separation, vegetative buffers, etc.); Truck routing off of residential streets, and; Aggregating trucking-heavy industry away from residential areas with sensible routing to reduce exposure. 6) Incentivize Least-distance sourcing of parts and products in industries that receive federal subsidies to reduce transportation pollution and trade route impacts on communities and other things, like marine breeding grounds: Local sourcing would increase state and local economic health of manufacturing and employment. Thank you for your consideration.

Thank you for the WHEJAC kickoff today and for making it possible for the public to observe. This is an exciting initiative that is critical to ensuring that the hard work members of the Biden Administration are doing at the federal level has the greatest value for disadvantaged communities at the local level and across the nation. It was particularly inspiring to hear the strong calls for input and feedback from Vice President Harris and Gina McCarthy. As you proceed with this important work, I'd like to offer some observations and suggestions that I hope will be useful for future committee meetings. For context: I'm the Principle Investigator for a project to help bring solar to low-to-moderate income members of electric cooperatives across the country. As part of that, my team has been facilitating remote meetings with busy energy and energy justice leaders since we all went remote a year ago. We've had success in structuring these meetings so that we get rich discussions, inputs and feedback from the participating co-op executives and energy justice advisors. Having agonized about how to make these on-line sessions as productive as possible, I share the following information with heartfelt good wishes. As with the WHEJAC, the intention of our advisor/stakeholder meetings is to engage the experts who've agreed to share their expertise and insights with us. We want to learn as much from them as we can, as efficiently as we can. With these priorities in mind, we intentionally structure the meetings so that our advisors are doing most of the talking and talking specifically to our questions/challenges. Meanwhile, our team's main function is to listen. To make that happen, we do the following: Limit our team's presentations during our shared time and instead provide background information/pre-recorded messages (like Vice President Harris' comments) ahead of time. Focus any meeting presentations on stimulating the conversation. Sometimes this means putting up one or two slides with targeted information. Focus the shared time on working together by sending specific questions ahead of time (allows participants to give some thought to specifics before the meetings) or asking participants to come to the meeting with specific information in hand. Have a subset of the advisors/experts in a particular area make short presentations to get the conversation around the topic of the day started. Idea for this group: It could be very interesting to have each advisor put together 1 slide or 1 picture of what environmental justice (or something more specific to their workgroups) means for them/their communities or 1 slide on what the urgent priorities are from their perspectives. Collect these ahead of time. Ask folks to be prepared to present their slide during an upcoming meeting. You could have each advisor talk for 2-4 minutes about their pictures--either all in one meeting or in groupings. And then have a structured discussion around those pictures--focusing on questions that would be most helpful to your immediate needs. Sometimes it means putting up 3-5 questions that we want the group to focus on beyond July: have each advisor establish a group or conduct a town hall to get feedback directly from disadvantaged communities and share what they learn. Facilitate the discussion to ensure we stay on-topic and solutions-oriented AND

that we as staff say as little as possible. I let the staff know that this is our time to hear from our advisors, and I will mute them if they are taking time away from our learning from the experts, we've asked to advise us. If anything, we let our advisors know that we don't have the answers. We ask questions and ask for their guidance--resisting the urge to feel like we have to provide answers. Goals: get as much as we can from our experts. Help them get to know one another. Facilitate dialogue that fosters creative solutions, cooperation, and action for and beyond our project. Use their time together efficiently so that additional time requirements are limited or tightly focused. When we structure meetings in these ways, people get to the end of the meeting and feel that 1) we've collectively been productive during our time together, and 2) energized about next steps without feeling overwhelmed by the work we are asking them to do. My observation today is that advisors were ready/aching to advise. They brought ideas and thinking that got put on hold in order to get through presentations. Until the last 40 minutes of the four-hour meeting, we heard more from the folks who signed up for public comments than most of the advisors. That left some folks feeling they'd invested significant time without a sense of accomplishment (the sense of feeling overwhelmed). The very good news is that, and I think everyone got this sense, this is an impressive group with a lot of potential. While on-line meetings provide challenges, they also provide opportunities for us to participate and engage--without the environmental impacts and time requirements of travel. :) Thank you for all of the work to get this important work started today. I hope this is helpful, and I'm happy to discuss/assist if there's interest. With gratitude for the Biden Administration's focus on this issue and for your dedication, Deb Roepke

Full Name (First and Last): Vanessa Redus

Name of Organization or Community: MCAP

City and State: Cordova

Brief description about the concern: Stopping the building of the Byhalia Pipeline and its potential effects on the Memphis and north Mississippi communities.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? Stop the pipeline which would be contaminating the water aquifer in Memphis and Shelby county.

Full Name (First and Last): Celene Krauss

Name of Organization or Community: Kean University, Department of Sociology

City and State: Brooklyn NY

Brief description about the concern: My name is Celene Krauss. I am a sociologist who teaches at Kean University in N.J. I have written about women in the environmental justice movement, many of whom are now represented on the Environmental Justice Advisory Council. I just wanted to recognize today as an inspirational moment. This advisory council is made up of many leaders of the environmental justice movement who have been active for over three decades. They show what a movement can accomplish over time. The members of this council have inspired me; they have also inspired many of my students who themselves live in sacrifice zones. Like me, my students find hope in the women and men who continue to fight for justice in a difficult historical context. My students are particularly inspired by women like Maria Lopez- Nunez who helped pass one of the strongest Environmental Justice bills in the U.S. in their New Jersey community. I was particularly moved by Dr. Beverly Wright's comment today that people who have been in the trenches for decades have seen good ideas fail, for example, around community participation that left the community disempowered. It left me hoping that government agencies learn from the lessons of the EJ community- their activist experience and knowledge

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I trust that they will use their knowledge and experience to guide governmental EJ agencies.

Full Name (First and Last): Teresa Geoghegan Brown

Name of Organization or Community: Memphis

City and State: Memphis

Brief description about the concern: Byhalia Pipeline has no option but to pollute community, land, and water resources deep within the earth. It is in the nature of the product as well as the invasive nature and probability of error of the transport and pipeline itself. As a people who live with, not on, this planet we have no more room in our timeline for reckless motivations seeped in smoke and mirrors. This voice is one with peoples from all over this planet who raise their voices for the Voice of this earth, this intelligence who knows how to heal the wounds we as a species have inflicted if we give her time and the space to do so. Putting another pipeline filled with the nonrenewable blood of her veins feeds only those whose pockets receive the money. It literally kills the land and the people it effects most directly. This does not even touch the destruction to the sacred waters of the Memphis Aquifer. Surely, we are learning what is right for the generations to come as well as the ones already here.

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

Refuse the proposal for the Byhalia Pipeline in any form it takes. We need to start now implementing a deconstruct of old energy ways and building instead resources that honor and feed this planet as well as the people who live in community with Her.

Full Name (First and Last): Tim Guinee

Name of Organization or Community: The Climate Actors

City and State: Stone Ridge, NY

Brief description about the concern: The proposed Byhalia Pipeline was fast-tracked by the Army Corps of Engineers using Nationwide Permit 12, during the previous Administration, despite the fact that the pipeline will run through an already overburdened environmental justice community in Memphis. The two companies behind the proposal have a history of environmental violations including oil spills and leaks.

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

The army corps approval should be rescinded because: 1) The impact on the Boxtown Community was not considered in the permitting process. Boxtown, a resilient, low-wealth, Black community has cancer rates 4X the national average. It is already overburdened with 17 toxic-release inventory facilities. 2) The corps also did not consider in their permitting process the fact the route of the Byhalia would cross directly over an aquifer that provides drinking water to 1 million people in Memphis (an area which is also incredibly seismically active) Common sense demands that the permit be revoked and the process revisited taking these two issues into account. Notably also, the county and local governments seem to be weighing options to stop the pipeline which has dwindling public support and offers no real economic benefit to the community in comparison to the risk that Memphis is being asked to take. Thank you for your consideration in this matter and for your service.

Full Name (First and Last): Elizabeth McMahon

Name of Organization or Community: None

City and State: Memphis, TN

Brief description about the concern: Byhalia Pipeline in Memphis TN disproportionately impacts the Black community. It also threatens the entire Memphis water supply were any kinds of accidents to occur. This is also in close proximity to the New Madrid Seismic zone, further reason to find that this pipeline is too great a risk to the Memphis community to proceed.

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

Protect Memphis TN community from risks associated with the pipeline by denying permits and/or increasing the level of scrutiny on the possible environmental impacts of this pipeline to the greater Memphis area and specifically to the Black community where the pipeline is proposed to be build.

To whom it may concern, Umm hello. I don't know about you but that was one of the most DISTURBING things I ever witnessed. The only thing that trumps it is the Transforming Police meeting that was ALSO sand blasted into the pages of desertification history. Allow me to introduce myself. My name is Tonique Merrell, I am the HUMAN spirit of Newport News. I went to Howard University; I am one of the Black Nationals. As one of the strongest driving forces that brought Green New Deal to the discussion board even, to see my ENTIRE generation's life work and livelihood be DECOMPOSED by agents of agency data transmission into that debacle I just saw is DISTURBING! Do you not understand where you are? Do you not understand that this equate to the Emancipation Proclamation and is LITERALLY the biggest thing this country CAN or WILL ever do? The richest man in the country backed me and my generation from the Zeitgeist Movement and Spirit Science to now, Barack Obama even. This. This is embarrassing! You made autotrophs cry son we literally had to go to a mental institute really quick because u don't TRULY understand entirely what this is. Do you remember slave rebellions? I don't think you want to be so poor in miscommunication again. I don't think you want to leave this to agents or agencies again. This is everything we ever worked for all in one package. I don't want to get too specific, but we said Human centered capitalism and Green New Deal correct? But the only LANG I can pick up does not even refer to them as living beings but as resources. DO YOU HEAR WHAT YOU JUST SAID? You said you were going to free them from Slavic bonds BUTTTTT referred to them as resources. That's not the spirit that created this. That's not the spirit that makes this happen even. That is the spirit of a rundown competition-based bureaucracy that does not care about anything but it's next check. The great Tonique Merrell once quoted, "how can you create freedom if you are not free yourself"? I know what Green Libertarianism is and u do not look like I look like. This was a disaster. You did not create a stage you create a scene, as in an accident. The nation, the one I have been leading, needs to know where we are going. Its well-known politicians lie as well as fail. How, at this point, can we confirm our life's work is going to amount to anything (anything at all) when we are presented this to start things off? It's sad to see the game winning shots in the hands of agents, like watching the Titanic sink. To be quite honest, it's still uncertain how this end. Which way it's going down. So, with my autotroph family I now go back to not knowing anything about anything and having nothing good to say about the first quarter's performance. This is the biggest, once again, thing that a nation, any nation, can do. This is the depth of Zeus and the biological level. How on Earth could you be so offensive using Jargon and technical language. No, no I don't care anything about what you were about to say you was "computing". The only thing I want to know is are we doing this or not. My work in Hampton Roads as one of the main if not the main representatives of the autotrophs (human wise) in a forest city will not go undone because of a bad start. This was a horrible start. Slow down man. They are people and so are we, you included. Talk to me man. The specifics of how we implement are NOT A VALID COMPONENT of what THE FIRST federal agency to pick up Green New Deal should be talking about. Gather everyone around the goal/ideal. Discuss solutions. Then you can talk about implementation. But you just tried to middle manage the Emancipation Proclamation. That is NOT a solid idea at all. Especially not what we have worked so hard for. If you don't want to go as hard as we do that's fine, but don't pick up my level affairs if you are going to mismanage the nation into a desert wasteland overnight as if you get to make any decision you want. Remember what planet you live on. I really need you to get it together. I wanted to talk about the infinite potential of making the right decision fundamentally as it relates to the stabilizing platform, it's a rare occurrence but it's doable. The decision makers policy makers whatever the case is, only spoke jargon and basically got shut down on screen. Green New Deal. "That's what you said. But when it came time to pay taxes...A new bill will be drafted." P.S. - You are the federal government; you should not be EXTRACTING; that shouldn't have made it past the State! Furthermore, you now have the nation moving in uncertainty as opposed to certainty. I keep telling you about yourself, but you keep claiming your plan was gonna work. Yes, and what about the 20-40 terrorists you just created to both ensure this goes

forward, because you pretended to be uncertain (politicians now) as well as to "show yo ass" that crime don't pay. It's all fun and games until people get hurt. Please don't do this again. If you are going to do this again then simply do not involve me. I'm a real man and I actually respect people's right not to be lied to or manipulated. It's not my job to clean up after you. Get the order straight, you follow ME (us) not the other way around. You had better not forget that. Next time if you are going to give me a task order or assignment you had better show your face, of actual collaboration. But I suppose you don't know about the free will basis of productivity either do you keyword abusers? All in all, what I saw lacks the spirit of the realm of the culture of that which it is we are here to do. If you need some help, just ask. But please don't eveerrrr do that again. The faith in governance, America even, drops off the map by droves as you drive people mad (insane even) because you seem capable of bricking the game winning shot. The people need security. The people need validity. The people need to be certain. The only thing certain about this so far is that the county blues will keep blinding and biological systems will remain vulnerable. Anyone? Anyone at all? I'm thoroughly disappointed in that, especially with our potential. Please don't fail me again. So, my concern is do you understand. Aside from DATA. Because we often fail in implementation seeing the world from such a limit as implementation as opposed to what we are going to do. One is a limit, one is not. So, are you sure you didn't just read a bunch of database information? Are you sure you embody the spirit of nature? That is properly understanding. Tons of weight metric is NOT understanding man! So, I'm worried you might fail this thing if left in your hands. I want you all to stop pretending to be limited in bureaucracy and step up to your duty to represent autotrophs and the biological system PROPERLY! You are partially responsible for creating the specifics of the Green New Deal nation transformation. This TRANSFORMS a nation much like independence from Britain or emancipation from slavery. This is nothing small. But this is not a war. Unlimit yourself and your mind frame. You yourself should be a fairly unlimited being representing the autotrophs. There are very large issues. We have tools to do work. But before that we are people. Be a person not an employee. So, all I ask is that you keep it 8 more than 92 with it one hunnid. Then we won't have to worry so much or constantly watch over you. Then we won't have to waste time or resources we don't have to cover the impending disasters that will SURELY transpire if you try this or UBI and don't do it the right way. You say don't worry but you also just called the autotrophs STICKS (the equivalent of the N word) as the federal government son. I don't want to have to cover your a** because there will be parts of the nation that miss out locally now and that counts as cataclysmic disaster. The implications of this are very real. The adverse conditions and unfair treatment are just as real as their impact on you, your body even. So, get it right man. That's not it! How about you let someone connected to the autotrophs lead the procession? Then there are no mistakes in leading the whole procession! Instead of grabbing what you can only to hit a very big wall coming right up actually. The last wall btw. You started with LIMIT this, KEYWORD that. Never once did u call them by name or do anything that would SURELY resonate in their mind that the day will be saved. So, in our minds it is uncertain. Simply put, I want you to win. If you need some help, here I am. Do not take me lightly either, I know leaders are a dime a dozen, but some talk about it and some make things happen. How, how are we having this conversation right now even about my PhD dissertation? Quite a lot went into it but again, here is an actual representative. A guaranteed win. So, think about it. We all know that. But do we, is all I'm begging you to consider cuz you literally just lost the whole nation just then. Doesn't matter. Whatever you are talking about. The only thing I need from you is to win. No not by any means necessary. No I mean when there is a sandwich on your plate, EAT YOUR SANDWICH man. Do you think you cannot drop this sandwich (ball) for me? It's only the entire future of the nation we talkin about here. I will require at least one more meeting from you after all this. I need to hear from you. I know you are the federal government above my Jurisdiction, but after that I am watching you son is all. Hope all is well. Best of luck and god speed. "We're very worried about you all after that performance man, ijs."

Thanks, Tonique Merrell

Full Name (First and Last): Dio Cramer

Name of Organization or Community: Minneapolis Resident

City and State: Minneapolis, Minnesota

Brief description about the concern: Last year Minnesota's Governor, Tim Walz, signed off on the final permits for the Canadian company Enbridge to build the Line 3 pipeline, and construction began immediately. Even though they call this a "replacement" project, it more than doubles capacity of the old line and takes a different route. This is an expansion project. This pipeline embodies numerous evils: pollution, oil spills, trafficking, deforestation, and immense climate damage. It is a huge threat to indigenous sovereignty and sacred livelihoods. Letting this pipeline be built is an environmental injustice.

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

Stand with the indigenous leaders, young people fighting for their future, environmental and climate scientists, and revoke the permits for the Line 3 pipeline.

Full Name (First and Last): Nancy Morris

Name of Organization or Community: Memphis Resident

City and State: Memphis TN

Brief description about the concern: The Plains All American Pipeline and Valero Energy Corp are planning to build the Byhalia Pipeline through Memphis, Tennessee. This construction must be stopped.

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

Please do everything you can to stop the Byhalia Pipeline from being built in Memphis, TN. There are many reasons why the pipeline is not good for this city, but primarily its construction will destroy an historic black neighborhood, put one of the cleanest water supplies in the country at risk of contamination, and expose Memphis residents to toxic chemicals that will negatively affect their health and well-being. We are a city of deep roots, significant culture, and environmental beauty that is beyond compare. Please help us protect and preserve our magnificent city.

Full Name (First and Last): Rhoberta Orsland

Name of Organization or Community: Resident of Midtown Memphis

City and State: Memphis, Tennessee

Brief description about the concern: The Byhalia Pipeline that is being considered in South Memphis is a threat to our city's water supply and also threatens some of our most vulnerable citizens. It needs to be stopped. I am in shock that local leaders are even considering it.

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

would love the Council to require an environmental impact study of the proposed Pipeline and require Valero to consider other options that would not threaten our aquifer.

Full Name (First and Last): Kevin Williams

Name of Organization or Community: Memphis, TN

City and State: Memphis

Brief description about the concern: All Plains America has a history of broken pipelines, and wants to build over our Memphis Sands aquifer, running it through the oldest, poorest community where already there are people suffering plenty.

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

Stop the pipeline from happening, stop the corporation from invoking laws to strip people of property, and save life giving resources like water - the second-best water in the US, serving millions of people.

Please.

Full Name (First and Last): Bretran Thompson
Name of Organization or Community: MEMPHIS COMMUNITY AGAINST PIPELINE
City and State: Memphis
Brief description about the concern: Byhalia pipeline in Memphis....

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Potential toxic and environmental concerns?

Full Name (First and Last): Megan Boone
Name of Organization or Community: Memphis Community Against the Pipeline
City and State: Brooklyn, NY
Brief description about the concern: Valero and Plains All-America want to put a crude oil pipeline through a predominantly Black community to export oil more efficiently. This is environmental racism and would only exasperate the climate emergency. It must be stopped.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Look for the permitting loopholes that allow fossil fuel corps to fast track pipeline permits nationwide and close them.

Full Name (First and Last): James McLellan
Name of Organization or Community: Memphis Community Against the Pipeline
City and State: Memphis, TN
Brief description about the concern: There is proposed oil pipeline to be built underground over our aquifer that provides our drinking water. The aquifer has open areas and earthquake activity where the pipeline is proposed to be built that makes crude oil leaking into our drinking water a strong possibility. The pipeline is 24 inches and the proposed flow is 1500 PSI. Leak detectors detect 7% of leaks. There are 2 kinds of pipelines; those that leak and that those will leak. Our drinking water is in danger.
What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
The Army Corp of Engineers provided a permit to build the pipeline. The Corp only assessed the surface. The Corp did not recognize the pipeline will be built over an aquifer that has leaks and earthquake activity. I request the permit be reevaluated in regard to oil leaking into in our drinking water.

Full Name (First and Last): Gregory I. Simpson
Name of Organization or Community: Nauraushaun Presbyterian Church & The Hudson Valley Environmental Justice Coalition
City and State: Hurley, New York
Brief description about the concern: The use of the Nationwide permit 12 by the Army Corp of Engineers to construct the Byhalia pipeline is a blatant abuse of power that disregards people's rights in Memphis, Tennessee, to the protection and safety of their drinking water, their property rights, and protection of their community and environment.
What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Request that the Army Corp of engineers fast-track use of Nationwide permit 12 for Byhalia be rescinded because it ignored environmental justice issues and the crossing of an aquifer that provides drinking water to 1 million people in Memphis.

Full Name (First and Last): Jolena Brown

Name of Organization or Community: Boxtown

City and State: Memphis, TN

Brief description about the concern: I am concerned about the health of the neighborhood and long-term effects of oil being pumped through the community

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

Please stop the Byhalia Pipeline from cutting through southwest Memphis

Full Name (First and Last): Jim Spake

Name of Organization or Community: Memphis Community Against The Pipeline

City and State: Memphis, TN

Brief description about the concern: There is proposed oil pipeline to be built underground over our aquifer that provides our drinking water. The aquifer has open areas and earthquake activity where the pipeline is proposed to be built that makes crude oil leaking into our drinking water a strong possibility. The pipeline is 24 inches and the proposed flow is 1500 PSI. Leak detectors detect 7% of leaks. There are 2 kinds of pipelines; those that leak and that those will leak. Our drinking water is in danger.

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

The Army Corp of Engineers provided a permit to build the pipeline. The Corp only assessed the surface. The Corp did not recognize the pipeline will be built over an aquifer that has leaks and earthquake activity. I request the permit be reevaluated in regard to oil leaking into in our drinking water.

Hello, Karen, I am very happy, still excited by this opportunity that is so beautiful and awesome. The time has come. President Biden wants to place down and fix so many problems running for so long in the air. Environmental Justice is an inspired idea. I love that it pushes us to work in the best capacities of ourselves. Focus on justice is focus in weighting and rebalancing. And we are to make the greatest innovative team in this legislature for sure, since minute one. Beautiful. The most important side of this message that we have received is the challenge. We are entering a multilevel horizon with Justice 40. I like it very much...The opportunity is so impressive that it is logical to be worried at this initial point because of the timeline. We were surprised by the magnitude of the idea, a project that needs to be deep, brilliant and well embodied to be one day, soon, the first ground of Law. Excellent! The team will have to accept the idea that, later on, the administrators will have to touch base on our first guide. Wow...The enterprise is pioneering, we build for legacy, you repeated. To me, it is a central point. I see that this is a powerful moment and this project needs to start seeding the soonest we can, just because of timeline frames to design, get approval, launch plans, etc. So, finally, in regard to what the organization has asked at the end of the session (I could not provide the answer, the preference for work groups), the following is the order of my choices: 1. Executive Order. 2. Justice 40. I am honored for having been invited to work along a phenomenal group of professionals, the germinal team of Environmental Justice. We can take the challenge and start today, tomorrow. Feeling blessed. Thank you, Mr. President and Mrs. Vice President, and thank you Karen, Cecilia and all these great people of the organization.

Carmen Parron

Dear Karen, I was unable to attend the EJ meeting yesterday and would like to view it if there is a recording. I also noticed that there are no EJ representatives from Ohio. I live in the Ohio Appalachian region and have experienced many EJ issues that occur in education and the impacts of the oil and gas

industry on our communities. The lack of Environmental Justice reviews by state agencies, because they are not mandated, cause great harm to the health of our communities. In particular the lack of EJ in the USEPA and primacy for states that were granted such before 1992. This burden is becoming unbearable to citizens and local public officials who deal with a flawed process in our state. Thank you for your assistance with this matter. Sincerely,
Roxanne Groff
Amesville Ohio 45711
Athens County

Full Name (First and Last): Jim Spake

Name of Organization or Community: Memphis Community Against The Pipeline

City and State: Memphis, TN

Brief description about the concern: There is proposed oil pipeline to be built underground over our aquifer that provides our drinking water. The aquifer has open areas and earthquake activity where the pipeline is proposed to be built that makes crude oil leaking into our drinking water a strong possibility. The pipeline is 24 inches and the proposed flow is 1500 PSI. Leak detectors detect 7% of leaks. There are 2 kinds of pipelines; those that leak and that those will leak. Our drinking water is in danger.

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

The Army Corp of Engineers provided a permit to build the pipeline. The Corp only assessed the surface. The Corp did not recognize the pipeline will be built over an aquifer that has leaks and earthquake activity. I request the permit be reevaluated in regard to oil leaking into in our drinking water.

Full Name (First and Last): Kyle Cornish

Name of Organization or Community: Durham NC

City and State: Durham NC

Brief description about the concern: The Byhalia Connection pipeline is an immediate threat to communities in Memphis, Tennessee and is being permitted to happen by the silence of people in power and the rushed permitting process of the NWP12 waiver. The pipeline would disrupt communities in De Soto County through South Memphis (e.g. Rolling Green Hills, Westwood, Walker Homes/West Junction, Mitchell Sub, Boxtown, Indian Hills). Memphis communities are adamantly against Valero and Plains All American Pipeline.

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

want the WHEJAC to advise the White House Council on Environmental Quality to oppose the Byhalia pipeline. Additionally, I want the WHEJAC to advise the White House Council on Environmental Quality to request that the Army Corp of engineers use of Nationwide permit 12 for Byhalia be rescinded because it ignores environmental justice issues and the crossing of a critical aquifer that provides drinking water to 1 million people in Memphis.

Full Name (First and Last): Gerard Billmeier, MD

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: MEMPHIS

Brief description about the concern: Name of Organization - Memphis Community Against the Pipeline
Brief Description of the Concern (Required) There is proposed oil pipeline to be built underground over our aquifer that provides our drinking water. The aquifer has open areas and earthquake activity where the pipeline is proposed to be built that makes crude oil leaking into our drinking water a strong possibility. The pipeline is 24 inches and the proposed flow is 1500 PSI. Leak detectors detect 7% of leaks. There are 2 kinds of pipelines; those that leak and that those will leak. Our drinking water is in danger.

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

The Army Corp of Engineers provided a permit to build the pipeline. The Corp only assessed the surface. The Corp did not recognize the pipeline will be built over an aquifer that has leaks and earthquake activity. I request the permit be reevaluated in regard to oil leaking into in our drinking water.

Full Name (First and Last): Janelle

Name of Organization or Community: McCoy

City and State: Germantown, TN

Brief description about the concern: This pipeline has the potential to ruin the fabulous water Shelby Countians now enjoy by possibly poisoning our underground wells that provide our drinking water. It is also going through one of the poorest, Black communities of our major city, Memphis.

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

Prevent all measures that threaten our environment's air and water.

Full Name (First and Last): Cindy Hastings Sakaan

Name of Organization or Community: Memphis Community Against Pollution

City and State: Memphis Tennessee

Brief description about the concern: Oil pipeline threatening drinking water

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

Memphis sits on an aquifer providing fresh, clean, water to millions of people. The city also sits on the New Madrid fault, a major earthquake zone. Regulations must be created and enforced to protect this aquifer-including denying permits to construct new oil pipelines over it. We want NO OIL ON OUR SOIL

Full Name (First and Last): Dr. Charlotte L. Keys

Name of Organization or Community: JPAP/MTAC

City and State: Columbia, MS

Brief description about the concern: What can the WHEJAC do to help establish more partnerships with the Faith-Based CBO ECJ Leadership to enhance better Environmental -Primary Health and Green Job Programs with Collaborative Problem Solving for grassroots ECJ Leadership to benefit from? Because most of the funds never hardly get on the ground to the grassroots but is worked through the buddy system.

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

Form better Partnership Collaboration with the FBO ECJ Leaders to help work on CPS.

Full Name (First and Last): Patricia Primrose

Name of Organization or Community: Memphis

City and State: Tennessee

Brief description about the concern: No pipeline through Memphis.

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

Stop any further pipeline proposals from going through our Aquifer.

Full Name (First and Last): Marilyn Brien

Name of Organization or Community: Memphis Community Against the Pipeline (MCAP)

City and State: Memphis

Brief description about the concern: Please protect our drinking water in Memphis by stopping the

Byhalia Connection Pipeline.

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

Whatever is required to assist citizens of Memphis in protecting our drinking water. Follow the recommendations of experts rather than what only benefits Valero and the Byhalia pipeline.

Full Name (First and Last): Julia Horne

Name of Organization or Community: MCAP

City and State: Memphis, TN

Brief description about the concern: Plains All American Pipeline and Valero Oil Company are proposing to build an underground crude oil pipeline over areas of the Memphis Sand Aquifer which provides drinking water to Memphis, TN as well as parts of Arkansas and Mississippi. There are breaches in the clay layer above the aquifer as well as seismic activity in the route of the pipeline that make crude oil leaking into the drinking water supply a strong possibility. Pipelines, no matter how well monitored or constructed, are prone to leaking, and 1 gallon of crude oil can contaminate 25 million gallons of groundwater. That is an unacceptable risk, especially for a project that provides no economic benefit to the citizens of the region whose drinking water is being put at risk.

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

The US Army Corps of Engineers approved Nationwide Permit 12 for the pipeline, but this permit only considered the impact to surface water, not the impact to groundwater, i.e. the aquifer. I request that the permit be re-evaluated to include consideration of the environmental impact of the pipeline on the region's drinking water source, the Memphis Sand Aquifer.

Full Name (First and Last): Brenda Webb Lanier

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: MEMPHIS

Brief description about the concern: There is proposed oil pipeline to be built underground over our aquifer that provides our drinking water. The aquifer has open areas and earthquake activity where the pipeline is proposed to be built that makes crude oil leaking into our drinking water a strong possibility. The pipeline is 24 inches and the proposed flow is 1500 PSI. Leak detectors detect 7% of leaks. There are 2 kinds of pipelines; those that leak and that those will leak. Our drinking water is in danger.

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

The Army Corp of Engineers provided a permit to build the pipeline. The Corp only assessed the surface. The Corp did not recognize the pipeline will be built over an aquifer that has leaks and earthquake activity. I request the permit be re-evaluated in regard to oil leaking into in our drinking water.

Full Name (First and Last): Caroline Brown

Name of Organization or Community: CA GND Citizen's Group

City and State: Healdsburg CA

Brief description about the concern: Conventional Farming practices add to Global Warming. Use of Ag chemicals threatens water supplies, health of neighboring communities' biological diversity (decimates pollinator populations). Further, these large-scale practices degrade soil quality and produce food low in nutrients. In the US central states, there remain an estimated 60 harvests in the existing topsoil if no change is made. Thank you. And thank you for your service.

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

endorse Sustainable Agriculture focused on Soil Health, reduced or no-till methods aka Regenerative Agriculture as a means to secure a nutrient-dense food supply, dramatically reduce chemical use and sequester carbon leading to reversal of Climate Change. And how about urban farms, on unused land, maintained by volunteers and paid civil servant farmers ala City Park Rangers? Thank you sincerely for

the opportunity to participate in these public meetings!

Full Name (First and Last): Linda Collins

Name of Organization or Community: Memphis

City and State: Memphis, TN

Brief description about the concern: Memphis, Tennessee's water supply is in grave danger of contamination if two corporations are allowed to build their Byhalia Pipeline to transport crude oil over lands that are environmentally protected and owned by minorities.

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

Do not allow the pipeline to be built in Memphis! The route would place the pipeline directly on top of our city's underground aquifer which supplies water to the city of Memphis. The question of a pipeline carrying crude oil isn't if it will leak, but rather when it will leak its poison into our water supply. This proposal should be stopped in its tracks immediately! The Plains All American Pipeline and Valero Energy Corp must not be allowed to build their pipeline for profit at the expense of minority owned land of historical importance that is also located above our city's precious water supply. It would be unethical and put the citizens of Memphis at risk.

Full Name (First and Last): Amy Balentine

Name of Organization or Community: Memphis community against the pipeline

City and State: Germantown

Brief description about the concern: The Byhalia pipeline is being proposed to be built to connect crude oil pipes owned by Valero. This would run over the Memphis Sands Aquifer, putting our water supply at risk. It would run under a black community, one of the poorest areas of the city, already beset by environmental contamination from nearby industries. This would benefit the oil company to the tune of 7 billion a year while leaving the risk in the hands of Memphis, with very little to show for it.

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

Revoke all laws that allow the Byhalia pipeline to be built in Memphis against the will of the citizens.

Full Name (First and Last): Marcia Spake

Name of Organization or Community: Memphis

City and State: Memphis, Tennessee

Brief description about the concern: The Memphis Aquifer is an irreplaceable natural resource. Any pipeline in the vicinity of the aquifer is an unacceptable risk. The pipeline plan will disrupt an established community with no redeeming value to our population or environment. Just NO.

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

Do not approve a pipeline near the phis aquifer.

Full Name (First and Last): Vandy Scoates

Name of Organization or Community: Memphis community against the pipeline

City and State: High point NC

Brief description about the concern: I do not live in Memphis but plead that you stop the Byhalia Pipeline! Like many other southern communities, lack of community support, industrial racism and lack of infrastructure equality has led to companies taking advantage of poor communities where people of color predominantly reside. This environmental racism must stop if we are to heal as a country

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

Help stop the Byhalia Pipeline.

Full Name (First and Last): Nancy and Brian Kuhn

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Cordova

Brief description about the concern: Many citizens in Memphis are opposed to a proposed 24-inch crude oil pipeline with a PSI of 1500. It is projected to be built over the aquifer which provides our drinking water. Al Gore supports us and calls the pipeline risky and racist. Risky because a leak would contaminate the drinking water for the whole city and racist because it is routed in a poor, black neighborhood.

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

We want Federal regulation to protect our aquifer; TDEC, the Tennessee Department of Environment and Conservation, and the Army Corp of Engineers have permitted the pipeline because they are only concerned with surface water. That doesn't make any sense; the aquifer is one of our greatest resources. No one is protecting our underground resources!

Full Name (First and Last): Mary Todd

Name of Organization or Community: MCAP

City and State: Memphis

Brief description about the concern: Need to protect the health and aquifer of our community from proposed Byhalia Pipeline

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

Rescind Corps Of Engineers' approval as the Corps only looks at lakes, rivers, etc. not underground water sources

Full Name (First and Last): Simeon Hahn

Name of Organization or Community: NOAA

City and State: Wilmington DE

Brief description about the concern: Interagency coordination; regional and place based focus; consider establishing feature/example projects like the Port of Wilmington DE Expansion, which is occurring in a highly impacted EJ area.

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

Review the Urban Water Federal Partnership as a model for an interagency and community coordinated EJ effort. Institutionalize the UWFP coordination through coordinated planning and funding efforts to support the locations. Track the amount of agency federal funding distributed throughout the Country and how well coordinated it was. Evaluate the Port of Wilmington DE expansion as a case study of EJ needs and implementation. Designate other case study examples where federal coordination is occurring for EJ.

Full Name (First and Last): Kendall Wimberley

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: I am writing to express my concern about the proposed Byhalia Pipeline in Memphis, TN. This pipeline is an environmental justice concern. If the pipeline goes forward, surrounding communities and the entire Memphis Sands aquifer are at risk.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I advise the White House Council to intervene to stop the Byhalia pipeline.

Full Name (First and Last): Isabella Killius

Name of Organization or Community: Sunrise Movement Knoxville

City and State: Knoxville

Brief description about the concern: The Memphis City Council will be voting on an ordinance at your next meeting that would give the city increased oversight of the Memphis Sands Aquifer, the source of drinking water for Memphis and several surrounding cities and states. This is an environmental justice issue - this community is not the path of least resistance. No one deserves to have their land and water polluted. Water is a human right. Southwest Memphis has already borne the brunt of pollution from the Valero refinery and other sites for years and suffers high cancer rates because of it. We urge you to stand with the Memphis community in supporting this ordinance and standing up to the Byhalia pipeline.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Stop the pipeline.

Full Name (First and Last): Caitlin Rose

Name of Organization or Community: Sunrise Knoxville

City and State: Knoxville, TN

Brief description about the concern: The proposed Byhalia Pipeline in Memphis, TN would devastate the region. Memphis has already borne the brunt of pollution from the Valero refinery and other sites for years and suffers high cancer rates because of it. We urge you to stand with the Memphis community in supporting this ordinance and standing up to the Byhalia pipeline.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Stop the pipeline!

Full Name (First and Last): Heather Croshaw

Name of Organization or Community: St. Croix Environmental Association

City and State: Christiansted, USVI

Brief description about the concern: Known locally as SEA, we are located on the beautiful island of St. Croix, which is part of the U.S. Virgin Islands. SEA creates environmental education programs for children and adults, sponsors engaging activities, remains vigilant in seeking compliance with local and federal environmental regulations, and continues to provide leadership for a healthy and sustainable environment on St. Croix. Recently, you might have read the articles in the Washington Post, Reuters, and InsideClimate News about our challenge against EPA and the Clean Air Act "PAL" permit issued to Limetree Bay Refinery and recent pollution events in our community, which is a community of color and recognized as an EJ community by EPA. This designation triggers both procedural and substantive requirements under EO 12898 and cannot be ignored. Our island community and environment have suffered for decades due to lax monitoring of emissions, poor enforcement, and inadequate protections. Now, we have already experienced several harmful pollution events since Limetree Bay's restart - unscheduled flares, an airborne chemical release, more oil spills, an upset incident for which it evacuated employees, a fire, and an oil and vapor release that dirtied homes, cars, and water cisterns that residents use to collect drinking water. This must change. We are hopeful that the Biden administration and this Council will continue to support St. Croix in paving the way towards an equitable and sustainable future. We are optimistic for robust enforcement of our environmental laws, promoting environmental justice for our community, and increasing access to information and equity for frontline communities.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
SEA humbly asks WHEJAC to advocate for communities of color, especially those in the U.S. Territories who are without voting rights, to have greater access to information, strengthen equity in decision-making, recognize environmental justice as a substantive right, scale-up green tech finance, increase enforcement measures, and to provide resources for frontline communities to protect their homes and families. We need environmental permits to be posted online for all jurisdictions so anyone can access

them at any time. We need more funding resources for frontline communities to mitigate historic pollution, monitor current polluting facilities, and provide workshops to help communities be stronger advocates for their home. Importantly, the EJ Screen Tool must be updated for all jurisdictions of the United States. When SEA embarked on challenging Limetree Bay's PAL permit, we noticed that the EJ Screen Tool did not include any data for St. Croix or the U.S. Virgin Islands. Finally, SEA asks the WHEJAC to elevate resources for communities of color facing the threats of climate change, particularly for places like the U.S. Virgin Islands who experienced back-to-back category five hurricanes in 2017.

Full Name (First and Last): Janelle

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: There is a proposal to build a pipeline underground over our aquifer that provides our drinking water. The aquifer has open areas and earthquake activity where the pipeline is supposed to be built that makes crude oil leaking into our drinking water a strong possibility. The pipeline is 34 inches and the proposed glow is 1500 PSI. There are two kinds of pipelines: those that leak and those that will leak. Our drinking water is in danger.

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

The Army Corp of Engineers provided a permit to build the pipeline. The Core only assessed the surface. The Corp did not recognize the pipeline will be built over an acquirer that has leaks and earthquake activity. I request the permit be reevaluated in regard to oil leaking into our drinking water.

Full Name (First and Last): Mike Schooler

Name of Organization or Community: Memphis Community Against The Pipeline

City and State: Collierville TN

Brief description about the concern: Please help in preventing a drinking water disaster by the Byhalia oil pipeline in TN and MS

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

Recommend against permits

Full Name (First and Last): Gloria J Anderson

Name of Organization or Community: MCAP (Memphis Community Against The Pipeline)

City and State: Memphis, TN

Brief description about the concern: Chemically infested potable water by companies only interested in profit.

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

Conduct a mandatory nationwide testing protocol for all water systems deemed as potable (or "safe") with the source of all chemicals with concentration levels present to be traced to the polluting companies. For too long these companies have been allowed to brazenly and carelessly infest our waters without any significant measures in place for violations. This problem is nationwide- but specifically in higher concentration levels in waters adjacent to communities of color. Fracking and pipeline construction efforts have only exacerbated an already climactic situation. The only way to address this massive problem is through federal intervention- without the usual delicate handling of these companies. They are killing people, for God's sake. Next in line should be "processed" "food".

Full Name (First and Last): pat cavanaugh

Name of Organization or Community: Memphis resident

City and State: Memphis TN

Brief description about the concern: this pipeline project is too dangerous for our community. we want

to continue to have safe water resources. in addition, no project should be placed in an area which seems selected due to the poverty population housed nearby.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
stop the project!

Full Name (First and Last): Alexandra Schwarz

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Memphis

Brief description about the concern: The Byhalia Pipeline is an endangerment to the City of Memphis' water aquifers, some of the best drinking water in the country. The pipeline will disproportionately affect low income black communities.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Halt the construction and planning of the Byhalia Pipeline.

Full Name (First and Last): Diane S Smith

Name of Organization or Community: Citizens For Environmental Justice Committee

City and State: Dallas

Brief description about the concern: Environmental Injustice in communities of color. Degradation in the lives of people with no concern for the lives of citizens to whom live in these areas where industries are allowed to operate, leaving people of color with no choice other than to suffer the greatest disproportionate burden of environmental harm with no regard for the health and safety of many lives to whom receives no reparation for the harm that is imposed upon them due to health disparities and that of degradation in property from contamination when relief was never in site for those to whom are living in these areas without any type of compensation for the lack of care in entities allowing for these industries to run. The affluent communities thru research live longer lives and healthier lives than that of low-income communities for the allowance of these toxic industries are not permitted to operate in their community, this only shows redlining in communities of color and the lack of environmental laws or regulations being implemented in these areas for environmental genocide is nontransparent.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do?
Take responsibility for the lack of care and began the task of repair even if it means relocating people living in these communities to whom property within a certain radius is affected to move to areas where they can at least live somewhat of a wholesome life. Began the task of responsibility for those to who are suffering health disparities and began the task of reparation.

Full Name (First and Last): Felecia Boyd

Name of Organization or Community: Memphis Against the Pipeline

City and State: Memphis, TN

Brief description about the concern: The concern I have is about Plains All American, Byhalia Pipeline and Valero Gas And Oil requesting permits to build and run a pipeline through a historical African American community that is already surrounded by more than 30 polluting toxic industries that will ultimately destroy the pristine water aquifers in the community, too.

What do you want the WHEJAC to advise the White House Council on Environmental Quality to do? I'd like the WHEJAC to advise the WHCEQ to eliminate all permits; and immediately stop and prevent any construction of any pipeline in Memphis and Shelby County, particularly in the 38109 area that is more than likely to affect the pristine drinking water of our county.

Full Name (First and Last): Brady Watson

Name of Organization or Community: Memphis Community Against the Pipeline

City and State: Knoxville, TN

Brief description about the concern: The Byhalia Pipeline is being proposed through predominately Black communities and will put the entire region's water supply at risk.

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

Revoke the federal permits granted to the Plains All American and Valero and stop the pipeline.



April 6, 2021

Via Email

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, D.C. 20590

**Re: Environmental Justice Impacts of Proposed LaGuardia Airport Airtrain
Warrant Additional Federal Review Before FAA Approval**

Dear Secretary Buttigieg:

The Federal Aviation Administration (FAA) is poised to issue a final Record of Decision for its environmental impact review of the proposed AirTrain that would carry passengers between the Mets-Willets Point Subway Station and the LaGuardia Airport in East Elmhurst, Queens, New York. The controversial project would tower over a 2,100-foot stretch of the World's Fair Marina and Flushing Bay Promenade.

The FAA's review process has had significant flaws. Specifically, the agency has failed to garner public engagement from linguistically isolated communities prior to and throughout the environmental review and has failed to plan meaningful mitigation for the condemnation of a public waterfront park. Moreover, new information has come to light that tends to show that the FAA has undermined a review of transit alternatives that might better serve the region while imposing fewer environmental impacts on local communities.

The AirTrain would be located in the "World's Borough," Queens, where roughly 160 languages are spoken. While the borough's polyglotism has significant advantages, when it comes to development of major infrastructure projects linguistic isolation can make it extremely difficult for affected members of the public to engage in an environmental impact review process. High rates of linguistically isolated households are found in the affected nearby communities of Flushing, Corona and Jackson Heights. East Elmhurst, the neighborhood that abuts the airport, has a large Spanish speaking population. The FAA never meaningfully engaged these linguistically isolated communities in the environmental review process prior to or during the Draft Environmental Impact Statement phase, as evidenced by their relative lack of participation in the public comment process. FAA's outreach and project documents were written primarily in English and it did not provide simultaneous translation at its public meetings, some of which were held only online via Zoom due to the pandemic.

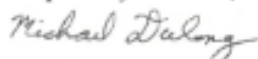
By contrast, Riverkeeper and our local partners held multiple forums with coalition partners where we performed outreach in multiple languages and provided simultaneous interpretation. At these forums, we garnered comments and participation in multiple languages, primarily Spanish in addition to English. Many of our partners in Flushing, where there is a high concentration of East Asian immigrants speaking English as a second language, have expressed that their communities were rarely engaged in this issue outside of our forums. The lack of participation from linguistically isolated neighborhoods was not due to lack of interest, but instead to a lack of robust engagement. We urge you to meaningfully consult these communities prior to issuing the Record of Decision.

Despite the significant impacts on the waterfront promenade park from overhead rail, FAA has eschewed mitigation planning, leaving it instead to the project applicant, Port Authority of New York & New Jersey, to later determine. To date, Port Authority has publicly committed to spend \$16.5 million in total on undetermined parkland improvements. That figure equates to \$1.25 million per acre for the 13.16-acre park. By comparison, the New York City Economic Development Corporation recently funded \$165 million (\$15 million per acre) for Hunter's Point Park South Park; Brooklyn Bridge Park had a budget of \$347 million (\$4.13 million per acre); and Domino Park in Williamsburg, Brooklyn, cost \$50 million (\$4.5 million per acre). Compared to these projects, the Port Authority's proposed mitigation is woefully incomplete and inadequate, short-changing the park users and local environmental justice communities. We urge you to commit to just parkland mitigation for the project and to complete preliminary planning prior to issuing the Record of Decision.

We also hope to obtain your oversight on project selection. It has recently come to our attention that in March 2019 the FAA critiqued the applicant's initial review of LaGuardia Airport transit alternatives, for, among many other things, failing to accurately describe the benefit of the proposed AirTrain; unexplained cherry-picking of selection criteria; unevenly applying selection criteria among alternatives; and excluding viable and desired ferry service from consideration. I have attached the FAA's critique of the initial alternatives review. Many of these same deficiencies continue to pervade FAA's final alternatives analysis. We urge you to seek an explanation from the FAA regarding why it feels these deficiencies have been remedied in its final analysis. Given the FAA's recent change in policy (PFC Update, PFC 75-21) that will allow use of passenger facility charges for rail construction that serves local communities in addition to airports, we believe the FAA and Port Authority can and must evaluate a better alternative for this region and for our communities.

Thank you for your consideration of our requests. You can reach me at (914) 478-4501 or at mdulong@riverkeeper.org. We look forward to hearing from you.

Respectfully submitted,



Michael Dulong
Senior Attorney

Enclosure

Cc:

Hon. Kirsten Gillibrand, United States Senator
Hon. Chuck Schumer, United States Senator
Hon. Alexandria Ocasio-Cortez, United States Congressperson
Hon. John Liu, New York State Senator
Hon. Jessica Ramos, New York State Senator
Hon. Jeffrion Aubry, New York State Assembly Member
Hon. Ron Kim, New York State Assembly Member
Hon. Costa Constantinides, New York City Council Member
Hon. Peter Koo, New York City Council Member
Hon. Francisco Moya, New York City Council Member
Hon. Paul Vallone, New York City Council Member
Hon. Donovan Richards, Queens Borough President
Queens Community Board 3
Queens Community Board 4
Queens Community Board 7
Maria Belen-Power, White House Environmental Justice Advisory Council
Jerome Foster, White House Environmental Justice Advisory Council
Andrea Delgado, White House Environmental Justice Advisory Council
Maria Lopez-Nunez, White House Environmental Justice Advisory Council
Michele Roberts, White House Environmental Justice Advisory Council
Nicky Sheats, Ph.D., White House Environmental Justice Advisory Council
Peggy Shepard, White House Environmental Justice Advisory Council
Cecilia R. Martinez, Ph.D. White House Council for Environmental Quality
Christopher Coes, United States Department of Transportation
Carol A. Petsonk, United States Department of Transportation
Andrew Brooks, United States Federal Aviation Administration
Karen Martin, United States Environmental Protection Agency
George QE Ward, United States Environmental Protection Agency
Janice Melnick, Flushing Meadows Corona Park Administrator
Warren Schreiber, LGA Committee of the New York Community Aviation Roundtable
George Dixon, President, NAACP Corona/East Elmhurst Chapter
Frank Taylor, Ditmars Blvd Block Association
Larinda Hooks, East Elmhurst Corona Civic Association
Edwin O'Keefe Westley, Jackson Heights Beautification Group
Tania Mattos, Queens Neighborhoods United
Taehoon Kim, Greater Flushing Chamber of Commerce
Juan Restrepo, Transportation Alternatives
Sarah Ahn, Flushing Workers Center
Alex Herzan, NYC Empire Dragon Boat Team
Good Jean Lau, Wall Street Dragon Boat Team
Kevin Montalvo, Queens Distance Runners



April 6, 2021

Mr. Michael Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Regan.Michael@epa.gov

Via USPS Overnight Express Delivery and electronic mail

RE: Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act

Dear Mr. Regan,

All Americans deserve clean air and water, a stable climate, and to live in healthy and sustainable communities. President Biden has committed to act on climate, follow the science, and place environmental justice at the center of climate policy. You should therefore grant this petition and regulate industrial dairy and hog operations under section 111 of the Clean Air Act because these operations cause and contribute significantly to air and climate pollution that endangers public health and welfare.

The Public Justice Foundation, Institute for Agriculture and Trade Policy, Environmental Integrity Project, Association of Irrigated Residents, Center for Food Safety, Center on Race, Poverty & Environment, Dakota Rural Action, Farm Forward, Food & Water Watch, Friends of Family Farmers, Friends of the Earth, Government Accountability Project, Great Lakes Environmental Law Center, GreenLatinos, Idaho Organization of Resource Councils, Iowa Citizens for Community Improvement, Johns Hopkins Center for a Livable Future, Land Stewardship Project, Leadership Counsel for Justice & Accountability, Missouri Rural Crisis Center, North Carolina Environmental Justice Network, Northeast Organic Farming Association, Massachusetts Chapter, Organic Consumers Association, Sierra Club, and the Socially Responsible Agricultural Project accordingly submit our *Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act*. We have provided exhibits in pdf format on the enclosed flash drive. Thank you for your time and courtesy.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brent Newell", is written over a light blue horizontal line.

Brent Newell
Kristina Sinclair
bnewell@publicjustice.net
ksinclair@publicjustice.net

publicjustice.net

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West Coast Office
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Enclosures: Petition
Exhibits (on flash drive)

cc: *via email only w/o exhibits*

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via US Mail only w/o exhibits

Regina (Gina) McCarthy
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White House
Office of Domestic Climate Policy
1600 Pennsylvania Ave NW
Washington, DC 20500

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
PETITION TO LIST INDUSTRIAL DAIRY AND HOG OPERATIONS AS SOURCE CATEGORIES
UNDER SECTION 111(b)(1)(A) OF THE CLEAN AIR ACT

INTRODUCTION

All Americans deserve clean air and water, a stable climate, and to live in healthy and sustainable communities. And President Biden has committed to act on climate, follow the science, and place environmental justice at the center of climate policy. EPA should therefore list and regulate industrial dairy and hog operations under section 111 of the Clean Air Act because these operations cause and contribute significantly to air and climate pollution that endangers public health and welfare. Over the past few decades, these operations have dramatically grown in size and number while simultaneously spewing unabated and increasing air pollution, including methane, a climate super pollutant, while driving smaller, sustainable, pasture-based farmers out of business. The proliferation of this corporate-controlled model has hollowed out and impacted Black, Latino, Indigenous, and other communities of color, as well as white rural communities, from the coastal plain of North Carolina to the San Joaquin Valley of California. And the U.S. Environmental Protection Agency has stood idly by for more than twenty years while communities suffer the consequences. But now the Biden Administration and an EPA that no longer prioritizes polluters over people have an opportunity to stand with these communities, advance environmental justice, follow the science, and Build Back Better a system of agriculture that behaves like a good neighbor and helps restore our land, air, and water. Taking that stand and delivering on recent promises begins with the EPA granting this Petition.

This Petition urges EPA to regulate industrial dairy and hog operations that liquefy manure and confine at least 500 cows or 1,000 hogs without access to pasture. These operations stock far more animals in confinement than would otherwise be sustainably farmed on pasture and thus generate massive amounts of manure and waste. To deal with the massive increase in manure, the corporate-controlled pork and dairy industry concocted a system of liquefying the manure and storing it in football field-sized impoundments before disposing the manure on nearby crop fields. These intentionally created super-emitters release methane from the liquefied manure in those giant lagoons and the animals' digestive systems. The methane from these industrial dairy and hog operations has increased dramatically during recent decades and now

accounts for 33 percent of agricultural methane emissions, 13 percent of total U.S. methane emissions, and 1.3 percent of total U.S. greenhouse gas emissions.

This unabated methane pollution has not gone unnoticed. Recently, Big Oil & Gas have smelled opportunity and developed a scheme to continue the use of their products – fossil fuels – and greenwash their business model. Seizing on the false solution of factory farm gas “energy” from liquefied manure in anaerobic digesters, Big Oil & Gas want to burn factory farm gas to make their fossil fuel climate impact seem less severe. But burning factory farm gas and fossil fuels does not reflect the clean energy economy that America, especially rural and communities of color, need to stabilize our climate. Constructing pipelines through rural communities, expanding industrial dairy and hog operations, and increasing air and water pollution leads us further away from the future our communities deserve. The tried and true approach of sustainably raising far fewer dairy cattle and hogs on pasture provides a myriad of benefits far greater than Big Oil & Gas’s false and dirty solution. To minimize those benefits and avoid the harms of industrial dairy and hog operations, this petition urges the EPA to reject the false solution of burning factory farm gas and instead rely on proven, pasture-based farming with reduced, sustainable herd sizes that will restore rural communities, help stabilize the climate, and provide environmental justice. And communities deserve healthy and affordable food that does not come at the expense of their health and welfare, so Building Back Better also means equity and justice at the grocery store.

The twenty-five Petitioners here represent over 2.4 million members from coast to coast. Our members and rural communities want respect, dignity, clean air and water, and a livable climate. Our well-being and that of future generations depend on the EPA fulfilling its duty to protect people. Industrial hog and dairy operations have hollowed out rural communities, gutted Main Street, and driven family farmers off their land. Big Oil & Gas clings to their use of fossil fuels despite that massive pollution. Doubling down on their corporate schemes will not Build Back Better; it will not revitalize rural America, family farmers, local grocery and hardware stores, our Main Street economy, or our climate. Rather than wasting millions of dollars on a system that requires harming people and polluting our communities, the EPA can grant this petition and choose what already works. Truly clean and sustainable energy solutions, like wind and solar, combined with food production led by local family farmers, will allow future

generations to enjoy a livable climate and clean air and water. EPA should grant this Petition and stand with family farmers and local communities committed to sustainable farming and truly clean, renewable energy.

Environmental justice principles also demand the EPA grant this Petition. The Biden Administration has committed to environmental justice, while preceding administrations have fallen far short. On January 27, 2021, President Biden signed the Executive Order on Tackling the Climate Crisis at Home and Abroad, and section 219 of that Order commits the Administration to placing environmental justice at the center of climate policy. The President stated, “[i]t is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution[.]” Racism and exploitation reflect the status quo in communities harmed by industrial dairy and hog operations and Big Oil & Gas. Black communities in North Carolina and Latino communities in California bear a disproportionate impact from air and water pollution, and from climate impacts such as catastrophic wildfires and more intense hurricanes. The EPA can and should provide every person the opportunity to live, work, play, and pray in a healthy and sustainable community. Being good neighbors and treating the soil, air, water, land, and everyone in our communities as connected and valued is the key to EPA doing its part to Build Back Better.

Building Back Better starts with EPA granting this Petition. EPA has the duty and authority to regulate these methane super-emitters under the Clean Air Act as part of the Administration’s larger strategy to prevent catastrophic and irreversible climate change. On the first day of his administration, President Biden issued the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. Section 1 of the Order declares:

It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize

both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

As this Executive Order directs, EPA should list industrial dairy and hog operations under Clean Air Act section 111 of the Act as sources that cause or contribute significantly to dangerous pollution. Within one year of listing, EPA must issue regulations to reduce methane from such new and existing operations. And EPA should reject factory farm gas – branded as “biogas” by Big Oil & Gas – as dirty energy and a false solution. Because pasture-based farms mean reduced herd sizes and avoided methane emissions, while providing myriad co-benefits, EPA should base subsequent regulations on the emission reductions achievable with widespread application of sustainable, pasture-based practices. Pasture-based operations not only significantly reduce methane, they also remove carbon dioxide from the atmosphere through healthy soils, reduce nitrous oxide emissions from feed crops and manure disposal, reduce water pollution, and decrease odors and other harmful air pollutants in local communities. The EPA should thus grant this Petition, reject dirty and harmful factory farm gas, truly place environmental justice at the center of climate policy, and Build Back Better.

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I. NOTICE OF PETITION

The Association of Irrigated Residents, Center for Food Safety, Center on Race, Poverty & the Environment, Dakota Rural Action, Environmental Integrity Project, Farm Forward, Food & Water Watch, Friends of Family Farmers, Friends of the Earth, Great Lakes Environmental Law Center, Government Accountability Project, GreenLatinos, Idaho Organization of Resource Councils, Institute for Agriculture and Trade Policy, Iowa Citizens for Community Improvement, Johns Hopkins Center for a Livable Future, Land Stewardship Project, Leadership Counsel for Justice & Accountability, Missouri Rural Crisis Center, North Carolina Environmental Justice Network, Northeast Organic Farming Association, Massachusetts Chapter, Organic Consumers Association, Public Justice Foundation, Sierra Club, and Socially Responsible Agriculture Project petition the U.S. Environmental Protection Agency to fulfill its obligation under section 111 of the Clean Air Act to list industrial dairy and hog operations as source categories of methane that endanger public health and welfare. After EPA has listed these source categories, EPA shall establish (1) national standards to reduce methane emissions from new and modified sources within these source categories; and (2) requirements for state-specific standards to reduce methane emissions from existing sources.

Industrial dairy and hog operations rely on confinement production facilities with liquefied manure management systems to maximize production at the expense of independent farmers, local communities, public health, and the environment. Although industrial dairy and hog operations emit significant amounts of methane and other air pollutants, EPA has failed to regulate any emissions from these operations.¹ By failing to list these source categories, EPA is breaching its clear statutory duty under section 111 to maintain a list of source categories, establish emissions standards for new and modified sources within these source categories, and develop guidelines for states to issue emission standards for existing sources. Further, EPA's inaction is exacerbating climate change risks and endangering public health and welfare.

Accordingly, we file this Petition to urge EPA to list industrial dairy and hog operations as stationary sources of methane pursuant to section 111 of the Act. Specifically, we respectfully petition EPA to initiate rulemaking on the following required actions:

- Find that industrial dairy and hog operations with (1) fully confined production facilities for 500 or more dairy cows or 1,000 or more hogs, and (2) liquefied manure management systems are stationary sources that cause or contribute significantly to air pollution that endangers health and welfare;
- Although not required by statute, and irrespective of other pollutants from these industrial dairy and hog operations, find that methane emissions specifically cause or contribute significantly to air pollution that endangers public health and welfare.
- Consistent with the prior findings, list industrial dairy and hog operations as source categories subject to regulation under section 111(b)(1)(A);

¹ See U.S. EPA, Denial of Petition to List Concentrated Animal Feeding Operations under Clean Air Act, 82 Fed. Reg. 60940 (Dec. 26, 2017) (notice of final action denying petition for rulemaking).

- Within one year of the listing decision, promulgate standards of performance to reduce methane emissions from new and modified sources within the listed industrial dairy and hog source categories, as required under section 111(b)(1)(B); and
- Within one year of the listing decision, promulgate guidelines for states to develop standards of performance to reduce methane emissions from existing sources within these source categories, as required under section 111(d)(1).

II. PETITIONERS

The Petitioners are local, regional, and national environmental justice and public interest organizations committed to stabilizing our climate crisis, reforming harmful industrial animal agricultural practices, and advocating for a more just, humane, and regenerative animal agriculture system.

Association of Irrigated Residents is a California nonprofit advocating for environmental justice in the areas of clean air, water quality and global warming as in the San Joaquin Valley. Members live in close proximity to hundreds of industrial dairy operations, which impact their ability to enjoy clean air, a safe water supply, and a zero carbon energy and food system.

Center for Food Safety is a national nonprofit organization that aims to empower people, support farmers, and protect the earth from the harmful impacts of industrial agriculture. Through groundbreaking legal, scientific, and grassroots action, Center for Food Safety protects and promotes everyone's right to safe food and the environment.

Center on Race, Poverty & the Environment (CRPE) is a nonprofit environmental justice organization with the mission to achieve environmental justice and healthy sustainable communities through collective action and the law. CRPE represents predominately Latino communities in the San Joaquin Valley to reduce impacts of climate change and health harming pollution from industrial dairy operations.

Dakota Rural Action is a statewide grassroots organization in South Dakota with a history of working on environmental, agricultural, and justice issues. Dakota Rural Action specifically has worked with citizens and communities to insure people have a say in the siting of concentrated animal feeding operations (CAFOs) in their communities and to ensure the state does not take away rights from people.

Environmental Integrity Project (EIP) is a nonpartisan, nonprofit organization that advocates for more effective enforcement of environmental laws and greater regulation of air and water pollution from CAFOs. EIP aims to reduce air and water pollution from CAFOs and empower affected communities by holding federal agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws.

Farm Forward was founded in 2007 as the nation's first nonprofit devoted exclusively to end factory farming and our work improves the lives of 400,000,000 farmed animals annually.

Farm Forward implements innovative strategies to promote conscientious food choices, reduce farmed animal suffering, and advance sustainable agriculture.

Food & Water Watch is a national, nonprofit membership organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. Food & Water Watch uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. Food & Water Watch has worked to address pollution from CAFOs since its founding, and advocates for a ban on these facilities due to their harmful impacts on the environment, rural communities and family farmers, public health, workers, and animal welfare.

Friends of Family Farmers is a statewide grassroots nonprofit organization with more than 8,000 supporters across Oregon. Friends of Family Farmers brings together independent small to mid-size farmers, food advocates, and concerned citizens to shape and support socially and ecologically responsible, family-scale agriculture in Oregon that respects the land, treats animals humanely, and sustains local communities.

Friends of the Earth, founded by David Brower in 1969, fights to create a healthy and just world. Our Climate-Friendly Food Program aims to reduce the harmful impacts of industrial animal agriculture and build a more just and resilient food system through policy change and by reducing institutional purchases of industrial meat and dairy while driving increased demand for plant-based foods and organic, high welfare, and pasture-raised animal products.

Government Accountability Project is a national nonprofit whose mission is to promote corporate and government accountability by protecting whistleblowers, advancing occupational free speech, and empowering citizen activists. Founded in 1977, Government Accountability Project is the nation's leading whistleblower protection and advocacy organization. In addition to focusing on whistleblower support in several program areas, including food and agriculture through its Food Integrity Campaign, Government Accountability Project leads campaigns to enact whistleblower protection laws both domestically and internationally.

Great Lakes Environmental Law Center is a Michigan-based environmental law nonprofit that fights for environmental justice, and works with Michigan residents to develop and implement effective legal and policy strategies to address the environmental issues that are impacting their health and quality of life.

GreenLatinos is a national nonprofit organization that convenes a broad coalition of Latino leaders committed to addressing national, regional and local environmental, natural resources and conservation issues that significantly affect the health and welfare of the Latino community in the United States. GreenLatinos develops and advocates for policies and programs to advance this mission. An overwhelming majority of Latinos (78%) say they have personally experienced the effects of climate change. GreenLatinos members are calling for federal climate action that achieves deep carbon cuts, funds resilient infrastructure, and prioritizes benefits for the most impacted communities.

Idaho Organization of Resource Councils is an environmental justice nonprofit that empowers its members to improve the well-being of their communities, sustain family farms and ranches, transform local food systems, promote clean energy, and advocate for responsible stewardship of Idaho's natural resources.

Institute of Agriculture and Trade Policy (IATP) is a nonprofit that works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm, and trade systems. IATP's climate change work aims to reduce the harmful impacts of industrialized animal agriculture and promote regenerative systems based on agroecology principles.

Iowa Citizens for Community Improvement (Iowa CCI) is a statewide, grassroots people's action group that uses community organizing to win public policy that puts communities before corporations and people before profits, politics and polluters. Iowa CCI members are everyday Iowans fighting for a better food and farm system, one that works for farmers, workers, eaters, and the environment. Iowa CCI has been fighting to put people first for over 45 years.

Johns Hopkins Center for a Livable Future is based at the Johns Hopkins Bloomberg School of Public Health. We are an academic based education, research and practice Center focusing our work at the intersection of food production, public health, and the environment. We have a particular focus on the public health, environmental and rural community impacts of large scale animal production systems, commonly referred to as concentrated animal feeding operations.

Land Stewardship Project (LSP) is a private, nonprofit organization founded in 1982 to foster an ethic of stewardship for farmland, to promote sustainable agriculture and to develop sustainable communities. LSP is dedicated to creating transformational change in our food and farming system. LSP's work has a broad and deep impact, from new farmer training and local organizing, to federal policy and community based food systems development. At the core of all our work are the values of stewardship, justice and democracy.

Leadership Counsel for Justice & Accountability works alongside impacted communities in the San Joaquin and Eastern Coachella Valleys to eradicate injustice and secure equal access to opportunity regardless of wealth, race, income, or place. Leadership Counsel advocates at the local, regional, and statewide levels on the overlapping issues of land use, transportation, climate change, safe and affordable drinking water, housing, environmental justice, equitable investment, and government accountability.

Missouri Rural Crisis Center is a statewide farm and rural membership organization founded in 1985 with over 5,600 member families. The Missouri Rural Crisis Center's mission is to preserve family farms, promote stewardship of the land, environmental integrity, and strive for economic and social justice by building unity and mutual understanding among diverse groups, both rural and urban.

North Carolina Environmental Justice Network promotes health and environmental equality for all people of North Carolina through community action for clean industry, safe workplaces and fair access to all human and natural resources. NCEJN seeks to accomplish these goals through organizing, advocacy, research, and education based on principles of economic

equity and democracy for all people. NCEJN is a network of twenty eight organizations committed to the principles of environmental justice.

Northeast Organic Farming Association, Massachusetts Chapter is a member-based nonprofit that represents over 1,000 sustainable farmers, gardeners, and organic consumers across the state. NOFA/Mass is primarily an educational organization committed to deep organic and agroecological practices, social justice, and healthy communities. Since 1982 NOFA/Mass has been working to expand the production and availability of nutritious food from living soil for the health of individuals, communities and the planet.

Organic Consumers Association is an online and grassroots 501(c)(3) nonprofit public interest organization, and the only organization in the U.S. focused exclusively on promoting the views and interests of the increasingly vocal majority of Americans who prefer organic food and farming – for their health and the health of the planet.

Public Justice Foundation is a national nonprofit legal advocacy organization committed to fighting injustice, protecting Earth’s sustainability, and challenging corporate wrongdoing. The Public Justice Food Project specifically aims to dismantle harmful industrial agricultural practices and promote a just, humane, and regenerative animal agriculture system.

Sierra Club is a national nonprofit organization with 65 chapters and over 800,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club is committed to reducing emissions of all harmful pollutants, including industrial greenhouse gases, and has invested significant resources into combatting emissions of methane, a powerful greenhouse gas that is responsible for approximately one-quarter of the warming our planet has experienced since pre-industrial times.

Socially Responsible Agricultural Project (SRAP) informs and educates the general public about the negative effects of concentrated animal feeding operations – also known as factory farms – while working directly with U.S. communities impacted by this destructive form of industrial animal agriculture. Through public education, issue advocacy, and local community organizing, SRAP empowers rural residents to protect their public health, environmental quality, natural resources and local economies from the damaging impacts of factory farms.

III. STATUTORY BACKGROUND

A. EPA has expansive authority to list industrial dairy and hog operations under section 111 of the Clean Air Act.

Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare.”² To this end, the Act outlines a

² 42 U.S.C. § 7401(b)(1).

process for identifying stationary sources of dangerous air pollution, and limiting emissions from those sources. The EPA is the federal agency responsible for administering the Act.

Section 111 of the Clean Air Act requires EPA to publish and regularly revise a “list of categories of stationary sources.”³ Specifically, EPA must list any source category that the Administrator finds, in their judgment, “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”⁴ EPA commonly refers to this determination as the “endangerment finding.”

1. New Source Performance Standards

Within one year of adding a new source category to this list, EPA must then promulgate “standards of performance” to reduce air pollution from new and modified sources in that category.⁵ EPA may also “distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.”⁶

These standards must “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into consideration the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.”⁷ EPA cannot, however, “require any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance” unless the Administrator finds, in their judgment, “it is not feasible to prescribe or enforce a standard of performance.”⁸

EPA has promulgated standards of performance for pollutants from new and modified facilities in dozens of industries,⁹ including non-methane organic compound emissions from

³ *Id.* § 7411(b)(1)(A).

⁴ *Id.*

⁵ *Id.* § 7411(b)(1)(B).

⁶ *Id.* § 7411(b)(2).

⁷ *Id.* § 7411(a)(1).

⁸ *Id.* § 7411(b)(5). If the Administrator finds, in their judgment, “it is not feasible to prescribe or enforce a standard of performance,” they “may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction,” taking into account the cost, non-air quality health and environmental impact, and energy requirements. *Id.* § 7411(h)(1).

⁹ EPA, *New Source Performance Standards*, <https://www.epa.gov/stationary-sources-air-pollution/new-source-performance-standards> (last updated Jul. 9, 2020); 40 C.F.R. § 60.16 (prioritized major source categories).

municipal solid waste landfills;¹⁰ particulate matter from grain elevators;¹¹ particulate matter from glass manufacturing plants;¹² particulate matter, nitrogen oxide, and sulfur dioxide from portland cement plants;¹³ and volatile organic compounds from rubber tire manufacturing plants, to name a few.¹⁴ In 2015, EPA promulgated standards of performance to limit GHG emissions “manifested as CO₂” from fossil fuel-fired electric utility steam generating units and stationary combustion turbines,¹⁵ which were among the first sources regulated under section 111(b).¹⁶

2. Emission Guidelines for Existing Sources

Upon or after setting standards for new and modified sources, EPA must establish guidelines for existing sources, and states must follow these guidelines to develop standards of performance for existing sources located in their borders.¹⁷ This requirement does not apply to emissions of air pollutants regulated as either (1) a criteria air pollutant listed under section 7408(a); or (2) a hazardous air pollutant emitted from a source category regulated under section 7412.¹⁸ Thus, section 111(d) is a gap-filling provision designed to regulate pollutants from existing sources that are not covered by the criteria pollutant provisions or the hazardous air pollutant provisions.

Currently, EPA has listed six criteria air pollutants under section 7408(a): carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), ozone (O₃), and

¹⁰ 40 C.F.R. § 60.752; *see also* Standards of Performance for Municipal Solid Waste Landfills, 61 Fed. Reg. 9905 (Mar. 12, 1996) (adding “municipal solid waste landfills” to the priority list of source categories under section 111 and promulgating NSPS for landfill gas emissions); EPA, EPA-453/R-94-021, Background Information Document, 1-2 and 1-3 (Dec. 1995) (explaining that methane and other organic compounds from landfills endanger public health and welfare by contributing to ozone formation, cancer and non-cancer health effects, and odor nuisance).

¹¹ 40 C.F.R. § 60.302; *see also* Standards of Performance for Grain Elevators, 43 Fed. Reg. 34340 (Aug. 3, 1978) (promulgating NSPS for particulate matter emissions from grain elevators because senate committee “listed grain elevators as a source for which standards of performance should be developed” in September 1970).

¹² 40 C.F.R. § 60.292; *see also* EPA, EPA-450/3-79-005b, Background Information Document, 2-11 (Sep. 1980) (noting that the Administrator found that particulate matter emissions from new glass manufacturing plants contribute significantly to air pollution, “even though the total amount of emissions is a small portion of the Nation’s total particulate emissions”); 44 Fed. Reg. 34193 (Jun. 14, 1979) (adding glass manufacturing to list of source categories that endanger public health and welfare under section 111).

¹³ 40 C.F.R. § 60.62.

¹⁴ *Id.* § 60.542; *see also* Standards of Performance for Rubber Tire Industry, 54 Fed. Reg. 38634 (Sep. 19, 1989) (promulgating revised NSPS for VOC emissions from rubber tire manufacturing operations in response to petition); 44 Fed. Reg. 49222 (Aug. 21, 1979) (adding synthetic rubber tire industry to priority list under section 111).

¹⁵ 40 C.F.R. Part 60, Subpart TTTT; *see also* Standards of Performance for GHG Emissions from Electric Utility Generating Units (EGUs), 80 Fed. Reg. 64510 (Oct. 23, 2015).

¹⁶ *See* List of Categories of Stationary Sources, 36 Fed. Reg. 5931 (Mar. 31, 1971); Priority List & Additions to the List of Categories of Stationary Source, 44 Fed. Reg. 49222 (Aug. 21, 1979); *see also* Standards of Performance for New Stationary Sources, 36 Fed. Reg. 24876 (Dec. 23, 1971) (promulgating standards for steam generators, portland cement plants, incinerators, nitric acid plants, and sulfuric acid plants).

¹⁷ 42 U.S.C. § 7411(d)(1).

¹⁸ *Id.* § 7411(d)(1).

particulate matter (PM).¹⁹ The “primary criteria pollutants of concern for agriculture” are particulate matter and ozone.²⁰ Although industrial animal operations do not directly emit ozone, they emit nitrogen oxides (NO_x) and volatile organic compounds (VOCs), which are precursors to ozone formation. Industrial animal operations emit particulate matter as dust. These operations also indirectly emit particulate matter precursors including ammonia, NO_x, VOCs, and sulfur dioxide.²¹ So while some CAFO emissions are criteria pollutants, methane is not one of them. EPA has also failed to list industrial animal operations as a source category of hazardous air pollutants, even though they emit several hazardous air pollutants listed by EPA.²² Thus, the gap-filling provisions of section 111(d) would apply with respect to methane, which is not regulated as either a criteria pollutant or a hazardous air pollutant from CAFOs.

EPA has promulgated guidelines under section 111(d) to reduce emissions from existing facilities in the following source categories:

- GHG emissions (in the form of CO₂) from fossil fuel-fired electric utility generating units.²³
- Non-methane organic compound emissions from municipal solid waste landfills.²⁴
- Particulate matter, nitrogen oxides, sulfur dioxides, and other air pollutants from solid waste combustors.²⁵ Please note that section 129 of the Act requires EPA to issue

¹⁹ 40 C.F.R. Part 50; EPA, *NAAQS Table*, <https://www.epa.gov/criteria-air-pollutants/naaqs-table> (Dec. 20, 2016); *see also* Review of the Ozone NAAQS, 85 Fed. Reg. 49,830 (Aug. 14, 2020) (proposed rule) (proposing to retain primary and secondary air quality standards for ozone); Review of the Particulate Matter NAAQS, 85 Fed. Reg. 24,094 (Apr. 30, 2020) (proposed rule) (proposing to retain primary and secondary air quality standards for particulate matter, despite new evidence of health and welfare effects).

²⁰ *See* NRCS, USDA, *CRITERIA POLLUTANTS* (2011).

²¹ *See, e.g.*, PM_{2.5} SIP Requirements Rule, 81 Fed. Reg. 58010 (Aug. 24, 2016) (requiring that states evaluate all PM_{2.5} precursor pollutants (sulfur dioxide, oxides of nitrogen, VOC, and ammonia) in the development of all PM_{2.5} nonattainment area state implementation plans); *see also id.* at 58104 (“The principal precursor gases that contribute to secondary PM_{2.5} formation are . . . ammonia, from sources such as animal feeding operations, wastewater treatment and fertilizer.”); P. GREEN & F. MITLOEHNER, EPA, *MECHANISMS OF NITROGEN OXIDE FORMATION DURING ENSILING* (2014) (long-term feed storage (or silage) at industrial dairy operations emits NO_x and VOCs, which are precursors to ozone formation and PM_{2.5}).

²² 40 C.F.R. Parts 60-63; *see also id.* § 61.01 (list of hazardous air pollutants); EPA, *National Emission Standards for Hazardous Air Pollutants*, <https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9> (Jun. 5, 2020); *Initial List of Hazardous Air Pollutants with Modifications*, <https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications> (Jun. 18, 2020).

²³ 40 C.F.R. Part 60, Subpart UUUUa; *see also* Emission Guidelines for GHG Emissions from Existing EGUs, 84 Fed. Reg. 32520 (Jul. 8, 2019) (promulgating revised emission guidelines for CO₂ emissions from two subcategories of existing coal-fired EGUs based on measures that can be applied to a designated facility); Carbon Pollution Emission Guidelines for Existing EGUs, 80 Fed. Reg. 64661 (Oct. 23, 2015) (promulgating emission guidelines for CO₂ emissions based on previous best system).

²⁴ 40 C.F.R. § 60.33c; Emission Guidelines for Existing Municipal Solid Waste Landfills, 81 Fed. Reg. 59276 (Aug. 29, 2016). In 2003, the EPA promulgated national emission standards for hazardous air pollutants from municipal solid waste landfills under section 112. The HAP emitted by landfills include vinyl chloride, ethyl benzene, toluene, and benzene. *See* 40 C.F.R. Part 63, Subpart AAAA; 68 Fed. Reg. 2227 (Jan. 16, 2003).

²⁵ 40 C.F.R. Part 60, Subpart Cb; Emission Guidelines for Existing Large Municipal Waste Combustors, 71 Fed. Reg. 27323 (May 10, 2006); *see also* 40 C.F.R. Part 60, Subparts BBBB (small municipal waste combustion units), DDDD (industrial solid waste incineration units), EEEE and FFFF (other solid waste incineration units).

emission guidelines for air pollution from existing solid waste incinerators under section 111(d).²⁶

- Acid mist from sulfuric acid production plants.²⁷
- Fluoride emissions from phosphate fertilizer plants.²⁸
- Total reduced sulfur emissions from Kraft pulp plants.²⁹
- Fluoride emissions from primary aluminum plants.³⁰

B. Although EPA has regulated other sources of GHG emissions under section 111, EPA took final action and declined to determine whether to list concentrated animal feeding operations.

1. EPA's Rulemakings on GHG Emissions

In 2009, EPA determined that six greenhouse gases—carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—endanger the public health and public welfare of current and future generations by causing and contributing to climate change.³¹ Subsequently, EPA relied on this finding to establish standards to reduce GHG emissions in the form of CO₂ from new and existing fossil fuel-fired electric utility steam generating units and combustion turbines under section 111 of the Clean Air Act.³² Further, in addition to establishing VOC standards for new sources within the oil and gas industry under section 111,³³ which have the co-benefit of reducing methane emissions, EPA issued GHG standards in the form of methane emission

²⁶ Although section 111(d) generally prohibits EPA from issuing emission guidelines for pollutants regulated as criteria pollutants under section 110 or hazardous air pollutants under section 112, section 129 directs the agency to issue existing source emission guidelines for specified pollutants, including a number of criteria and hazardous air pollutants, from solid waste incinerators. 42 U.S.C. § 7429(b).

²⁷ 40 C.F.R. Part 60, Subpart Cd; Emission Guideline for Sulfuric Acid Mist, 42 Fed. Reg. 55796 (Oct. 18, 1977).

²⁸ 42 Fed. Reg. 12022 (Mar. 1, 1977) (notifying public of availability of final guideline document: EPA-450/2-77-005, Guidelines for Control of Fluoride Emissions from Existing Phosphate Fertilizer Plants (Mar. 1977)).

²⁹ 44 Fed. Reg. 29828 (May 22, 1979) (notifying public of availability of final guideline document: EPA-450/2-78-003b, Guidelines for Control of Emissions from Existing Mills (Mar. 1979)).

³⁰ 45 Fed. Reg. 26294 (Apr. 17, 1980) (notifying public of availability of final guideline document: EPA-450/2-78-049b, Guidelines for Control of Fluoride Emissions from Existing Primary Aluminum Plants (Dec. 1979)).

³¹ Endangerment & Cause or Contribute Findings from GHGs under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496 (Dec. 15, 2009) (final rule) (finding that combined GHG emissions from new motor vehicles and new motor vehicle engines contribute to GHG pollution that endangers both public health and welfare); *see also* Finding that GHG Emissions from Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated to Endanger Public Health & Welfare, 81 Fed. Reg. 54422 (Aug. 15, 2016) (finding that GHG emissions from aircraft engines satisfy endangerment standard under section 231(a)(2)(A) of the Clean Air Act).

³² Standards of Performance for GHG Emissions from New EGUs, 80 Fed. Reg. 64510, 64530-31 (Oct. 23, 2015) (final rule) (regulating CO₂ emissions from new EGUs under section 111); Review of Standards of Performance for New EGUs, 83 Fed. Reg. 65424, 65435 (Dec. 20, 2018) (proposed rule) (proposing to promulgate new emission standards for CO₂ emissions from new EGUs under section 111); Emission Guidelines for GHG Emissions from Existing EGUs, 80 Fed. Reg. 32520 (Sep. 6, 2019) (final rule) (promulgating emission guidelines for GHG emissions from existing EGUs based on revised determination of best system of emission reduction).

³³ Review of Standards of Performance for Oil & Gas Sector, 77 Fed. Reg. 49490, 49513 (Aug. 16, 2012) (“[T]he control measures that the EPA is requiring for VOC result in substantial methane reductions as a co-benefit.”).

limits.³⁴ Although EPA has taken action to rescind the GHG standards for oil and gas operations, it has not disputed its earlier finding that GHG emissions—including methane—endanger public health and welfare,³⁵ and the incoming Biden administration has affirmed its intention to reinstitute those standards and to issue existing source guidelines for oil and gas methane emissions.

2. EPA’s Final Action Declining to Determine the Petition to Regulate GHG Emissions from CAFOs

In September 2009, several public interest organizations recognized that industrial animal production is a major source of criteria air pollutants and GHG emissions and petitioned EPA to regulate these emissions. Specifically, the petition urged EPA to list concentrated animal feeding operations (CAFOs) as a category of sources that emit GHGs and other air pollutants that cause or contribute significantly to air pollution that endangers public health and welfare under section 111 of the Clean Air Act.³⁶

In December 2017, in its final response to the petition, EPA “declined to determine whether to list CAFOs as a source category under . . . section 111.”³⁷ Although information at the time indicated that methane emissions from industrial dairy and hog operations were significant,³⁸ EPA noted that it needed more time to “gather[] additional information” before “determining which regulatory tool[s] would be most appropriate to regulate CAFO emissions to protect public health and welfare.”³⁹ EPA further claimed that it could not determine whether any regulatory action was needed until the agency finished “[d]eveloping accurate methodologies to estimate air emissions from CAFOs,” based on data collected during the National Air Emissions Monitoring Study (NAEMS).⁴⁰

However, as explained further below, these justifications do not explain EPA’s failure to list CAFOs as a source category causing or contributing significantly to dangerous air emissions. The NAEMS study focused on a short list of pollutants, which did not include methane, so NAEMS simply has no bearing on methane emissions from CAFOs. Moreover, effective methodologies for estimating methane emissions already exist and are being used by the

³⁴ Standards of Performance for Oil & Natural Gas Sector, 81 Fed. Reg. 35824, 35841 (Jun. 3, 2016) (final rule) (“While the controls used to meet the VOC standards in the 2012 NSPS also reduce methane emissions incidentally, in light of the current and projected future GHG emissions from the oil and natural gas industry, reducing GHG emissions from this source category should not be treated simply as an incidental benefit to VOC reduction; rather, it is something that should be directly addressed through GHG standards in the form of limits on methane emissions under CAA section 111(b) . . .”).

³⁵ Review of Emission Standards for New, Reconstructed, and Modified Sources in Oil & Natural Gas Sector, 85 Fed. Reg. 57018 (Sep. 14, 2020) (final rule).

³⁶ Petition to List CAFOs & Promulgate Standards of Performance under Section 111 of the Clean Air Act (Sep. 21, 2009).

³⁷ Letter from E. Scott Pruitt, Administrator, EPA, to Tom Frantz, President, Ass’n of Irrigated Residents, at 1–2 (Dec. 15, 2017).

³⁸ See Petition to List CAFOs, *supra* note 36, at 17–19, 28–30.

³⁹ Letter from E. Scott Pruitt, *supra* note 37, at 1–2.

⁴⁰ *Id.* at 4–7.

Agency.⁴¹ EPA has not initiated any rulemaking to reduce these emissions. Accordingly, EPA should list industrial dairy and hog operations as source categories of dangerous methane emissions and subsequently adopt emission reduction standards for methane emissions.

IV. FACTUAL BACKGROUND

A. Climate Change

Over the last several decades, atmospheric concentrations of anthropogenic greenhouse gases (GHGs), such as carbon dioxide, methane, and nitrous oxide, have reached unprecedented levels. Due largely to population growth and industrial processes, this increase in anthropogenic GHG emissions has had widespread climate impacts, from warming temperatures to rising sea levels. However, despite widespread consensus that anthropogenic emissions are the “dominant cause” of climate change, current efforts to reduce emissions from industrial activities have not stabilized current GHG concentrations.⁴² Thus, without additional reduction efforts, GHG emissions will continue to rise, resulting in irreversible damage to natural and human systems.⁴³

1. Public Health

Climate change is a significant threat to human life and safety. Recent scientific assessments confirm that extreme temperature variation and heat waves are likely to increase deaths and illnesses, especially among society’s most vulnerable populations, such as children, pregnant women, elderly people, and people with chronic illness.⁴⁴ Climate change is also associated with more intense and frequent extreme weather events (e.g., hurricanes, wildfires, tornadoes), which can have numerous detrimental public health impacts, including increased deaths, injuries, infections, and stress-related disorders. Relatedly, climate change is likely to increase exposure to harmful pathogens and toxins in water and food resources, and accelerate the spread of deadly infectious diseases, such as the West Nile and Zika viruses.⁴⁵ Moreover, the health impacts of climate change disproportionately affect low-income communities and communities of color due to their increased exposure and sensitivity to health hazards.⁴⁶

2. Public Welfare

Climate change will also adversely affect public welfare in several ways. For example, rising temperatures will increase extreme weather events, such as droughts, floods, and wildfires. Coastal communities are also particularly vulnerable to property damage and degradation from rising sea levels and more intense hurricanes and storm events. Likewise, the agricultural sector

⁴¹ See *infra* Part V.B.1.

⁴² INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, FIFTH ASSESSMENT REPORT, SYNTHESIS REPORT 4 (2014) [hereinafter IPCC, AR5 REPORT]; see also SPECIAL REPORT ON CLIMATE CHANGE & LAND (2019).

⁴³ IPCC, AR5 REPORT, *supra* note 42, at 17–20.

⁴⁴ See *infra* Part V.A.2.ii.a (discussing public health impacts of climate change).

⁴⁵ U.S. GLOBAL CHANGE RESEARCH PROGRAM, FOURTH NAT’L CLIMATE ASSESSMENT, VOL. II: IMPACTS, RISKS, & ADAPTATION 544–46 (2018) [hereinafter USGCRP, NCA4 REPORT].

⁴⁶ *Id.* at 546–48.

is uniquely vulnerable to climate change because extreme weather events, such as heavy precipitation and heat waves, threaten crop and livestock production.⁴⁷ Further, climate change will disrupt access to critical sectors and infrastructure, including transportation, energy, communication, and medical systems.

B. Expansion of Industrial Dairy and Hog Operations

Over the past few decades, corporate consolidation has forced U.S. hog and dairy production to shift from traditional, independent pasture-based operations to highly concentrated and industrialized operations, which rely on the industrial model of production to maximize the number of animals. Unlike pasture-based operations, where animals can graze and forage on pasture, industrial hog and dairy operations confine animals in large, specialized facilities for every stage of production. Further, industrial operations use liquefied manure management systems, such as lagoons (flush systems) or slurry/liquid tanks (scrape systems), to collect and store massive amounts of manure from production facilities until disposal on nearby agricultural fields.⁴⁸ Typically, industrial operations use mechanical spread and injection systems to apply manure to soils, and irrigation systems to apply liquid manure solutions and wastewater to crops and grazing lands.⁴⁹ Thus, industrial hog and dairy operations stock more animals per acre than traditional pasture-based operations because they rely on confined production facilities and liquefied manure management systems.

Both confinement facilities and liquefied manure storage systems emit significant amounts of ammonia, hydrogen sulfide, particulate matter, and other odorous and harmful air pollutants, which degrade local and regional air quality. These sources also emit methane, nitrous oxide, and carbon dioxide, which contribute to rising GHG emissions and climate change impacts. In fact, EPA has expressly acknowledged that the expansion of dairy cows and hogs in confinement facilities with liquefied manure management systems has caused methane emissions from this sector to increase significantly in recent decades.⁵⁰ In the most recent inventory of U.S. GHG emissions, EPA noted that the “manure management systems with the most substantial methane emissions are those associated with confined animal management operations[,] where

⁴⁷ See IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 5-24 to 5-37.

⁴⁸ Manure lagoons “are large earthen containment structures into which manure and wastewater is flushed and maintained in liquid form until removed,” and pits or tanks “are often located under hog production facilities where, in the typical system, manure drops into pits through slatted floors and is stored in a slurry form until removed.” Both systems of liquefied manure storage “hold the manure until it can be land-applied on the same farm or nearby farms.” ECON. RESEARCH SERV. (ERS), USDA, AGRIC. RESOURCES & ENVTL. INDICATORS 75 (2019).

⁴⁹ *Id.* (“Technologies for land application include liquid/slurry manure spreaders that may or may not incorporate manure into the soil, and irrigation systems that spray or spread the liquid manure solution on nearby fields.”); see also WISCONSIN MANURE IRRIGATION WORKGROUP, CONSIDERATIONS FOR THE USE OF MANURE IRRIGATION PRACTICES 13, 16–17 (K. Genskow & R. Larson, eds., 2016) [hereinafter MANURE IRRIGATION REPORT].

⁵⁰ EPA, INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS & SINKS: 1990-2018, at 5-12 (2020) (explaining that “the shift toward larger dairy cattle and swine facilities since 1990 has translated into an increasing use of liquid manure management systems, which have higher potential CH₄ emissions than dry systems”) [hereinafter U.S. GHG INVENTORY]; see also *id.* at 5-11 (noting that the “majority of [the 66 percent increase in methane emissions from 1990 to 2018] is due to swine and dairy cow manure . . . [and] an increase in animal populations”).

manure is handled in liquid-based systems.”⁵¹ Consequently, as animal production becomes increasingly more industrialized and concentrated, methane emissions will also increase, leading to adverse climate change impacts.

1. Industrial Dairy

According to the U.S. Department of Agriculture (USDA), “the structure of dairy farming has changed dramatically in the last [three] decades,” with production shifting away from small, pasture-based farms to larger and more industrialized operations.⁵² In fact, over 60 percent of U.S. dairy production takes place on industrialized operations with more than 500 cows, and “[s]everal farms now have milking herds of well over 10,000 [cows.]”⁵³ As USDA explained, industrial dairy operations rely on animal confinement, purchased feed, liquefied manure management, and other highly polluting “practices and technologies” to maximize profits.⁵⁴

As the number of U.S. dairy farms has decreased, farmer-owned dairy cooperatives have also decreased. These cooperatives provide a wide-range of beneficial services to member farmers, including price negotiations, milk processing, and marketing. However, as cooperatives consolidate and their membership grows more diverse, it becomes increasingly difficult for cooperatives to adequately represent member farmers with different needs, causing “farmers [to] feel they have lost control of their cooperative’s priorities and strategic direction.”⁵⁵

The decline in dairy farms and cooperatives has coincided with increased consolidation in ownership on a national scale, including mergers between the nation’s largest dairy cooperatives and milk processors.⁵⁶ According to recent studies, the expansion of “cooperatives’ investments in dairy processing can affect farmers’ earnings” and “create power imbalances.”⁵⁷ Moreover, major grocery retailers, such as Walmart, have started to build their own dairy processing plants to cut costs, forcing dairy farmers to find new buyers and lower their prices.⁵⁸

⁵¹ *Id.* at 5-11; *see also id.* at 5-12 tbl.5-7 (demonstrating that methane emissions from dairy cattle and swine have increased by 120 percent and 46 percent, respectively, since 1990).

⁵² J. MACDONALD, ET AL., USDA, ECON. RES. REP. 205, CHANGING STRUCTURE, FINANCIAL RISKS, & GOV’T POLICY FOR THE U.S. DAIRY INDUSTRY 7-13, 18 (2016) [hereinafter USDA, U.S. DAIRY REPORT].

⁵³ *Id.* at 11; USDA, 2017 CENSUS OF AGRICULTURE: UNITED STATES, 23 tbl.17 (2019).

⁵⁴ USDA, U.S. DAIRY REPORT, *supra* note 52, at 13-14, 16.

⁵⁵ GAO, DAIRY COOPERATIVES: POTENTIAL IMPLICATIONS OF CONSOLIDATION & INVESTMENTS IN DAIRY PROCESSING FOR FARMERS 5 (2019).

⁵⁶ *See, e.g.*, Press Release: Dean Foods Completes Sale of Assets to Dairy Farmers of America (May 1, 2020) (announcing merger between DFA, largest dairy cooperative in the country, with Dean Foods, largest milk processor in the country).

⁵⁷ GAO, DAIRY CONSOLIDATION, *supra* note 55, at 4.

⁵⁸ *See, e.g.*, J. Bunge & J. Kang, *Walmart, Kroger Bottle Their Own Milk & Shake Up American Dairy Industry*, WALL STREET J. (Jul. 27, 2020), <https://www.wsj.com/articles/walmart-kroger-bottle-their-own-milk-and-shake-up-american-dairy-industry-11595872190>.

The increased consolidation of the U.S. dairy industry has put significant financial stress on farmers, most notably independent pasture-based farms. The expansion of industrial dairy operations has increased dairy production,⁵⁹ which has caused milk prices and net returns to decline.⁶⁰ In doing so, industrial dairies have put “increased financial pressure” on smaller dairies with higher production costs or tighter margins.⁶¹ Across the country, independent farms are struggling to operate with little to no farm income, often wiping out their savings and credit to stay in business.⁶² In fact, many independent farms have been forced to close, thereby “continuing the process of structural change” due to increased consolidation and corporate control in the U.S. dairy industry.⁶³

Further, industrial dairy operations have several adverse impacts on local communities because they confine large numbers of cows in specialized production facilities, and generate massive amount of manure, odor, dust, and harmful air pollutants in local communities. These emissions degrade local air quality and threaten the health and well-being of local residents.⁶⁴ In addition, industrial dairies significantly increase local air pollution and odor because they rely heavily on liquefied manure management systems, most notably lagoons for storing manure. When operations eventually dispose of liquefied manure or wastewater onto nearby agricultural fields, nutrients, pathogens, antibiotic residues, and other harmful pollutants in the manure can

⁵⁹ J. MACDONALD, ET AL., USDA, ECON. RES. REP. 274, *CONSOLIDATION IN U.S. DAIRY FARMING* 2 fig.1; 6 fig.3 (2020); see also USDA, *MILK PRODUCTION* 7 (Feb. 20, 2020) (U.S. Milk Production from 2010 to 2019).

⁶⁰ See USDA, *CONSOLIDATION IN U.S. DAIRY*, *supra* note 59, at 5 fig.2 (demonstrating declining net returns and fluctuating milk prices in recent years); U.S. DAIRY REPORT, *supra* note 52, at 18 (“Increases in production reduce real (inflation-adjusted) product prices, and ultimately reduce farm milk prices.”).

⁶¹ USDA, U.S. DAIRY REPORT, *supra* note 52, at 18; see also *CONSOLIDATION IN U.S. DAIRY*, *supra* note 59, 19-25, 30; see also J. MacDonald & D. Newton, *Milk Production Continues to Shifting to Large-Scale Farms*, ERS (Dec. 1, 2014) (“Most of the largest dairy farms generate gross returns that exceed full costs, while most small and mid-size dairy farms do not earn enough to cover full costs.”), <https://www.ers.usda.gov/amber-waves/2014/december/milk-production-continues-shifting-to-large-scale-farms>.

⁶² See, e.g., J. Fox, *A Productivity Revolution is Wiping Out (Most) Dairy Farms*, BLOOMBERG (Jun. 5, 2019), <https://www.bloomberg.com/opinion/articles/2019-06-05/dairy-farms-fall-victim-to-the-productivity-revolution>; see, e.g., R. Barrett & L. Bergquist, *Industrial Dairy Farming is Taking Over in Wisconsin, Crowding Out Family Operations & Raising Environmental Concerns*, MILWAUKEE J. SENTINEL (updated Feb. 11, 2020), <https://www.jsonline.com/in-depth/news/special-reports/dairy-crisis/2019/12/06/industrial-dairy-impacts-wisconsin-environment-family-farms/4318671002>.

⁶³ USDA, U.S. DAIRY REPORT, *supra* note 52, at 18; USDA, *CONSOLIDATION IN U.S. DAIRY*, *supra* note 59, at 7-14; see also Hope Kirwan, *Wisconsin Loses 10 Percent of State’s Dairy Herds as Fallout from Low Milk Prices Continues*, WISCONSIN PUBLIC RADIO (Jan. 7, 2020), <https://www.wpr.org/wisconsin-loses-10-percent-states-dairy-herds-fallout-low-milk-prices-continues>.

⁶⁴ See, e.g., S. Rasmussen, et al., *Proximity to Industrial Food Animal Production & Asthma Exacerbations in Pennsylvania*, 14 INT’L J. ENVTL. RES. & PUBLIC HEALTH 362 (2017); D. Williams, et al., *Cow Allergen (Bos D2) & Endotoxin Concentrations are Higher in the Settled Dust of Homes Proximate to Industrial-Scale Dairy Operations*, 26 J. EXPOSURE SCI. & ENVTL. EPIDEMIOLOGY 42 (2016); V. Blanes-Vidal, et al., *Residential Exposure to Outdoor Air Pollution From Livestock Operations & Perceived Annoyance Among Citizens*, 40 ENVTL. INT’L 44 (2012) (exposure to animal waste odor is “a significant degradation in [rural residents’] quality of life”); D. Williams, et al., *Airborne Cow Allergen, Ammonia & Particulate Matter at Homes Vary with Distance to Industrial Scale Dairy Operations: An Exposure Assessment*, 10 ENVTL. HEALTH. (2011) (industrial dairy operations increase community exposure to particulate matter, ammonia, and cow allergen).

spread to nearby properties and water sources,⁶⁵ threatening the health and well-being of local residents and livestock,⁶⁶ and contaminating crops.⁶⁷

2. Industrial Hog

Similarly, the expansion of the industrial model of production has significantly changed the structure of the U.S. hog industry.⁶⁸ According to USDA, hog farms were traditionally small, independently owned “farrow-to-finish operations that perform[ed] all phases of production,” from breeding to slaughtering.⁶⁹ Traditional hog farms also “typically fed their hogs crops grown onsite and then sold their hogs at local markets.”⁷⁰ Over the last three decades, however, corporate interests have forced U.S. hog production to shift away from “farrow-to-finish” operations to larger and more industrialized operations.⁷¹ In fact, 73 percent of U.S. hog production takes place on industrial operations with 5,000 or more hogs.⁷²

⁶⁵ See, e.g., EPA, TRANSPORT & FATE OF NUTRIENTS & INDICATOR MICROORGANISMS AT A DAIRY LAGOON WATER APPLICATION SITE: AN ASSESSMENT OF NUTRIENT MANAGEMENT PLANS (2012) (collecting studies demonstrating that land applications of manure and wastewater from industrial dairy lagoons contaminate water sources); EPA, CASE STUDIES ON THE IMPACT OF CAFOs ON GROUND WATER QUALITY 62 (2012) (over-application of dairy lagoon effluent resulted in groundwater contamination by nitrate, as well as antibiotics, estrogens, and other stressors); C. McKinney, et al., *Occurrence & Abundance of Antibiotic Resistance Genes in Agricultural Soil Receiving Dairy Manure*, 94 FEMS MICROBIOLOGY ECOLOGY 1 (2018) (manure applications significantly increase abundance of antibiotic resistant genes in soil); C. Givens, et al., *Detection of Hepatitis E Virus & Other Livestock-Related Pathogens in Iowa Streams*, 556 SCI. TOTAL ENVTL. 1042 (2016) (zoonotic pathogens were present in surface waters near manure application sites).

⁶⁶ See, e.g., T. Burch, et al., *Quantitative Microbial Risk Assessment for Spray Irrigation of Dairy Manure Based on an Empirical Fate & Transport Model*, 125 ENVTL. HEALTH PERSPECTIVES 1 (2017) (bioaerosols from spray irrigation of dairy manure increased the risk for acute gastrointestinal illness for nearby residents); M. Jahne, et al., *Emission & Dispersion of Bioaerosols From Dairy Manure Application Sites*, 49 ENVTL. SCI. TECH. 9842 (2015) (“[B]ioaerosols emitted from manure application sites following manure application may present significant public health risks to downwind receptors.”); R. Dungan, *Estimation of Infectious Risks in Residential Populations Exposed to Airborne Pathogens During Center Pivot Irrigation of Dairy Wastewaters*, 48 ENVTL. SCI. TECH. 5033 (2014) (bioaerosols from wastewater irrigation pose greatest infection risks to nearby residents); M. BORCHARDT & T. BURCH, AIRBORNE PATHOGENS FROM DAIRY MANURE AERIAL IRRIGATION & THE HUMAN HEALTH RISK (2016).

⁶⁷ See, e.g., M. Jahne, et al., *Bioaerosol Deposition to Food Crops Near Manure Application: Quantitative Microbial Risk Assessment*, 45 J. ENVTL. QUAL. 666 (2016) (pathogens from manure application sites can spread by air to nearby leafy greens).

⁶⁸ W. McBRIDE, ET AL., USDA, ECON. RES. REP. 158, U.S. HOG PRODUCTION FROM 1992 TO 2009: TECHNOLOGY, RESTRUCTURING, & PRODUCTIVITY GROWTH 1, 5 (2013) (explaining how “U.S. hog farm numbers dropped by 70 percent over 1991-2009 while hog inventories remained stable”) [hereinafter USDA, U.S. HOG REPORT]; see also USDA, CHANGES IN THE U.S. SWINE INDUSTRY: 1995-2012, at 7-9 (2017); USDA, 2017 CENSUS, *supra* note 53, at 24 tbl. 21.

⁶⁹ USDA, U.S. HOG REPORT, *supra* note 68, at 1.

⁷⁰ *Id.* at 5.

⁷¹ *Id.* at 1, 5.

⁷² USDA, 2017 CENSUS, *supra* note 53, at 24 tbl. 21; see also USDA, CHANGES IN THE U.S. SWINE INDUSTRY, *supra* note, at 12 tbl. A.2.c.

As the USDA explained, industrial hog producers are often producing hogs under contract for “large conglomerates or corporate organizations” known as integrators,⁷³ and these integrators put significant financial pressure on producers to externalize the true costs of industrial hog production. Therefore, confinement facilities and the expansion of the corporate-driven model of production have enabled hog integrators to maximize industrial hog production at the expense of local communities, the environment, and public health.

Industrial hog operations significantly degrade local, regional, and global air quality because they densely confine thousands of hogs in large and highly specialized facilities for each stage of production, and generate massive amounts of waste. These confinement facilities are a significant source of harmful air pollutants and odors, such as ammonia, hydrogen sulfide, and particulate matter, which adversely affect local communities.⁷⁴ Another significant source of air pollution is liquefied manure storage, which hold millions of gallons of manure and wastewater for long periods until operators can dispose of it onto nearby fields as fertilizer or irrigation water.⁷⁵ These systems generate significant amounts of methane, a potent greenhouse gas, and other harmful air pollutants. Unlike traditional farms, which sequester more carbon than they emit,⁷⁶ industrial hog operations do not offset GHG emissions because they rely on purchased feed from outside suppliers rather than crops grown on-site.⁷⁷

In addition, industrial hog operations threaten nearby properties and water sources by storing manure in long-term storage systems prone to breakage and spillage.⁷⁸ When there is an infrastructure failure or heavy rain storm, manure lagoons can spill decades’ worth of accumulated waste onto local properties, causing crop destruction, soil degradation, water

⁷³ USDA, U.S. HOG REPORT, *supra* note 68, at 4, 6, 11; *see also* USDA, 2017 CENSUS, *supra* note 53, at 24 tbl.23.

⁷⁴ *See, e.g.*, A. Schultz, et al., *Residential Proximity to CAFOs & Allergic & Respiratory Disease*, 130 ENVTL. INT’L 104911 (2019) (living near hog CAFO was associated with reduced lung function, allergies, and asthma); L. Schinasi, et al., *Air Pollution, Lung Function, & Physical Symptoms in Communities Near Concentrated Swine Feeding Operations*, 22 EPIDEMIOLOGY 208 (2011) (air pollutants near hog CAFOs cause acute physical symptoms); B. Pavilonis, et al., *Relative Exposure to Swine Animal Feeding Operations & Childhood Asthma Prevalence in an Agricultural Cohort*, 122 ENVTL. RES. 74 (2013); D. Ferguson, et al., *Detection of Airborne Methicillin-Resistant Staphylococcus aureus Inside & Downwind of a Swine Building*, 21 J. AGROMEDICINE 149 (2016) (methicillin-resistant *S. aureus* (MRSA) was present in air downwind of hog CAFO); K. Kilburn, *Human Impairment From Living Near Hog CAFOs*, J. ENVTL. & PUBLIC HEALTH 1, 4–6 (2012) (residents near hog CAFOs have higher rates of neurobehavioral and pulmonary impairments).

⁷⁵ *See* ERS, TRENDS & DEVELOPMENTS IN HOG MANURE MANAGEMENT 11–18 (2011) (explaining industrial hog operations rely on liquefied manure management systems to “concentrat[e] more animals on a limited land base”).

⁷⁶ *See, e.g.*, W. Teague, et al., *The Role of Ruminants in Reducing Agriculture’s Carbon Footprint in North America*, 71 J. SOIL & WATER CONSERVATION 156 (2016) (“[R]uminants consuming only grazed forages under appropriate management result in more C sequestration than emissions.”).

⁷⁷ USDA, U.S. HOG REPORT, *supra* note 68, at 6, 8 (noting that “hog producers that specialized in individual production phases generally had much less acreage than farrow-to-finish farms”).

⁷⁸ *See, e.g.*, D. Schaffer-Smith, et al., *Repeated Hurricanes Reveal Risks & Opportunities for Social-Ecological Resilience to Flooding & Water Quality Problems*, 54 ENVTL. SCI. & TECH. 7194, 7199–20 (2020) (finding “91 swine CAFOs with 125 waste lagoons, which produce ~500 million gallons of liquid manure per year, as well as almost 6,700 km² of agricultural land where manure is likely regularly applied” “within the repeatedly flooded area”).

contamination, and other adverse impacts.⁷⁹ Manure spills can also spread disease among livestock,⁸⁰ and reduce crop yields, quality, and revenue on nearby farms.⁸¹ Moreover, disposing of liquefied manure and wastewater onto nearby agricultural fields can threaten crops, aquatic life, livestock, and human health by increasing manure nutrients and harmful pathogens in the environment.⁸² These risks disproportionately affect local farmers and residents.⁸³ In fact, several rural residents have successfully sued Smithfield, an industry giant, for spraying liquefied

⁷⁹ See, e.g., Press Release: NC Dep't of Env'tl. Quality, Division of Water Resources Issues Notice of Violation to B&L Farms (Jul. 16, 2020) (hog lagoon breach caused three million gallons of manure to spread "into farms, wetlands, and . . . tributary"), <https://deq.nc.gov/news/press-releases/2020/07/16/division-water-resources-issues-notice-violation-bl-farms>; *Eight Manure Lagoons Overflow in Western Iowa Because of Flooding*, SIOUX CITY J. (Mar. 26, 2019), https://siouxcityjournal.com/news/state-and-regional/iowa/eight-manure-lagoons-overflow-in-western-iowa-because-of-flooding/article_792b6561-c617-58ea-b287-70c58d3bb2bc.html; Wynne Davis, *Overflowing Hog Lagoons Raise Environmental Concerns in North Carolina*, NPR (Sep. 22, 2018), <https://www.npr.org/2018/09/22/650698240/hurricane-s-aftermath-floods-hog-lagoons-in-north-carolina>; Erin Jordan.

⁸⁰ See S. Haack, et al., *Genes Indicative of Zoonotic & Swine Pathogens are Persistent in Stream Water & Sediment Following a Swine Manure Spill*, 81 APPLIED & ENVTL. MICROBIOLOGY 3430 (2015).

⁸¹ See, e.g., Press Release: NC Dep't of Agric. & Consumer Servs., Flood Crops Cannot Be Used for Human Food (Sep. 21, 2018) ("Farmers whose crops were flooded . . . face not only the prospect of lower yields and loss of quality, but also the reality that those crops cannot be used for human food.")

⁸² ERS, TRENDS IN HOG MANURE MANAGEMENT, *supra* note 75, at iii (recognizing that liquid manure storage systems "magnif[y] the risk that manure nutrients (nitrogen, phosphorous, and potassium) and pathogens might flow into ground and surface water due to overapplication of manure on crops or leakage from manure storage facilities"); see, e.g., M. Mallin, et al., *Industrial Swine & Poultry Production Causes Chronic Nutrient & Fecal Microbial Stream Pollution*, 226 WATER, AIR & SOIL POLLUTION 407 (2015); C. Heaney, et al., *Source Tracking Swine Fecal Waste in Surface Water Proximal to Swine CAFOs*, 511 SCI. TOTAL ENVTL. 676 (2015); L. Casanova, et al., *Antibiotic-Resistant Salmonella in Swine Wastes & Farm Surface Waters*, 71 LETTERS IN APPLIED MICROBIOLOGY 117, 120 (2020) (salmonella, including antibiotic-resistant salmonella, was present in environmental waters associated with hog CAFOs); S. Hatcher, et al. *Occurrence of MRSA in Surface Waters Near Industrial Hog Operation Spray Fields*, 565 SCI. TOTAL ENVTL. 1028 (2016) (MRSA and MDRSA were present in surface waters near industrial hog spray fields); L. He, et al., *Discharge of Swine Wastes Risks Water Quality & Food Safety: Antibiotics & Antibiotic Resistance Genes From Swine Sources to the Receiving Environments*, 92 ENVTL. INT'L 210 (2016) (vegetables irrigated with swine wastewater can contain antibiotic resistant genes).

⁸³ See M. Carrel, et al., *Pigs in Space: Determining the Environmental Justice Landscape of Swine CAFOs in Iowa*, 13 INT'L J. ENVTL. RES. PUBLIC HEALTH 1, 13 (2016) (areas with "high densities of swine" are "significant hotspots of hog manure spills" with "uneven exposure to the negative impacts of uncontrolled manure release"); J. Casey, et al., *High-Density Livestock Operations, Crop Field Application of Manure, & Risk of Community-Associated Methicillin-Resistant Staphylococcus aureus Infection in Pennsylvania*, 172 JAMA INTERNAL MEDICINE 1980 (2013) (residents near manure application sites and confinement facilities had increased rates of MRSA and skin and soft tissue infection); see also J. Kravchenk, et al., *Mortality & Health Outcomes in North Carolina Communities Located in Close Proximity to Hog Concentrated Animal Feeding Operations*, 79 NC MED. J. 278 (2018) ("[C]ommunities located near hog CAFOs had higher all-cause and infant mortality, mortality due to anemia, kidney disease, tuberculosis, septicemia, and higher hospital admissions . . ."); V. Guidry, et al., *Connecting Environmental Justice & Community Health: Effects of Hog Production in North Carolina*, 79 NC MED. J. 324 (2018); STEVE WING & JILL JOHNSTON, INDUSTRIAL HOG OPERATIONS IN NORTH CAROLINA DISPROPORTIONATELY IMPACT AFRICAN-AMERICANS, HISPANICS & AMERICAN INDIANS (2014).

manure near their homes.⁸⁴ “It is past time to acknowledge the full harms that the unreformed practices of hog farming are inflicting.” *McKiver v. Murphy Brown, LLC*, 980 F.3d 937, 977 (4th Cir. 2020) (Wilkinson, J. concurring).

In sum, corporate consolidation has forced U.S. hog and dairy production to shift to a highly concentrated and industrialized model of animal production that generates significant amounts of pollution and waste, and externalizes costs onto local communities and the public.

C. **Industrial dairy and hog operations emit significant amounts of methane and other air pollutants.**

Industrial dairy and hog operations rely on the corporate-driven model of production to maximize the stocking density of dairy cows and hogs in full confinement conditions, and generate significantly more manure, than traditional, pasture-based farms. Consequently, industrial dairy and hog operations emit significantly more methane (CH₄) than pasture-based farms.⁸⁵ As EPA expressly acknowledged in the most recent U.S. GHG Inventory, the expansion of industrial dairy and hog operations, and the facilities in which they confine animals and store their waste, are responsible for causing methane emissions from this sector to increase dramatically in recent decades.⁸⁶

1. **Enteric Fermentation**

Industrial dairy operations are significant sources of methane emissions from enteric fermentation, which is a by-product of animals’ digestive processes, also known as “cow burps.”⁸⁷ As EPA explained in the most recent U.S. GHG Inventory, methane emissions from enteric fermentation increase as herd size and confinement-based production increases and feed

⁸⁴ See, e.g., Mery P. Dalesio, *Pork Giant Smithfield Foods Loses Another Neighbors’ Lawsuit*, US NEWS (Mar. 3, 2019), <https://www.usnews.com/news/best-states/north-carolina/articles/2019-03-08/pork-giant-smithfield-foods-loses-another-neighbors-lawsuit>; see also ERS, TRENDS IN HOG MANURE MANAGEMENT, *supra* note 75, at iii (“[I]ncreased concentration of hogs per farm has led to conflicts with nearby residents or communities over odor and air quality . . .”).

⁸⁵ For further discussion on the benefits of pasture, including the capacity to sequester carbon dioxide in soil, see Part V.C.1.

⁸⁶ See *supra* note 50.

⁸⁷ EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-3. Ruminant animals, such as dairy cows, “are the major emitters of CH₄ because of their unique digestive system.” *Id.* Although non-ruminant animals, such as hogs, “also produce CH₄ emissions through enteric fermentation,” they “emit significantly less CH₄ on a per-animal-mass basis than ruminants because the capacity of the large intestine to produce CH₄ is lower.” *Id.*

In 2018, dairy cows emitted 24.5 percent (or 43.6 mmt CO₂ eq.) of all methane emissions from enteric fermentation, and hogs emitted 1.6 percent (or 2.8 mmt CO₂ eq.). *Id.* at 5-4 tbl.5-3.

digestibility decreases.⁸⁸ Accordingly, by enabling dairy operators to increase herd size and productivity to unprecedented levels, the expansion of dairy confinement facilities and purchased feed is largely responsible for causing enteric emissions from dairy cows to increase by 10.7 percent (or 4.2 mmt CO₂ eq.) in the last three decades.⁸⁹ Likewise, the decrease in feed quality and increase in productivity associated with the expansion of industrial hog facilities have caused enteric emissions from hogs to increase by 40 percent (or 0.8 mmt CO₂ eq.) over this same period.⁹⁰ The corporate-driven confinement model thus maximizes enteric methane emissions compared to pasture-based systems, where stocking density is inherently limited by grazeable acres.

2. Manure Management

Industrial dairy and hog operations are the two largest sources of methane emissions from manure management.⁹¹ According to EPA, “the shift toward larger dairy and swine facilities since 1990 has translated into an increasing use of liquid manure management systems, which have higher potential CH₄ emissions than dry systems.”⁹² Unlike manure deposited on pasture or rangelands, which “decompose[s] aerobically” and produces “little or no CH₄,”⁹³ manure handled in liquid-based systems (e.g., liquid/slurry tanks or pits) decomposes anaerobically and produces large amounts of methane.⁹⁴ Methane emissions also increase when producers use

⁸⁸ *Id.* at 2-20 (noting that increased levels of methane emissions from enteric fermentation “generally follows the increasing trends in cattle populations” and decreasing “digestibility of feed”); 5-3 (explaining that “lower feed quality and/or higher feed intake leads to higher CH₄ emissions,” and “[f]eed intake is positively connected to . . . level of activity and production” and thus varies “among different management practices . . . (e.g., animals in feedlots or grazing on pasture”); 5-11 (noting that “the greater the energy content of the feed, the greater the potential for CH₄ emissions”); *see also* USDA, QUANTIFYING GREENHOUSE GAS SOURCES & SINKS IN ANIMAL PROD. SYS., at 5-6 (explaining how animal diet and intake affects enteric fermentation emissions).

⁸⁹ EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-4 tbl.5-3; 2-19.

⁹⁰ *Id.* at 5-4 tbl.5-3.

⁹¹ In 2018, dairy and hog operations emitted 88.3 percent (or 54.5 mmt CO₂ eq.) of all methane emissions from manure management. *Id.* at 5-12 tbl.5-7. Specifically, dairy operations emitted 52 percent (32.3 mmt CO₂ eq.) of total methane emissions from manure management, and hog operations emitted 36 percent (22.2 mmt CO₂ eq.). *Id.* Note: U.S. GHG Inventory does not provide separate enteric methane data for industrial dairy and hog operations and pasture-based operations.

⁹² *Id.* at 5-12; FOOD CLIMATE RESEARCH NETWORK (FCRN), GRAZED & CONFUSED 27 (2017); USDA, QUANTIFYING GHG SOURCES, *supra* note 88, at 5-8 (noting that manure deposited onto confinement flooring, rather than pasture, begins to emit methane almost immediately).

⁹³ EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-10.

⁹⁴ *Id.*; *see also* J. Wightman, et al., *New York Dairy Manure Management Greenhouse Gas Emissions & Mitigation Costs (1992–2022)*, 45 ENVTL. QUALITY 266 (2015) (finding that increased use of liquefied manure management systems was associated with a substantial increase in methane emissions); S. Petersen, *Greenhouse Gas Emissions from Liquid Dairy Manure: Prediction & Mitigation*, 101 J. DAIRY SCI. 6642 (2018).

long-term storage systems, such as lagoons, which can collect and hold liquefied manure for 10 to 15 years.⁹⁵

Consequently, the expansion of industrial dairy and hog operations, and “the resultant effects on manure management system[s]” and farm size, has caused overall methane emissions from manure management to increase by 98.8 percent (or 24.3 mmt CO₂ eq.) in recent decades.⁹⁶ Between 1990 and 2018, methane emissions from manure management at industrial dairy and hog operations increased by 80.4 percent. Specifically, industrial dairy and hog operations are responsible for causing methane emissions from manure management to increase by 120 percent at dairy operations, and 43 percent at hog operations, since 1990.⁹⁷ Overall, industrial dairy and hog operations have caused methane emissions from manure management to increase by 98.8 percent since 1990. Moreover, several recent studies have found that EPA’s U.S. GHG Inventory significantly underestimates methane emissions from liquid manure storage,⁹⁸ largely because EPA’s emission factors do not reflect recent developments in confinement animal production and liquefied manure management.⁹⁹ Under a revised approach, methane emissions from industrial hog and dairy operations would be higher for both enteric fermentation and manure management.

⁹⁵ See EPA, U.S. GHG INVENTORY, *supra* note 50, at A-348 tbl.A-190; V. Sokolov, et al., *GHG Emissions from Gradually-filled Liquid Dairy Manure Storages in Different Levels of Inoculant*, 115 NUTRIENT CYCLING IN AGROECOSYSTEMS 455 (2019) (“On average, gradually-filled [liquid manure] tanks had 1.8°C higher manure temperature, which may have contributed to a 12% increase in total CH₄ emissions,” and a “28% increase in total NH₃ emissions.”).

⁹⁶ EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-12 tbl.5-7; 2-20 (“The majority of the increase observed in CH₄ resulted from swine and dairy cattle manure . . .”).

⁹⁷ *Id.* at 5-12 tbl.5-7; see also J. Wightman, et al., *supra* note, at 269-70 (although total number of cows in New York has decreased since 1992, methane emissions has increased dramatically due to “the shift toward anaerobic manure storage systems”).

⁹⁸ See, e.g., J. Owen, et al., *Greenhouse Gas Emissions from Dairy Manure Management: A Review of Field-based Studies*, 21 GLOBAL CHANGE BIO. 550 (2015) (suggesting that “current greenhouse gas emission factors generally underestimate emissions from dairy manure”); A. Leytem, et al., *Methane Emissions from Dairy Lagoons in the Western United States*, 100 J. DAIRY SCI. 6803 (2017) (“The [EPA] method underestimated CH₄ emissions [from an anaerobic lagoon] by 48%.”); H. Baldé, et al., *Measured Versus Modeled Methane Emissions From Separated Liquid Dairy Manure Show Large Model Underestimates*, 230 AGRIC. ECOSYSTEMS & ENVIRONMENT 261 (2016) (“Comparisons between measured and modeled CH₄ emissions showed that both the IPCC methane conversion factor (0.17) for cool climates (10 °C or less), and the USEPA model, underestimated annual emissions by up to 60%.”); M. Borhan, et al., *Greenhouse Gas Emissions from Ground Level Area Sources in Dairy & Cattle Feedyard Operations*, 2 ATMOSPHERE 303 (2011) (finding that an industrial dairy’s aggregate CH₄ emission rate was significantly higher than EPA’s estimated rate).

⁹⁹ See J. Owen, et al., *supra* note 98 (highlighting “liquid manure systems as promising target areas for greenhouse gas mitigation”); J. Wolf, et al., *Revised Methane Emissions Factors & Spatially Distributed Annual Carbon Fluxes For Global Livestock*, 12 CARBON BALANCE MGMT. 16 (2017) (finding that IPCC emission factors underestimate methane emissions from hog and dairy operations because they fail to account for “reported recent changes in animal body mass, feed quality and quantity, milk productivity, and management of animals and manure”); A. Leytem, *supra* note 98 (“An alternative methodology, using volatile solids degradation factor, provided a more accurate estimate of annual emissions from the lagoon system and may hold promise for applicability across a range of dairy lagoon systems in the United States.”).

D. Methane emissions from industrial hog and dairy operations have a substantial impact on climate change.

As discussed above, industrial dairy and hog operations emit large amounts of methane pollution into the ambient air. In 2018, industrial hog and dairy operations in the United States generated approximately 83.6 mmt CO₂ eq. of methane emissions from enteric fermentation (29.14 mmt CO₂ eq.) and manure management (54.5 mmt CO₂ eq.).¹⁰⁰ These emissions constitute 33 percent of total U.S. methane emissions from agriculture (253 mmt CO₂ eq.),¹⁰¹ and 13 percent of total U.S. methane emissions from all anthropogenic sources (634.5 mmt CO₂ eq.).¹⁰²

Table 1. Total U.S. GHG & Methane Emissions in 2018 (MMT CO₂ Eq.)

Total U.S. GHG Emissions (all sectors & gases)	6,676.6
<i>Agriculture Sector</i>	618.5
<i>Enteric Fermentation</i>	177.6
<i>Manure Management</i>	81.1
Total U.S. Methane Emissions (all sectors)	634.5
<i>Agriculture Sector</i>	253.0
<i>Enteric Fermentation</i>	177.6
<i>Manure Management</i>	61.7

Table 2. Contribution of Industrial Dairy & Hog Operations to Total U.S. Methane Emissions from Enteric Fermentation (MMT CO₂ Eq.)

Total CH₄ Emissions from Enteric Fermentation	177.6
<i>Dairy Cows</i>	43.6
<i>Industrial Dairy Operations (500 or more cows)</i>	26.4
<i>Hogs</i>	2.8
<i>Industrial Hog Operations (1,000 or more hogs)</i>	2.7
<i>All Other Livestock</i>	131.2

¹⁰⁰ According to EPA's methodologies for calculating methane emissions, dairy cows and hogs contributed 43.6 and 2.8 mmt CO₂ eq., respectively, to total U.S. methane emissions from enteric fermentation. See EPA, U.S. GHG INVENTORY, *supra* note 50, at A-319 tbl.A-180. Although EPA's model does not distinguish between animals in confinement facilities or pastures, large operations (500 or more dairy cows or 1,000 or more hogs) account for approximately 61% of all U.S. dairy cow inventory, and 97% of all U.S. hog inventory. See *supra* notes 53 and 73. Thus, using these percentages to calculate industrial operations' relative contribution to total enteric emissions, large dairy and hog operations account for approximately 29.14 mmt CO₂ eq. of total U.S. enteric methane emissions (26.42 and 2.72 mmt CO₂ eq., respectively).

¹⁰¹ EPA, U.S. GHG INVENTORY, *supra* note 50, at 2-19 tbl.2-7.

¹⁰² *Id.* at 2-3 tbl.2-1.

Table 3. Contribution of Industrial Dairy & Hog Operations to Total U.S. Methane Emissions from Manure Management (MMT CO₂ Eq.)

Total CH₄ Emissions from Manure Management	61.7
<i>Dairy Cows</i>	32.3
<i>Industrial Dairy Operations (500 or more cows)</i>	32.3
<i>Hogs</i>	22.2
<i>Industrial Hog Operations (1,000 or more hogs)</i>	22.2
<i>All Other Livestock</i>	7.2

Table 4. Summary of Contribution of Industrial Dairy & Hog Operations to Total U.S. GHG & Methane Emissions in 2018 (MMT CO₂ Eq.)

Enteric Fermentation	29.1	16% of total U.S. methane emissions from <i>all enteric fermentation processes</i>
<i>Industrial Dairy</i>	26.4	
<i>Industrial Hog</i>	2.7	
Manure Management	54.5	88% of total U.S. methane emissions from <i>all manure management processes</i>
<i>Industrial Dairy</i>	32.3	
<i>Industrial Hog</i>	22.2	
Total CH₄ Emissions from Industrial Dairy & Hog Operations	83.6	Contribution to Total U.S. Methane Emissions 33% of total U.S. methane emissions from <i>agricultural sector</i> 13% of total U.S. methane emissions from <i>all sectors</i>
		Contribution to Total U.S. GHG emissions 14% of total U.S. GHG emissions from <i>agricultural sector</i> 1.3% of total U.S. GHG emissions from <i>all sectors</i>

Methane is the second most abundant anthropogenic greenhouse gas, after carbon dioxide. As an anthropogenic greenhouse gas, methane contributes to rising global temperatures and in turn, the serious public health and welfare problems associated with climate change, by trapping heat in Earth's atmosphere. EPA recognized the significance of these climate impacts in 2009, when the agency found that methane and five other anthropogenic greenhouse gases "endanger both the public health and the public welfare of current and future generations by causing or contributing to climate change."¹⁰³

Thus, because industrial dairy and hog operations emit large amounts of methane, these operations significantly contribute to overall GHG emissions. Moreover, because methane is a particularly harmful and potent greenhouse gas, industrial dairy and hog operations have a major impact on rising temperatures.

¹⁰³ 2009 GHG Endangerment Finding, *supra* note 31.

1. Contribution to Total GHG Levels

Industrial dairy and hog operations contribute to rising levels of total U.S. GHG emissions. Specifically, methane emissions from these operations account for 14 percent of total U.S. agricultural GHG emissions (or 618.5 mmt CO₂ eq.), and 1.3 percent of total U.S. GHG emissions (or 6,676.6 mmt CO₂ eq.).¹⁰⁴ These figures reflect EPA's most recent U.S. GHG Inventory, which recent studies suggest significantly underestimate emissions from both enteric fermentation and manure management.¹⁰⁵

As discussed above, methane emissions from industrial dairy and hog operations have increased dramatically in recent decades.¹⁰⁶ However, from 1990 to 2018, total U.S. GHG emissions have only increased by 3.7 percent.¹⁰⁷ Further, although total U.S. methane emissions have *decreased* by 18 percent since 1990, total U.S. methane emissions from agricultural activities have *increased* by 16.3 percent during this same period.¹⁰⁸ Therefore, while total GHG emissions from other sectors are declining due to federal regulatory efforts, total GHG emissions from the agricultural sector are increasing because EPA has failed to implement methane emission standards for industrial hog and dairy operations, which significantly contribute to rising temperatures and domestic GHG levels.

2. Notable Short-Term Climate Change Impacts

While all greenhouse gases contribute to climate change and endanger public health and welfare, methane emissions from industrial dairy and hog operations are particularly potent because methane is far more effective at trapping heat in the atmosphere than other pollutants.¹⁰⁹

According to the EPA, reducing methane emissions is uniquely important for climate change mitigation because "methane is a potent GHG with a 100-year [global warming potential] that is 28 to 36 times greater than that of carbon dioxide."¹¹⁰ Consequently, over the next 100 years, methane will trap more heat in the atmosphere than carbon dioxide, resulting in more overall warming. Moreover, when this timescale is shortened to 20 years, methane's climate impacts are even more pronounced. Because methane does not stay in the atmosphere as long as carbon dioxide, methane has a 20-year global warming potential that is 72 to 87 times greater

¹⁰⁴ EPA, U.S. GHG INVENTORY, *supra* note 50, at 2-3 tbl.2-1.

¹⁰⁵ *See supra* note 98.

¹⁰⁶ EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-1 tbl.5-1. From 1990 to 2018, total GHG emissions from all agriculture sources increased by 11.6% (or 64.1 mmt CO₂ eq.). *Id.* Although CO₂, CH₄, and N₂O agricultural emissions also increased during that period, methane emissions increased the most—CH₄ emissions rose by 16.3%, whereas CO₂ emissions only increased by 1.5% (or 1 mmt CO₂ eq.) and N₂O only increased by 8.4% (or 27.7 mmt CO₂ eq.). *Id.*

¹⁰⁷ *Id.* at 2-3 tbl.2-1.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *See* 2016 Oil & Natural Gas Rulemaking, *supra* note 32, at 35,830 n.15.

than carbon dioxide.¹¹¹ This 20-year global warming potential holds significance when the science and policy consensus calls for reductions in the near term, meaning near term methane reductions especially benefit climate stabilization goals.

Therefore, reducing methane emissions is critical for preventing irreversible climate change. As the IPCC warned, if global temperatures do not decrease significantly in the near future, there is a “very high” risk of “severe and widespread impacts on unique and threatened systems,” “large risks to food security and compromised normal activities,” and other “abrupt and irreversible” climate change impacts.¹¹² As such, reducing methane emissions from the animal agriculture sector can help EPA achieve short-term climate goals.¹¹³

In sum, methane emissions from industrial dairy and hog operations pose unique threats to public health and welfare by contributing to increasing overall GHG levels and imposing a far greater impact on global warming than carbon dioxide. Therefore, reducing methane emissions from industrial dairy and hog operations will have a substantial impact on climate change.¹¹⁴

V. DISCUSSION

Section 111 of the Clean Air Act requires EPA to address methane emissions from industrial hog and dairy operations if the Agency finds that these emissions endanger public health or welfare. First, EPA must exercise discretion to list fully confined production facilities and liquefied manure management systems on industrial hog and dairy operations as stationary sources that emit significant amounts of methane into the ambient air.¹¹⁵ Second, within one year of listing industrial dairy and hog operations, EPA must set standards to reduce methane emissions from new and modified sources within these source categories.¹¹⁶ Third, within one year of listing, EPA must also promulgate guidelines governing state standards to reduce methane emissions from existing sources within these source categories because EPA is not currently regulating these emissions under the Clean Air Act’s national ambient air quality standards or hazardous air pollutant programs.¹¹⁷

¹¹¹ EPA, U.S. GHG INVENTORY, *supra* note 50, A-504 tbl.A-252; IPCC, AR5 REPORT, *supra* note 42, at 87 tbl.1 (“The choice of time horizon markedly affects the weighting especially of short-lived climate forcing agents, such as methane.”); EPA, *Understanding Global Warming Potential* (last accessed Mar. 31, 2021), <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials> (noting that because CH₄ “has a short lifetime, the 100-year GWP of 28–36 is much less than the 20-year GWP of 84–87”).

¹¹² IPCC, AR5 REPORT, *supra* note 42, at 63. In a recent, alarm-raising special report, IPCC identified the urgent need to limit global warming to 1.5°C by dramatically reducing emissions. IPCC, GLOBAL WARMING OF 1.5°C, at 4–11 (2019). To achieve this goal, IPCC calls for a 35 percent reduction in methane emissions by 2050 (from 2010 levels). *Id.* at 12.

¹¹³ *See, e.g.*, M. Saunio, et al., *The Growing Role of Methane in Anthropogenic Climate Change*, 11 ENVTL. RES. LETT. 1, 4 (2016).

¹¹⁴ *See, e.g.*, FCRN, GRAZED & CONFUSED, *supra* note 92, at 72–73.

¹¹⁵ *See* 42 U.S.C. § 7411(b)(1)(A).

¹¹⁶ *Id.* § 7411(b)(1)(B).

¹¹⁷ *Id.* § 7411(d)(1).

A. Industrial hog and dairy operations are source categories under section 111 of the Clean Air Act.

Section 111 expressly requires EPA to maintain “a list of categories of stationary sources” that the Administrator finds, in their judgment, “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹¹⁸ Thus, because industrial dairy and hog operations with fully confined production facilities and liquefied manure management systems satisfy this standard, EPA must add these source categories to its list.

1. Industrial hog and dairy operations are “stationary sources” of methane and other air pollutants.

Section 111 defines a “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”¹¹⁹ The Clean Air Act broadly defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological . . . substance or matter which is emitted into or otherwise enters the ambient air.”¹²⁰ Industrial hog and dairy operations are “stationary sources” because fully confined production facilities and liquefied manure management systems emit large volumes of methane, a potent greenhouse gas and “air pollutant” under the Clean Air Act.¹²¹

i. *Industrial hog and dairy operations use “buildings, structures, facilities, and installations” for animal confinement and liquefied manure management.*

Industrial dairy and hog operations rely heavily on restrictive housing, confined production facilities, liquid/slurry tanks, liquefied manure lagoons, and other “building[s], structure[s], facilit[ies], and installation[s]” to confine animals for each stage of production and manage their waste.

Fully Confined Production Systems

Both industrial dairy and hog operations rely on confinement facilities to concentrate large numbers of dairy cows and hogs in a small amount of space. Unlike pasture-based dairies, which enable animals to graze and forage in open fields, industrial dairy operations confine dairy cows in restrictive housing systems, such as free stall barns, for the duration of their lives.¹²² In fact, most large operations (i.e., 500 or more cows) confine dairy cows in freestalls with concrete

¹¹⁸ *Id.* § 7411(b)(1)(A).

¹¹⁹ *Id.* § 7411(a)(3).

¹²⁰ *Id.* § 7602(g); see also *Massachusetts v. EPA*, 549 U.S. at 528-29 (“The Clean Air Act’s sweeping definition of ‘air pollutant’ . . . embraces all airborne compounds of whatever stripe . . .”).

¹²¹ *Massachusetts v. EPA*, 549 U.S. at 529 (finding that “[c]arbon dioxide, methane, [and] nitrous oxide” are “air pollutants” under the Clean Air Act’s “unambiguous” definition).

¹²² “Tie stall” barns restrain cows “to a particular stall by a neck collar attached to the stall by a chain,” and “free stall” barns restrain cows to “cubicles or ‘beds’ in which dairy cows are free to enter and leave at will.” APHIS, DAIRY CATTLE MGMT. PRACTICES IN THE UNITED STATES, 2014, at 4 (2016).

flooring and no outside access,¹²³ and “[p]asture access for [dairy] cows decrease[s] as herd size increase[s].”¹²⁴ Likewise, larger and more industrialized dairies typically rely on restrictive feeding systems, which often confine dairy cows with head locks or fence-line stanchion feed lines.¹²⁵ Industrial hog operations also rely on confinement systems to produce hogs in highly specialized and very large, climate-controlled buildings, with no outdoor access.¹²⁶ Further, because industrial dairy and hog operations confine and feed animals indoors, they must also store raw materials, such as imported feed and bedding materials, on-site in built installations and structures.¹²⁷

Liquefied Manure Management Systems

Transfer & Storage

Both industrial dairy and hog operations rely on complex systems for managing animal manure and waste. In particular, industrial dairy and hog operations need either a scrape system or flush system to collect manure deposited on housing floors.¹²⁸ After collection, industrial hog and dairy operations transport the manure to long-term storage. Because industrial dairy and hog operations generate more manure than they can dispose at once, these operations must store large amounts of liquefied manure for extended periods in physical installations, such as anaerobic lagoons or liquid/slurry tanks.¹²⁹

Disposal

In addition, industrial dairy and hog operations require systems for disposing of stored manure and wastewater. For the majority of industrial hog and dairy operations that rely on anaerobic lagoons, they remove manure from anaerobic lagoons “every 5 to 15 years,”¹³⁰ and

¹²³ *Id.* at 163, 174.

¹²⁴ *Id.* at 166, 167 (noting that the vast majority of small and very small dairies (99 or fewer cows) provided pasture access to cows during summer, whereas only 3.9% of large dairies provided such access).

¹²⁵ *Id.* at 190.

¹²⁶ APHIS, *BASILINE REFERENCE OF SWINE HEALTH & MGMT. IN THE UNITED STATES* 27, 36, 59, 75 (2015) (noting that larger hog operations are more likely to rely total confinement facilities for every stage of hog production than smaller operations).

¹²⁷ *See* APHIS, *DAIRY MGMT. PRACTICES*, *supra* note 122, at 185 (demonstrating that larger dairies are more likely to rely on feed from outside sources).

¹²⁸ Scrape systems and flush systems are “means of removing manure and other wastes from swine [and dairy] buildings for storage or treatment outside the building.” D. Vanderholm, et al., *Scraper Systems for Removing Manure from Swine Facilities* (Aug. 28, 2019), <https://swine.extension.org/scraper-systems-for-removing-manure-from-swine-facilities>; EPA, U.S. GHG INVENTORY, *supra* note 50, at A-330 (“Based on EPA site visits and the expert opinion of state contacts, manure from dairy cows at medium (200 through 700 head) and large (greater than 700 head) operations are managed using either flush systems or scrape/slurry systems.”); D. MEYER, ET AL., *UNIV. OF CALIFORNIA, DAVIS, CHARACTERIZE PHYSICAL & CHEMICAL PROPERTIES OF MANURE IN CALIFORNIA DAIRY SYSTEMS TO IMPROVE GREENHOUSE GAS EMISSION ESTIMATES* (2019).

¹²⁹ EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-11 to -12; A-348 tbl.A-190.

¹³⁰ *Id.* at tbl.A-190.

dispose the accumulated sludge by spreading it onto nearby agricultural fields.¹³¹ Operators remove liquid from the lagoons more frequently, and dispose of the accumulated wastewater by spraying it on crops.¹³² In addition to manure application and disposal systems, industrial hog and dairy operations rely on other built systems, such as evaporation ponds, to control runoff from their animal confinement and manure storage structures.¹³³

EPA already recognizes liquefied manure management systems on industrial hog and dairy operations as a “source category” of methane emissions subject to mandatory GHG emission reporting requirements.¹³⁴ Under EPA regulations, a “manure management system” is “a system that stabilizes and/or stores livestock manure, litter, or manure wastewater in one or more of the following system components: Uncovered anaerobic lagoons, liquid/slurry systems with and without crust covers (including but not limited to ponds and tanks), storage pits, digesters, solid manure storage, dry lots (including feedlots), . . . deep bedding systems for cattle and swine, manure composting, and aerobic treatment.” 40 C.F.R. § 98.360(b). EPA also expressly excludes from this source category “system components at a livestock facility that are unrelated to the stabilization and/or storage of manure such as daily spread or pasture/range/paddock systems or land application activities.”¹³⁵ Accordingly, EPA can rely on the same definition for purposes of listing hog and dairy manure management systems under section 111.

In sum, industrial hog and dairy operations rely on several highly specialized “building[s], structure[s], facilit[ies], [and] installation[s]” for animal confinement, liquid manure storage, and manure disposal, satisfying the first half of the definition of a stationary source under section 111.¹³⁶

ii. *Industrial hog and dairy operations emit large amounts of “air pollutants” during animal confinement and liquefied manure management.*

The various “building[s], structure[s], facilit[ies], [and] installation[s]” on which industrial hog and dairy operations rely for animal confinement and liquefied manure management emit significant amounts of methane, which is a potent greenhouse gas and “air

¹³¹ *Id.*; see also C. Gilbertson, et al., *Pumping Liquid Manure from Swine Lagoons & Holding Ponds* (Aug. 24, 2019) (describing different methods of distributing liquid manure onto croplands), <https://swine.extension.org/pumping-liquid-manure-from-swine-lagoons-and-holding-ponds>.

¹³² See *supra* note EPA, U.S. GHG INVENTORY, *supra* note 50, at A-348 tbl.A-190; H. Aguirre-Villegas, et al., *Evaluating Greenhouse Gas Emissions From Dairy Manure Management Practices Using Survey & Lifecycle Tools*, 143 J. CLEANER PROD. 169, 173-34 (2017).

¹³³ EPA, U.S. GHG INVENTORY, *supra* note 50, at tbl.A-190.

¹³⁴ 40 C.F.R. § 98.360; see also EPA-430-F-09-026R, Final Rule: Mandatory Reporting of GHGs (Nov. 2009).

¹³⁵ 40 C.F.R. § 98.360(c).

¹³⁶ 42 U.S.C. § 7411(a)(3).

pollutant” under the Clean Air Act.¹³⁷ These stationary sources are also significant sources of other harmful “air pollutants,” including ammonia, hydrogen sulfide, volatile organic compounds, and particulate matter.

Fully Confined Production Systems

Both fully confined dairy and hog production facilities generate large amounts of methane and other pollutants. As the EPA recognized, confined production “[b]uildings” “concentrate the emissions of air pollution from a smaller area and/or through vents,” which “can increase localized levels of air emissions,” and “offer[] opportunities to target emissions of pollutants to reduce the amount that is released to the atmosphere.”¹³⁸ In particular, dairy production facilities are major sources of enteric methane emissions because they confine large numbers of cows with high input diets that includes non-forage feed like corn silage.¹³⁹ Fully confined dairy and hog housing and feeding systems, such as free stall barns, also generate methane by allowing manure to accumulate on floors or in short-term manure holding systems. Since the amount of methane emitted from manure increases when the air temperature in the facility rises,¹⁴⁰ these emissions will likely increase due to climate change. In addition to methane, confined dairy and hog facilities contribute to rising GHG levels by emitting carbon dioxide and nitrous oxide.¹⁴¹ These facilities also emit other harmful and odorous pollutants,

¹³⁷ See *Massachusetts v. EPA*, 549 U.S. at 529 (“Carbon dioxide, methane, nitrous oxide and hydrofluorocarbons are without a doubt ‘physical [and] chemical . . . substance [s] which [are] emitted into . . . the ambient air.’”) (citing 42 U.S.C. § 7602(g) (definition of “air pollutant”).

¹³⁸ USDA & EPA, AGRICULTURAL AIR QUALITY CONSERVATION MEASURES: REFERENCE GUIDE FOR POULTRY & LIVESTOCK PRODUCTION SYSTEMS 18 (2017).

¹³⁹ C. Rotz, *Modeling Greenhouse Gas Emissions From Dairy Farms*, 101 J. DAIRY SCIENCE 6675 (2018) (“Emissions per cow were about 15% less for the grazing operations, which used smaller cattle with lower feed intake and milk production [than confinement operations].”); C. Arndt, et al., *Short-Term Methane Emissions From 2 Dairy Farms in California Estimated by Different Measurement Techniques & U.S. EPA Inventory Methodology*, 101 J. DAIRY SCI. 11461, 11473 (2018) (finding that enteric emissions from industrial dairy housing are strongly correlated with herd size and dry matter intake).

¹⁴⁰ See, e.g., A. Leytem, *Greenhouse Gas & Ammonia Emissions from an Open-Freestall Dairy in Southern Idaho*, 42 J. ENVTL. QUALITY 10, 18 (2013); M. Borhan, et al., *Determining Seasonal Greenhouse Gas Emissions from Ground-Level Area Sources in a Dairy Operation in Central Texas*, 61 J. AIR & WASTE MGMT. ASS’N 786 (2011).

¹⁴¹ See, e.g., F. Philippe, et al., *Review on Greenhouse Gas Emissions From Pig Houses: Production of Carbon Dioxide, Methane & Nitrous Oxide by Animals & Manure*, 199 AGRIC. ECOSYSTEMS & ENVIRONMENT 10 (2015) (emissions of CO₂, CH₄ and N₂O contribute to 81, 17 and 2% of total emissions from pig buildings, representing 3.87, 0.83 and 0.11 kg CO₂ equiv. per kg carcass, respectively); M. Borhan, et al., *supra* note 140; H. Joo, et al., *Greenhouse Gas Emissions From Naturally Ventilated Freestall Dairy Barns*, 102 ATMOSPHERIC ENVIRONMENT 384 (2015) (mean concentrations of methane in dairy freestall barns ranged from 26 to 180% above background concentrations).

such as ammonia, hydrogen sulfide, volatile organic compounds, and particulate matter.¹⁴² Ammonia emissions are not only highly irritating to local residents, but they are also a significant threat to the environment.¹⁴³ Ammonia can also transform into fine particulate matter, which is harmful to human health.¹⁴⁴ Further, confinement facilities are also a major source of ozone-forming volatile organic compounds due to manure deposited on facility floors,¹⁴⁵ feed storage and handling systems,¹⁴⁶ and other sources.

Liquefied Manure Management Systems

Liquefied hog and dairy manure management systems, such as settling basins for manure deposited on facility floors and anaerobic lagoons for long-term manure storage, are significant

¹⁴² See, e.g., X. Yang, et al., *Analysis of Particle-Borne Odorants Emitted From CAFOs*, 490 SCI. TOTAL ENVIRONMENT 322 (2014) (collecting total suspended particulates and PM₁₀ at the air exhaust of different types of hog CAFOs, including farrowing, gestation, weaning, and finishing buildings); G. Kafle, et al., *Emissions of Odor, Ammonia, Hydrogen Sulfide, & Volatile Organic Compounds from Shall-Pit Pig Nursery Rooms*, 39 BIOSYSTEMS ENGINEERING 76 (2014) (hog confinement facilities emit several harmful gases, including ammonia, hydrogen sulfide, carbon dioxide, and volatile organic compounds, and these emissions are directly correlated with the number of hogs in the facility); H. Joo, et al., *supra* note 141 (mean concentrations in dairy freestall barns ranged from 6 to 20% (CO₂) and 0 to 4% (N₂O) above background concentrations); G. Schaubberger, et al., *Empirical Model of Odor Emission From Deep-Pit Swine Finishing Barns to Derive a Standardized Odor Emission Factor*, 66 ATMOSPHERIC ENVIRONMENT 84 (2013) (odor from hog confinement facilities are a public nuisance and health hazard for surrounding communities, and these emissions are directly correlated with the number of hogs in the facility); I. Rumsey, et al., *Characterizing Reduced Sulfur Compounds Emissions From A Swine CAFO*, 94 ATMOSPHERIC ENVIRONMENT 458 (2014) (hydrogen sulfide emissions from hog confinement facilities contributed approximately 98% of total North Carolina H₂S swine CAFO emissions).

¹⁴³ Ammonia plays a major role in ecosystem acidification and eutrophication of soil and water, which significantly impairs aquatic and terrestrial ecosystems. See EPA, *Health & Environmental Effects of Particulate Matter* (Jun. 20, 2018), <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>; see, e.g., OECD, AMMONIA EMISSIONS: ACIDIFICATION & EUTROPHICATION 133–34 (2013); Forest Service, USDA, *Acidification Impacts* (last accessed Apr. 13, 2020), <https://webcam.srs.fs.fed.us/pollutants/acidification>.

¹⁴⁴ See EPA, *How Does Particulate Matter Affect Human Health* (Oct. 11, 2019), <https://www3.epa.gov/region1/airquality/pm-human-health.html>; see, e.g., E. Sanchis, et al., *A Meta-Analysis of Environmental Factor Effects on Ammonia Emissions From Dairy Cattle Houses*, 178 BIOSYSTEMS ENGINEERING 176 (2019) (ammonia emissions from dairy facilities were strongly correlated with air temperature and ventilation rate); K. James, et al., *Characterizing Ammonia Emissions From A Commercial Mechanically Ventilated Swine Finishing Facility & An Anaerobic Waste Lagoon In North Carolina*, 33 ATMOSPHERIC POLLUTION RESEARCH 279, 283–84 (2012) (emissions of atmospheric ammonia–nitrogen from hog confinement facility were greatest in the summer and spring, due to high number and average weight of hogs, and low ventilation rate).

¹⁴⁵ See, e.g., H. Sun, et al., *Alcohol, Volatile Fatty Acid, Phenol, & Methane Emissions From Dairy Cows & Fresh Manure*, 37 J. ENVTL. QUALITY 615 (2008) (methanol and ethanol emissions “increased over time, coinciding with increasing accumulation of manure on the chamber floor”).

¹⁴⁶ See, e.g., X. Yang, et al., *Quantification of Odorants in Animal Feeds at Commercial Swine & Poultry Operations*, 61 TRANSACTIONS OF THE ASABE 693 (2018) (animal feed from hog CAFOs emit odorants, including alcohols and nitrogen-containing compounds); B. Yuan, et al., *Emissions of Volatile Organic Compounds from CAFOs: Chemical Compositions & Separation of Sources*, 17 ATMOSPHERIC CHEMISTRY & PHYSICS 4945 (2017) (feed storage and handling emits VOCs, such as carboxylic acids, alcohols and carbonyls); L. Malkina, et al., *Identification & Quantitation of Volatile Organic Compounds Emitted From Dairy Silages & Other Feedstuffs*, 40 J. ENVTL. QUAL. 28 (2011) (silage and other feed storages on dairies emit volatile organic compounds); J. Ni, et al., *Volatile Organic Compounds at Swine Facilities: A Critical Review*, 89 CHEMOSPHERE 769 (2012).

sources of methane emissions.¹⁴⁷ In fact, multiple studies have successfully measured emissions from these sources,¹⁴⁸ and found that manure lagoons and basins have higher aggregate methane emissions than any other source on industrial hog and dairy operations.¹⁴⁹ Most notably, industrial hog and dairy operations generate methane by storing liquefied manure in anaerobic lagoons for long periods.¹⁵⁰ Because lagoons can store manure for several years, the amount of volatile solids in the system increases each month, resulting in an exponential increase in methane emissions over time.¹⁵¹ Further, because manure management emissions are strongly influenced by rising temperatures, temperature variation, rainfall, and other short-term disruptions,¹⁵² such emissions will increase substantially due to climate change.

In addition to releasing methane, liquefied manure management systems emit ammonia, carbon dioxide, hydrogen sulfide, volatile organic compounds, and other harmful air pollutants

¹⁴⁷ See J. Owen & W. Silver, *Greenhouse Gas Emissions from Dairy Manure Management: A Review of Field-based Studies*, 21 GLOBAL CHANGE BIO. 550, 555 (2015) (finding that “anaerobic lagoons were the largest source of methane [on dairies], more than three times that from enteric fermentation”).

¹⁴⁸ See, e.g., W. Todd, et al., *Methane Emissions from Southern High Plains Dairy Wastewater Lagoons in the Summer*, 166 ANIMAL FEED SCI. & TECH. 575 (2011) (“Uncovered anaerobic lagoons were a source of CH₄ emitted from [industrial dairy operation], and lagoons could be a control point for emission reductions.”).

¹⁴⁹ See, e.g., Borhan, *supra* note 98 (settling basin and anaerobic lagoons contributed 98% of aggregate methane emissions on industrial dairy operation); A. VanderZaag, et al., *Measuring Methane Emissions From Two Dairy Farms: Seasonal & Manure-Management Effects*, 194 AGRIC. & FOREST METEOROLOGY 259 (2014) (methane emissions from liquefied manure storage contributed up to 60% of the whole farm emissions); Arndt, *supra* note 139, at 11475 (methane emissions from liquefied manure storage contributed up to 79% of whole farm emissions); H. Aguirre-Villegas, et al., *Evaluating Greenhouse Gas Emissions From Dairy Manure Management Practices Using Survey Data And Lifecycle Tools*, 143 J. CLEANER PROD. 169, 177 (2017) (methane from long-term storage contributed 70% of total GHG emissions from large dairy).

¹⁵⁰ See EPA, U.S. GHG INVENTORY, *supra* note 50, at tbl.A-190 and 5-10 to -11 (noting that “manure storage” and “residency time” affects CH₄ production).

¹⁵¹ *Id.*; see, e.g., A. Leytem, et al., *Methane Emissions from Dairy Lagoons in the Western United States*, 100 J. DAIRY SCIENCE 6803 (2017) (methane emissions from manure lagoons were strongly correlated with the amount of manure solids entering the lagoon (volatile solids), amount of manure in lagoon (total solids), and chemical oxygen demand); Arndt, *supra* note 139, at 11473-74 (methane emissions from manure lagoons were strongly correlated with amount of manure solids in liquefied manure storage); H. Aguirre-Villegas, et al., *supra* note 149, at 177 (large dairy can reduce 47% of GHG emissions by “minimizing VS accumulation in storage to mitigate CH₄ emissions”); see also T. Flesch, et al., *Methane Emissions From A Swine Manure Tank in Western Canada*, 93 CAN. J. ANIM. SCI. 159 (2013) (methane emissions from concrete manure storage tank “were likely enhanced by an unusually long duration of manure storage [of 15 months]”).

¹⁵² See EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-10 to -11 (noting that “[a]mbient temperature” and “moisture” affects methane production); see, e.g., Baldé, *supra* note 98 (methane emissions from manure storage tank were highest “when high manure temperature and high volume coincided” due to “high biodegradability of liquid manure fraction”); R. Grant, et al., *Methane & Carbon Dioxide Emissions From Manure Storage Facilities At Two Free-Stall Dairies*, 213 AGRIC. & FOREST METEOROLOGY 102 (2015) (warmer weather increases the mass ratio of CH₄ to CO₂ emissions of industrial dairy manure storage facilities); A. Leytem, et al., *Methane Emissions From Dairy Lagoons In The Western United States*, *supra* note 151, (finding that methane emissions from manure lagoon increased during events that agitated the lagoon surface, such as rainfalls and high winds); VanderZaag, *supra* note 149 (finding that methane emissions from manure storage increased 40 percent in the fall, when cows produced more manure, but emissions were highest during “agitation”).

and odors.¹⁵³ These emissions are not only annoying to human senses, but they are also harmful to human health.¹⁵⁴ Liquefied manure storage systems also emit nitrogen into the atmosphere as ammonia (NH₃), which can transform into nitrous oxide (N₂O), another potent GHG and air pollutant.¹⁵⁵ Further, ammonia emissions are a precursor to fine particulate matter in the atmosphere, which poses a significant threat to human health.¹⁵⁶ In addition, disposing of manure and wastewater onto nearby agricultural fields also emits volatile organic compounds and other harmful pollutants.¹⁵⁷

Accordingly, industrial dairy and hog operations are “stationary sources” under section 111 of the Clean Air Act because they rely on several highly specialized “building[s], structure[s], facilit[ies], [and] installation[s]” for animal confinement and manure management, and they emit significant amounts of the super pollutant methane—a potent “air pollutant” and greenhouse gas—directly into the ambient air.

2. Industrial hog and dairy operations satisfy the requisite standard for listing a source category under section 111.

EPA has authority to list fully confined dairy and hog production facilities and liquefied dairy and hog manure management facilities as source categories under section 111 because they

¹⁵³ A. Leytem, et al., *Greenhouse Gas & Ammonia Emissions from an Open-Freestall Dairy in Southern Idaho*, 42 J. ENVTL. QUAL. 10 (2013) (wastewater ponds on industrial dairy operation with anaerobic lagoons emitted ammonia, methane, and nitrous oxide); R. Grant, et al., *Manure Ammonia & Hydrogen Sulfide Emissions From A Western Dairy Storage Basin*, 44 J. ENVTL. QUALITY 127 (2015) (manure storage basins on industrial hog operation emitted hydrogen sulfide and ammonia).

¹⁵⁴ E. Nie, et al., *Characterization of Odorous Pollution & Health Risk Assessment of Volatile Organic Compound Emissions in Swine Facilities*, 223 ATMOSPHERIC ENVIRONMENT 117233 (2020) (manure storage had most odor activity on industrial hog operation, with emissions including methanethiol, dimethyl sulfide, and hydrogen sulfide, and exceeded cumulative carcinogenic risk threshold during the summer.); S. Trabue, et al., *Odorous Compounds Sources & Transport from a Swine Deep-Pit Finishing Operation: A Case Study*, 233 J. ENVTL. MGMT. 12 (2019) (finding that manure storage on industrial hog operation was the “main source of odorous compounds,” particularly hydrogen sulfide during agitation and pumping of the deep pits); F. Andriamanohiarisoamanana, et al., *Effects of Handling Parameters on Hydrogen Sulfide Emission From Stored Dairy Manure*, 154 J. ENVTL. MGMT. 110 (2015) (“H₂S concentration increased with [total solids] concentration”).

¹⁵⁵ A. Leytem, et al., *Ammonia Emissions From Dairy Lagoons In The Western U.S.*, 61 TRANSACTIONS OF THE ASABE 1001, 1006 (2018) (finding that ammonia emissions from anaerobic lagoons on industrial dairies were correlated with the amount of N in the lagoon, temperature, and wind speed, and lagoon receiving water from freestall flush dairy had highest emissions due to “greater concentrations of manure N”); K. James, *supra* note 144, at 284-86 (finding that emissions of atmospheric ammonia-nitrogen from anaerobic lagoon on industrial hog operation were greatest in the summer); A. Leytem, et al., *Greenhouse Gas & Ammonia Emissions*, *supra* note 153 (finding wastewater ponds contributed 67% of total farm ammonia emissions in the spring and summer); FAO, *TACKLING CLIMATE CHANGE THROUGH LIVESTOCK*, *supra* note 273, at 17, 20.

¹⁵⁶ See, e.g., EPA, *How Does Particulate Matter Affect Human Health* (Oct. 11, 2019), <https://www3.epa.gov/region1/airquality/pm-human-health.html>; *Health & Environmental Effects of Particulate Matter* (Jun. 20, 2018), <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>.

¹⁵⁷ B. Woodbury, et al., *Emission of Volatile Organic Compounds After Land Application of Cattle Manure*, 43 J. ENVTL. QUALITY 1207 (2014) (“[A]n increase in emissions of volatile sulfur compounds resulted from increased manure application.”).

“cause[]” and “contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹⁵⁸

i. *Significant Contribution Finding*

Contribution to Total U.S. Methane Emissions

Methane emissions from confined hog and dairy production and liquefied manure management system significantly contribute to elevated concentrations of GHGs in the atmosphere. According to EPA’s most recent GHG inventory, which is based on EPA’s methodologies for calculating non-carbon GHG emissions on a 100-year time horizon, methane emissions from these source categories account for 33 percent of total U.S. methane emissions from agricultural activities, and 13 percent of total U.S. methane emissions.¹⁵⁹ Moreover, on a CO₂-equivalent basis, methane emissions from industrial hog and dairy operations increase by 196 to 236 percent when the time horizon for methane’s global warming potential is adjusted to 20 years.¹⁶⁰

Contribution to Total U.S. GHG Emissions

In 2009, EPA found that GHG emissions from sources covered under section 202(a) of the Clean Air Act (e.g., passenger cars, light-duty trucks, motorcycles, buses, and heavy- and medium-duty trucks) contribute to air pollution that endangers public health and welfare by accounting for 23 percent of total U.S. GHG emissions.¹⁶¹ In 2016, EPA found that GHG emissions from aircraft engines satisfy the endangerment standard because they contributed to 10 percent of total U.S. transportation GHG emissions, and 2.8 percent of total U.S. GHG emissions.¹⁶² In comparison, according to EPA’s methodologies for estimating methane emissions based on a 100-year global warming potential, industrial dairy and hog operations account for 13 percent of total U.S. agricultural GHG emissions, and 1.3 percent of total U.S. GHG emissions.¹⁶³ Because methane is one of the few greenhouse gases with a greater short-term global warming potential, the relative contribution of these source categories to overall GHG emissions increases if the time horizon is adjusted to 20 years. Thus, although methane emissions from industrial hog and dairy operations contribute to rising GHG concentrations and have a significantly greater impact on total U.S. agricultural GHG emissions than regulated sources in the other industries, EPA has thus far refused to find that GHG emissions from industrial hog and dairy operations satisfy the endangerment standard.

¹⁵⁸ 42 U.S.C. § 7411(b)(1)(A).

¹⁵⁹ See *supra* Part IV.D.

¹⁶⁰ See EPA, U.S. GHG INVENTORY, *supra* note 50, at A-503 (“While [EPA’s GHG] Inventory uses agreed-upon GWP values according to the specific reporting requirements of the UNFCCC, . . . users of the Inventory can apply different metrics and different time horizons to compare the impacts of different greenhouse gases.”).

¹⁶¹ 2009 GHG Endangerment Finding, *supra* note 31, at 66,499 & 66,540.

¹⁶² 2016 GHG Endangerment Finding, *supra* note 31, at 54,461; 54,465-66; 54,472 (also noting that GHG emissions from covered aircraft engines comprises 89 percent of total U.S. aircraft GHG emissions).

¹⁶³ See *supra* Part IV.D.

Unless EPA promulgates standards to reduce these emissions, methane emissions will continue to pose significant near-term climate threats.¹⁶⁴ As corporate interests continue to pressure dairy and hog operations to increase herd sizes and adopt larger and more industrialized facilities for animal confinement and liquefied manure management, methane emissions from these source categories will continue to increase. Likewise, as small dairy and hog farms in the United States continue to go out of business, methane emissions from industrial dairy and hog operations will become an increasingly significant proportion of overall agricultural emissions.

Contribution to Total Social Costs of Methane

Furthermore, while we recognize that a source category's percentage contribution to an industry's (or the whole economy's) GHG emissions may in some cases provide useful information about that source's significance to dangerous air pollution, it is not necessarily the only relevant data point. Another useful metric is the Interagency Working Group's (IWG) social cost of methane, which was recently reinstated by the Biden Administration and updated to reflect 2020 dollars. According to that metric, in 2020, the social cost of one metric ton of methane ranges from \$670 to \$3,900 in terms of climate damages. *See* Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide, Interim Estimates under Executive Order 13990 (Feb. 2021), Table ES-2. In 2030, this figure rises to \$940 to \$5,200 per metric ton. *Id.* Given the estimates in Table 4, *supra*, industrial dairy and hog operations contributed 3.344 million metric tons in CH₄ emissions in the most recently recorded year using the 100-year global warming potential of 25. Those emissions would impose social costs of \$2.24 to \$13.04 billion. In 2030, these costs increase to a range between \$3.14 and \$17.39 billion. From any conceivable viewpoint, this reflects a significant contribution to climate change. The actual costs are likely higher, since, as noted above, the inventory likely underestimates these sources' methane emissions by a large margin. Furthermore, the IWG's metrics, which are currently being updated, represent merely a floor as to the true costs that greenhouse gases impose on society, which are almost surely significantly higher than the values that the IWG has produced thus far. For this reason as well, these figures likely underreport the true harm that industrial dairy and hog operations impose on society.

According to EPA, methane is a particularly harmful and potent greenhouse gas because it has a greater global warming potential than CO₂.¹⁶⁵ Methane also has a greater short-term impact on climate change than longer-lived GHGs, such as CO₂. Therefore, methane emissions from industrial dairy and hog operations significantly contribute to climate change by (1) constituting a large fraction of total U.S. methane emissions; (2) imposing huge absolute social costs through climate damages, even regardless of their percentage of total emissions; (3) increasing overall GHG emissions, and (4) trapping heat more effectively than other GHGs, especially in the near-term 20-year period. As such, even if EPA interpreted section 111 to require the agency "to make a pollutant-specific [significant contribution finding] for GHG

¹⁶⁴ *See supra* note Part IV.D.2.

¹⁶⁵ Although industrial dairy and hog operations emit other greenhouse gases and air pollutants, such as carbon dioxide (CO₂), EPA can make a pollutant-specific endangerment finding, as well as a significant contribution finding, with respect to methane emissions from these operations.

emissions from [each] source category as a prerequisite to regulat[e] those emissions,”¹⁶⁶ methane emissions from confined hog and dairy production and liquefied manure management facilities still easily satisfy the significant contribution standard.¹⁶⁷

ii. *Endangerment Finding*

Under section 111, the Administrator has discretion to make the initial endangerment determination. However, as the U.S. Supreme Court explained in *Massachusetts v. EPA*, the word “judgment” does not give the Administrator “a roving license to ignore the statutory text,” but rather “a direction to exercise discretion within defined statutory limits.” 549 U.S. 497, 533 (2007).

Methane emissions from confined hog and dairy production and liquefied manure management facilities endanger public health and welfare by significantly contributing to elevated greenhouse gas concentrations and rising temperatures. EPA has repeatedly found that greenhouse gases, including methane, “endanger both the public health and the public welfare of current and future generations by causing or contributing to climate change,”¹⁶⁸ and recent scientific assessments confirm that climate change continues to threaten public health and welfare. Thus, methane emissions from confined hog and dairy production and liquefied manure management facilities also satisfy the requisite endangerment standard.

Further, these facts and scientific assessments support a pollutant-specific endangerment finding. Because EPA has recognized that methane is a particularly potent GHG with a high 20-year global warming potential, and considerable short-term impacts on climate change, methane emissions from fully confined hog and dairy production and liquefied manure management facilities pose significant and immediate threats to public health and welfare.

a. *“Public Health” Impacts*

The Clean Air Act requires EPA to consider the “public health” impacts of methane pollution.¹⁶⁹ Although the Act does not expressly define the term “public health,” the legislative history demonstrates that Congress intended EPA to interpret this term broadly.¹⁷⁰ Congress also intended EPA to consider the adverse health impacts on “average healthy individuals,” as well as “sensitive citizens,” such as “children” and “people with . . . conditions rendering them

¹⁶⁶ 2019 Proposed Oil & Natural Gas Rulemaking, *supra* note 32, at 50261 (soliciting comments on pollutant-specific significant contribution finding for methane emission standards from new sources in the oil and gas sector). We dispute this interpretation and expect the Biden Administration to disavow it.

¹⁶⁷ EPA’s recent rulemaking to exempt certain source categories from listing under section 111 has been vacated. See Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed EGUs, and Process for Determining Significance of Other New Source Performance Standards Source Categories, 86 Fed. Reg. 2542 (Jan. 13, 2021); *California v. EPA*, Order Granting Motion for Voluntary Vacatur and Remand, No. 21-1035 (April 5, 2021).

¹⁶⁸ 2009 GHG Endangerment Finding, *supra* note 31.

¹⁶⁹ 42 U.S.C. § 7411(b)(1)(A).

¹⁷⁰ See *American Lung Ass’n v. EPA*, 134 F.3d 388, 388-89 (D.C. Cir. 1998) (finding that “Congress defined public health broadly”).

particularly vulnerable to air pollution.”¹⁷¹ Therefore, EPA must evaluate a range of potential health impacts, including the threats to vulnerable groups.

Because methane is a potent and abundant greenhouse gas, methane emissions from confined dairies and hog production and liquefied manure management source categories “contribute[] significantly” to the serious health problems associated with rising global temperatures and sea levels. In prior rulemakings under section 111, EPA has found that “[c]limate change caused by manmade emissions of GHGs threatens the health of Americans in multiple ways.”¹⁷² For example, “climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses,” and it exacerbates health problems in vulnerable populations, such as “[c]hildren, the elderly, and the poor.”¹⁷³

Recent assessments demonstrate that climate change continues to endanger public health by threatening to increase mortality, injury, and illness, and worsen existing health problems. For example, climate change is associated with increased heat waves, which cause a range of serious health complications, including kidney failure, blood poisoning, and death.¹⁷⁴ Other human health threats include increased spread of deadly infectious diseases, such as the West Nile and Zika viruses; heightened exposure to foodborne, airborne, and waterborne diseases; and the emergence of new diseases.¹⁷⁵ In addition, climate change is very likely to increase physical injuries and death from wildfires and other extreme weather events.¹⁷⁶

Moreover, climate change will also exacerbate existing health vulnerabilities among at-risk populations, including children, elderly people, pregnant women, and people with chronic illnesses.¹⁷⁷ Relatedly, the health impacts of climate change will disproportionately affect low-income communities and communities of color due to their increased exposure and sensitivity to health hazards.¹⁷⁸ Undernutrition and other health problems will also increase in rural and underserved areas.¹⁷⁹ By increasing heat waves and other extreme and dangerous weather

¹⁷¹ *Id.*

¹⁷² 2016 Oil & Natural Gas Rulemaking, *supra* note 32, at 35,833 (summarizing adverse public health effects identified in 2009 GHG Endangerment Finding, *supra* note 31).

¹⁷³ *Id.*

¹⁷⁴ C. Mora, et al., *Twenty-Seven Ways a Heat Wave Can Kill You: Deadly Heat in the Era of Climate Change*, 10 CIRCULATION: CARDIOVASCULAR QUALITY & OUTCOMES (Nov. 2017).

¹⁷⁵ USGCRP, NCA4 REPORT, *supra* note 45, at 544–46, 1217; IPCC, AR5 REPORT, *supra* note 42, at 69.

¹⁷⁶ USGCRP, NCA4 REPORT, *supra* note 45, at 1217; IPCC, AR5 REPORT, *supra* note 42, at 69.

¹⁷⁷ See, e.g., IPCC, AR5 REPORT, *supra* note 42, at 15, 69 (noting that climate change will lead to more illness, “especially in developing countries with low income”); see also HARVARD HEALTH PUBLISHING, HEAT STROKE (Jan. 2019) (explaining that nonexertional heat strokes are more likely “to occur in people who have diminished ability to regulate body temperatures, such as older people, very young children or people with chronic illnesses”), https://www.health.harvard.edu/a_to_z/heat-stroke-hyperthermia-a-to-z.

¹⁷⁸ USGCRP, NCA4 REPORT, *supra* note 45, at 546–48.

¹⁷⁹ IPCC, AR5 REPORT, *supra* note 42, at 69.

conditions, climate change will also adversely affect the health of farm workers and other agricultural workers who work outside.¹⁸⁰

Thus, because recent assessments confirm that climate change continues to pose serious acute and chronic health threats, EPA must find that methane emissions from industrial dairy and hog operations significantly endanger public health.

b. “Welfare” Impacts

EPA must also find that methane pollution affects public “welfare,” which the Act defines exceptionally broadly:

All language referring to effects on welfare includes, but is not limited to, [1] effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as [2] effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

42 U.S.C. § 7602(h). Accordingly, this sweeping definition gives EPA expansive power to regulate sources of air pollution that harm public welfare and contribute to global warming. Specifically, the Act expressly requires EPA to consider a wide range of environmental and ecological factors, as well as qualitative factors, such as “economic values,” and “personal comfort and well-being.”¹⁸¹ Further, because the Act requires EPA to consider any potential effects “caused by transformation, conversion, or combination with other air pollutants,” EPA must evaluate the effects associated with climate change—the combined effect of methane and other well-mixed greenhouse gases.

Disproportionate Impacts

Climate change disproportionately affects Black, Indigenous and other communities of color, low-income communities, and other vulnerable populations. Because these communities are more likely to be located in isolated rural areas, floodplains, coastlines, and other at-risk locations, they have increased risk of exposure to adverse climate change impacts.¹⁸² Moreover, these communities have disproportionately high rates of pollution and other socioeconomic stressors, which increases their risk of exposure, as well as their vulnerability to climate change impacts.¹⁸³ For example, Black and Latino communities have higher rates of underlying health conditions and poverty, which increases their sensitivity to heat waves, foodborne illnesses,

¹⁸⁰ *Id.* at 15 (explaining how climate change will “compromise common human activities, including growing food and working outdoors”).

¹⁸¹ 42 U.S.C. § 7602(h).

¹⁸² USGCRP, IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH IN THE UNITED STATES 249 (2016); CALIFORNIA’S FOURTH CLIMATE CHANGE ASSESSMENT, CLIMATE JUSTICE SUMMARY REPORT 36-48 (2018).

¹⁸³ USGRP, IMPACTS OF CLIMATE CHANGE, *supra* note 182, at 252.

infectious diseases, air pollution, and other climate change impacts.¹⁸⁴ Further, for immigrant and low-income populations in rural farming communities, drought and other climate-related impacts threaten to worsen existing vulnerabilities, such as water scarcity, unemployment, and food insecurity.¹⁸⁵

In addition to heightening exposure and vulnerability to climate-related impacts, these communities face social, political, and economic barriers, which impede their ability to respond and adapt to climate change. For example, communities with limited social capital or poorly maintained infrastructure have greater difficulty preparing and responding to natural disasters, disease outbreaks, and other climate change impacts.¹⁸⁶ These communities also face economic barriers to adaptive capacity, such as lack of financial capital for mitigation strategies or technologies.¹⁸⁷ Further, linguistically and geographically isolated populations or people with undocumented residency status are particularly vulnerable because they are less likely to receive the information and resources they need to respond to extreme weather events, public health impacts, and persistent climate change impacts, such as displacement.¹⁸⁸

Environmental & Ecological Impacts

Climate change has already had several environmental and ecological impacts, including “effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility.”¹⁸⁹ For example, well-documented ecological impacts include increasing atmospheric and oceanic temperatures, melting glaciers, rising sea levels, and ocean acidification.¹⁹⁰

These changes have also had widespread impacts on natural systems. Changing precipitation patterns and melting snow has adversely affected hydrological systems, resulting in coastal erosion, damage to water and sanitation systems, and decreased water availability.¹⁹¹ In recent decades, global warming has already caused “widespread shrinking of the cryosphere.”

¹⁸⁴ See S. CARRATALA & C. MAXWELL, CTR. FOR AMERICAN PROGRESS, HEALTH DISPARITIES BY RACE & ETHNICITY (2020); see, e.g., K. Shaw, et al., *Presence of Animal Feeding Operations & Community Socioeconomic Factors Impact Salmonellosis Incidence Rates: An Ecological Analysis Using Data From The Foodborne Diseases Active Surveillance Network, 2004–2010*, 150 ENVTL. RES. 166 (2016) (increased rates of *Salmonella* illness were linked to communities with CAFOs, higher percentages of African American populations, and higher poverty rates).

¹⁸⁵ See, e.g., C. Greene, *Broadening Understandings of Drought: The Climate Vulnerability of Farmworkers & Rural Communities in California*, 89 ENVTL. SCI. & POLICY 283 (2018).

¹⁸⁶ USGRP, IMPACTS OF CLIMATE CHANGE, *supra* note 182, at 252; see, e.g., A. Christ, et al., *The Role of Community Social Capital for Food Security Following an Extreme Weather Event*, 64 J. RURAL STUDIES 80 (2018) (rural communities with high social capital have greater capacity to respond to food insecurity after extreme weather events).

¹⁸⁷ See, e.g., M. Hayden, et al., *Adaptive Capacity to Extreme Heat: Results From a Household Survey in Houston, Texas*, 9 WEATHER, CLIMATE, & SOCIETY 787 (2017) (finding that most people suffering heat-related symptoms at home during heat wave could not afford to use air conditioning because of the high cost of electricity).

¹⁸⁸ See, e.g., E. Fussell, et al., *Implications of Social & Legal Status on Immigrants' Health in Disaster Zones*, 108 AMERICAN J. PUBLIC HEALTH 1617 (2018).

¹⁸⁹ *Id.*

¹⁹⁰ USGCRP, NCA4 REPORT, *supra* note 45, at 37, 39.

¹⁹¹ IPCC, AR5 REPORT, *supra* note 42, at 6.

with thinning ice sheets and glaciers, declining snow cover, and increasing permafrost temperatures.¹⁹² Likewise, climate change has caused many terrestrial and aquatic species to change their migratory, feeding, and reproductive behaviors.¹⁹³ A significant portion of plant and animal species are also at a greater risk of extinction due to climate change.¹⁹⁴

Weather-related impacts have also been considerable. In recent years, there has been a well-documented increase in extreme temperature and precipitation variation and heat waves.¹⁹⁵ In addition, weather-related changes have already had widespread effects on natural systems, including droughts, floods, wildfires, tornadoes, and severe storms.¹⁹⁶ As anthropogenic GHG emissions continue to rise, extreme weather-related events, such as heat waves and heavy precipitation events, are “virtually certain” to become more frequent and intense.¹⁹⁷ Climate change is also likely to cause larger and more destructive wildfires in the United States,¹⁹⁸ as well as “chronic, long-duration hydrological drought.”¹⁹⁹

Further, climate change will decrease productivity of irrigated agriculture and livestock. Declining winter snowmelt runoff will reduce water availability for crop irrigation,²⁰⁰ and the release of mercury and other contaminants stored in glaciers and permafrost will reduce water quality.²⁰¹ Relatedly, declining snow cover will directly affect soil moisture, resulting in drier soil and lower agricultural yields.²⁰² Climate change will also reduce agricultural yields by changing growing seasons, increasing extreme precipitation events (e.g., dry spells, heavy rainfalls), and increasing animal diseases and pest infestations.²⁰³ Thus, as food demand increases, food and water availability will become an increasingly important issue.²⁰⁴

Property Impacts

EPA should also consider the various ways in which climate change will “damage . . . and deteriorat[e] . . . property.”²⁰⁵ Extreme weather events, such as wildfires,

¹⁹² IPCC, SPECIAL REPORT ON THE OCEAN & CRYOSPHERE IN A CHANGING CLIMATE 1–6 (2019) [hereinafter OCEAN REPORT].

¹⁹³ IPCC, AR5 REPORT, *supra* note 42, at 6.

¹⁹⁴ *Id.* at 13.

¹⁹⁵ *Id.* at 7–8.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 10.

¹⁹⁸ USGCRP, NCA4 REPORT, *supra* note 45, at 240–41.

¹⁹⁹ *Id.* at 159.

²⁰⁰ IPCC, OCEAN REPORT, *supra* note 192, at 154–55, 163.

²⁰¹ *Id.* at 153; *see also id.* at 511–13 (explaining how climate change threatens human health by increasing the amount of mercury and other contaminants in marine organisms).

²⁰² *Id.* at 154, 165.

²⁰³ IPCC, AR5 REPORT, *supra* note 42, at 6, 13; USGCRP, NCA4 REPORT, *supra* note 45, at 401.

²⁰⁴ IPCC, AR5 REPORT, *supra* note 42, at 13.

²⁰⁵ 42 U.S.C. § 7602(h).

floods, and hurricanes, will cause significant property damage, and repairing or replacing this damage will cost hundreds of millions of dollars each year.²⁰⁶ Likewise, sea level rise poses serious threats to coastal property and public infrastructure, such as international airports and interstate highways.²⁰⁷ Climate change is also likely to have significant impacts on energy systems and infrastructure, resulting in disrupted access to communication, transportation, electricity, medical care, and other critical resources.²⁰⁸

With respect to agricultural infrastructure, extreme temperature variation or seasonal change will make liquefied manure storage systems more prone to erosion, breakage, and wall collapse.²⁰⁹ Similarly, extreme precipitation events (e.g., heavy rains or hurricanes) cause liquefied manure storage and runoff systems to overflow and spill large amounts of waste onto nearby agricultural lands, waterways, and residential properties,²¹⁰ which can lead to serious environmental and public health consequences, such as groundwater contamination, soil degradation, and crop destruction.²¹¹

Transportation Impacts

Likewise, climate change poses several “hazards to transportation.”²¹² Weather-related impacts, such as heat waves, power outages, flooding, and heavy precipitation, adversely affect the efficiency, reliability, and safety of interconnected transportation systems.²¹³ These impacts also delay completion of modernization and expansion projects, which further undermines the system’s overall performance.²¹⁴ Further, extreme weather events will put a significant strain on transportation infrastructure and assets.²¹⁵ Thus, as these events become more frequent and destructive, maintenance and replacement costs will also increase.²¹⁶

Moreover, the transportation impacts of climate change will disproportionately affect low-income people, elderly people, people with limited English proficiency, and other vulnerable populations.²¹⁷ Disrupted access to transportation systems will also disproportionately harm rural communities with limited infrastructure, resources, and political influence.²¹⁸ For example,

²⁰⁶ USGCRP, NCA4 REPORT, *supra* note 45, at 1220; *see also id.* at 240–41 (discussing “the high cost of protecting property [from wildfires] in the wildland-urban interface”).

²⁰⁷ *Id.* at 1118–19.

²⁰⁸ *Id.* at 652–53.

²⁰⁹ *See supra* note 78.

²¹⁰ *See supra* note 79.

²¹¹ For further discussion on the impacts of manure overapplication, see Part V.B.2.i.

²¹² 42 U.S.C. § 7602(h).

²¹³ USGCRP, NCA4 REPORT, *supra* note 45, at 486–90.

²¹⁴ *Id.* at 484.

²¹⁵ *Id.* at 486–90.

²¹⁶ *Id.*

²¹⁷ *Id.* at 490–91.

²¹⁸ *Id.* at 409.

disrupted transportation channels can prevent people in these communities from obtaining food, water, or medical supplies; evacuating a dangerous area; or obtaining emergency assistance. Consequently, climate change will not only make it more difficult for these communities to prepare for extreme weather events, but it will also make it more difficult for them to recover from them.

Economic Impacts

Climate change is a major threat to “economic values” on an individual level, as well as a community, state, regional, and national level.²¹⁹ For example, climate change will likely increase food and energy costs and alter purchasing behaviors.²²⁰ Rising temperatures will also slow economic growth and prolong poverty traps, especially in “urban areas and emerging hotspots of hunger.”²²¹ Rural communities are particularly vulnerable, as climate change will make it difficult for linguistically and spatially isolated areas to access jobs, food, water, and other essential resources and sectors.²²² Similarly, climate change will have significant impacts on development in coastal communities and other areas prone to extreme weather events.²²³

Likewise, recent assessments confirm that climate change will adversely affect the entire U.S. agricultural sector,²²⁴ as well as the rural communities that depend on the agricultural sector for jobs and tax revenue.²²⁵ Most notably, increased precipitation and temperature extremes will have widespread impacts on food production, including reduced crop yield, decreased water availability and supply, increased pest pressure, and decreased soil quality.²²⁶ In addition, climate change will adversely affect agricultural productivity by increasing health risks for workers, and “compromis[ing] common human activities, including growing food and working outdoors.”²²⁷

Extreme weather events will also negatively affect livestock health and animal agricultural productivity.²²⁸ Rising global temperatures will reduce industrial dairy and hog production because heat stress has the greatest effect on animals held in confinement facilities.²²⁹

²¹⁹ 42 U.S.C. § 7602(h).

²²⁰ USGCRP, NCA4 REPORT, *supra* note 45, at 447, 452.

²²¹ IPCC, AR5 REPORT, *supra* note 42, at 15.

²²² *Id.*; *see also* USGCRP, NCA4 REPORT, *supra* note 45, at 392.

²²³ USGCRP, NCA4 REPORT, *supra* note 45, at 1118–19; *see also* IPCC, OCEAN REPORT, *supra* note 192, at 75 (noting that people in polar, mountain, and coast environments regions “face the greatest exposure to ocean and cryosphere change, and poor and marginalized people here are particularly vulnerable to climate-related hazards and risks”).

²²⁴ IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 5-121 (explaining how climate change negatively affects food production, distribution, and utilization).

²²⁵ *Id.* at 4-53 to -56 (discussing links between poverty, land degradation, and climate change).

²²⁶ USGCRP, NCA4 REPORT, *supra* note 45, at 406–08, IPCC, AR5 REPORT, *supra* note 42, at 69.

²²⁷ IPCC, AR5 REPORT, *supra* note, at 42.

²²⁸ USGCRP, NCA4 REPORT, *supra* note 45, at 406–08.

²²⁹ J. Demer, et al., *Vulnerability of Grazing & Confined Livestock in the Northern Great Plains to Projected Mid- & Late-Twenty-First Century Climate*, 146 CLIMATIC CHANGE 19 (2018).

According to a recent study, heat stress from climate change alone already decreases U.S. dairy production by 1.9 percent each year, resulting in \$670 million in annual production losses, and likely reaching \$2.2 billion by the end of the century.²³⁰ Further, climate-related impacts will increase feed costs, disease, and other threats to U.S. animal production.²³¹ For example, three years of drought in Texas and California caused more than \$10 billion in direct agricultural losses, including increased feed costs.²³²

Climate change will directly affect food utilization.²³³ Specifically, rising temperatures will increase the spread of waterborne and foodborne diseases, and decrease effectiveness of transportation and distribution infrastructure,²³⁴ making it more difficult for safe and uncontaminated food products to reach consumers before spoiling. Consequently, climate change will not only intensify competition for soil and water resources, but it will decrease food availability and overall agricultural incomes.²³⁵

On a national scale, climate change is also “virtually certain” to have widespread effects on the U.S. economy and trade, from supply chains to transportation and access to global markets.²³⁶ Relatedly, climate change will negatively affect the “income and purchasing” power of low-income consumers.²³⁷

Personal Comfort & Well-Being Impacts

In addition, climate change poses several threats to “personal comfort and well-being” and overall quality of life. 42 U.S.C. § 7602(h). For example, climate threats include loss of cultural and traditional lifestyles and traditions, and “the accompanying mental health or social disruption effects” of such loss.²³⁸ As recent studies demonstrate, climate change will have serious mental health impacts, such as increased rates of anxiety, stress-related disorders,

²³⁰ G. Mauger, et al., *Impacts of Climate Change on Milk Production in the United States*, 67 PROFESSIONAL GEOGRAPHER 121 (2015). This study only estimated direct losses from heat stress.

²³¹ See A. Leister, et al., *Dynamic Effects of Drought on U.S. Crop & Livestock Sectors*, 47 J. AGRIC. & APPLIED ECONOMICS 261 (2015); A. Anyamba, et al., *Recent Weather Extremes & Impacts on Agricultural Production & Vector-Borne Disease Outbreak Patterns*, 9 PLoS ONE e92538 (2014).

²³² See D. Anderson, et al., *Agricultural Impacts of Texas’s Driest Year on Record*, 27 CHOICES 1 (2012) (noting that in 2011, drought caused \$7.62 billion in direct financial losses to agriculture, including \$3.23 billion in livestock losses (e.g., increased cost of feed)); J. Lund, et al., *Lessons From California’s 2012–2016 Drought*, 144 J. WATER RES. PLANNING & MGMT. 04018067 (2018) (noting that in 2014–2016, drought caused approximately \$3.8 billion in total direct statewide economic losses to agriculture, including lost revenue from dairy and livestock production).

²³³ IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 5-39 to -40, 5-121 (describing how climate change will increase mycotoxins in food and livestock feed).

²³⁴ IPCC, AR5 REPORT, *supra* note 42, at 69.

²³⁵ *Id.*

²³⁶ USGCRP, NCA4 REPORT, *supra* note 45, at 620–21.

²³⁷ IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 5-121.

²³⁸ USGCRP, NCA4 REPORT, *supra* note 45, at 1217.

depression, and suicide.²³⁹ These impacts will likely disproportionately affect residents of rural communities due to lack of access mental health services.²⁴⁰

Climate change will also have serious socioeconomic and political impacts on a regional, national, and global scale. For example, climate change will perpetuate existing social and economic injustices by making it more difficult for members of low-income communities to escape poverty.²⁴¹ Climate change will also reduce quality of life in urban areas by disrupting access to social networks and systems, economic opportunities, education, nature, recreation, and culture.²⁴² Moreover, extreme weather events and land degradation will increase displacement of people, which will likely lead to heightened risk of racial and social tension, as well as violent conflict.²⁴³ Further, experts predict that climate change will increase conflict and competition for resources in agricultural communities, as water resources and productive land become scarcer.²⁴⁴

In sum, climate change continues to pose serious threats to public health and welfare. Accordingly, because methane emissions from industrial dairy and hog operations significantly contribute to climate change, EPA must list these source categories under section 111.

B. EPA must reconsider its final action that decided not to determine whether to list industrial hog and dairy operations as source categories of methane under section 111.

“Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or *if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.*” *Massachusetts v. EPA*, 549 U.S. at 533 (emphasis added). Accordingly, EPA must “adequately explain[] the facts and policy concerns it relied on and . . . those facts [must] have some basis in the record.” *WildEarth Guardians v. EPA*, 751 F.3d 649, 653 (D.C. Cir. 2014) (citations omitted). Courts will overturn EPA’s decision not to initiate a rulemaking if there is a “fundamental change in the factual premises previously considered by the agency” or other “compelling cause.” *Id.* Thus, because EPA can effectively determine that methane emissions from industrial hog and dairy operations contribute to rising GHG emissions and climate change impacts, and promulgate standards to reduce these emissions based on currently

²³⁹ See M. Burke, et al., *Higher Temperatures Increase Suicide Rates in the United States & Mexico*, 8 NATURE CLIMATE CHANGE 723 (2018).

²⁴⁰ See, e.g., Claire Hettinger & Pam Dempsey, *Seeking a Cure: Mental Health Access Scarce in Rural, Farming Communities*, MIDWEST CTR. FOR INVESTIGATIVE REPORTING (Feb. 14, 2020), <https://investigatamidwest.org/2020/02/14/seeking-a-cure-mental-health-access-scarce-in-rural-farming-communities>.

²⁴¹ IPCC, AR5 REPORT, *supra* note 42, at 15.

²⁴² USGCRP, NCA4 REPORT, *supra* note 45, at 447.

²⁴³ IPCC, AR5 REPORT, *supra* note 42, at 16; CLIMATE CHANGE & LAND, *supra* note 42, at 4-57 to -58 (explaining how displacement due to land degradation and lost livelihoods will lead to conflict and violence); OCEAN REPORT, *supra* note 126, at 172-73 (explaining how reduced water supply will undermine agricultural and pastoral livelihoods, and lead to more labor migration and displacement).

²⁴⁴ IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 5-120 (discussing how climate change will increase “resource competition” and conflict in “agriculture-dependent communities”).

available data and methodologies, EPA has no reasonable explanation for refusing to make an endangerment finding, as sought in this petition.

1. EPA is not currently developing emission estimation methodologies for methane.

In December 2017, EPA took final action and declined to determine whether to list CAFOs as a source category under section 111 because the agency claimed to need more time to “develop[] accurate methodologies to estimate air emissions from CAFOs.”²⁴⁵ EPA claimed that it “has been undertaking [the National Air Emissions Monitoring Study (NAEMS)]” “[t]o better understand and evaluate emissions from CAFOs,”²⁴⁶ and the agency is “unable to provide emission-estimating methodologies for use with [farm emission reports] until [NAEMS] is complete.”²⁴⁷ However, NAEMS was a two-year monitoring study that collected data on “emissions of particulate matter, ammonia, hydrogen sulfide, and volatile organic compounds” from hog, dairy, and poultry confinement structures and manure storage units.²⁴⁸ It did not collect data on methane emissions. Moreover, in EPA’s denial letter, the agency expressly admitted that it was only “develop[ing] methodologies to estimate emissions of ammonia, hydrogen sulfide, PM and VOC”—not methane.²⁴⁹ Thus, EPA is not addressing emission estimation methodologies for methane through NAEMS,²⁵⁰ and EPA has no plans to develop such methodologies (because, as described below, they already exist).²⁵¹ Accordingly, EPA’s prior excuse does not apply to the present petition, and EPA should thus grant this petition.

EPA cannot refuse to carry out the objectives of section 111 with respect to one pollutant (methane) while it develops methodologies for other pollutants (particulate matter, ammonia, hydrogen sulfide, and volatile organic compounds).²⁵² In *Massachusetts*, the Supreme Court overturned EPA’s denial of a petition to regulate carbon dioxide emissions from new vehicles because the agency’s reasons “ha[d] nothing to do with whether greenhouse gas emissions

²⁴⁵ Letter from E. Scott Pruitt, *supra* note 37, at 5.

²⁴⁶ *Id.* at 10.

²⁴⁷ *Id.* at 7–8.

²⁴⁸ EPA, *National Air Emissions Monitoring Study* (last accessed Nov. 15, 2019), <https://www.epa.gov/afos-air/national-air-emissions-monitoring-study>; see also OFF. OF INSPECTOR GENERAL, REP. NO. 17-P-0396, ELEVEN YEARS AFTER AGREEMENT, EPA HAS NOT DEVELOPED RELIABLE EMISSION ESTIMATION METHODS TO DETERMINE WHETHER ANIMAL FEEDING OPERATIONS COMPLY WITH CLEAN AIR ACT & OTHER STATUTES 7 (Sep. 19, 2017) [hereinafter 2017 NAEMS REVIEW]; Animal Feeding Operations Consent Agreement & Final Order, 70 Fed. Reg. 4958, 4971–72 (Jan. 31, 2005) (enumerating the targeted emissions and measurement methodologies).

²⁴⁹ Letter from E. Scott Pruitt, *supra* note 37, at 8.

²⁵⁰ *Id.* at 7.

²⁵¹ In May 2019, Petitioner Environmental Integrity Project (EIP) submitted a FOIA request for agency records relating to EPA’s efforts to complete NAEMS and comply with the 2017 NAEMS REVIEW, *supra* note 248. See Letter from Abel Russ, Senior Attorney, EIP, to EPA (May 21, 2019). As EPA’s released records reveal, EPA has not yet finalized any methodologies and continues to unduly delay development of emission estimation methodologies.

²⁵² EPA has not finalized emission models for any of the pollutants or emission sources monitored as part of the NAEMS. As of August 2020, the agency has only released draft emission models for ammonia, hydrogen sulfide, and particulate matter from industrial hog operations. See EPA, DEVELOPMENT OF EMISSIONS ESTIMATING METHODOLOGIES FOR SWINE BARN & LAGOONS (2020).

contribute to climate change.” 549 U.S. at 533. There, EPA claimed that other federal programs were providing “an effective response to the threat of global warming,” and reducing emissions from new vehicles would result in “an inefficient, piecemeal approach” to climate change. *Id.* The Supreme Court held that EPA’s “policy judgments” do not amount to “a reasoned justification for declining to form a scientific judgment.” *Id.* at 533–34.

Nor can EPA avoid its statutory obligation by noting the uncertainty surrounding various features of climate change and concluding that it would therefore be better not to regulate at this time. If the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming, EPA must say so. That EPA would prefer not to regulate greenhouse gases because of some residual uncertainty... is irrelevant. The statutory question is whether sufficient information exists to make an endangerment finding.

Id. at 534. Thus, if EPA refuses to make an endangerment determination, the agency must provide a “reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change.” *Id.* at 534.

EPA is not taking any regulatory action to reduce GHG emissions from industrial hog and dairy operations. In *WildEarth Guardians v. EPA*, the D.C. Circuit upheld EPA’s denial of a petition to list coal mines as a stationary source category under section 111 because the agency was “focusing first on promulgating standards for transportation and electricity systems,” which accounted for more than 60 percent of total U.S. GHG emissions at the time, and coal mines only accounted for 1 percent of total emissions. 751 F.3d 649, 653, 655 (D.C. Cir. 2014). The D.C. Circuit held that EPA’s reasons for denying the petition for rulemaking are entirely consistent with the agency’s duties under [section 111]” because “the statute affords agency officials discretion to prioritize sources that are the most significant threats to public health.” *Id.* Unlike *WildEarth Guardians*, however, EPA is not currently “prioritiz[ing] sectors that emit more air pollutants” or otherwise “prioritiz[ing] regulatory actions in a way that best achieves the objectives of § 7411.” *Id.* Rather, the Biden Administration has committed to taking action on climate with an emphasis on environmental justice and public health, factors this Petition demonstrates. Thus, if EPA refuses to take action to reduce GHG emissions from industrial hog and dairy operations, EPA’s discretionary decision would lack a foundation in the statutory scheme, spin untethered from congressional objectives, and warrant no deference during judicial review.²⁵³

2. Existing methane emission estimation methods are reliable.

EPA does not need to develop new methodologies for estimating methane emissions from industrial dairy and hog source categories because reliable methods already exist. As explained in the most recent U.S. GHG Inventory, EPA currently estimates methane emissions from enteric fermentation based on recommendations in the 2006 IPCC Guidelines for National Greenhouse

²⁵³ See *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014) (holding that “EPA lacked authority to ‘tailor’ the [Clean Air] Act’s unambiguous numerical thresholds . . . to accommodate its greenhouse-gas-inclusive interpretation of the permitting triggers”).

Gas Inventories.²⁵⁴ Specifically, EPA uses the IPCC Tier 2 methodology to estimate enteric emissions from the most significant source—dairy cows and other cattle—and the IPCC Tier 1 methodology for hogs and other livestock.²⁵⁵

EPA also has an effective method for estimating methane emissions from manure management systems. The agency first uses existing data to determine key characteristics of existing animal agriculture operations, such as herd size and type of manure management system.²⁵⁶ It does not need to collect its own data. EPA then uses IPCC defaults to calculate methane emission factors for dry systems, such as pasture-based operations, and its own methodology for liquefied manure management systems, such as lagoons, to capture seasonal temperature changes and long-term retention time.²⁵⁷

Moreover, EPA has already established methods for calculating methane emissions from industrial hog and dairy manure management systems and industrial wastewater systems in its mandatory GHG reporting requirements.²⁵⁸ Under these requirements, owners or operators of facilities that contain a liquefied manure management system that emits at least 25,000 metric tons of GHGs (methane and nitrous oxide) per year must collect emissions data, calculate methane emissions from manure management source categories, and report emissions to EPA.²⁵⁹

EPA can use these existing methods to predict how changing key characteristics of dairy and hog operations will affect methane and other air pollutant emissions. Under this approach, EPA would find that the most effective way to reduce methane emissions from industrial dairy and hog operations is to apply pasture-based practices that will reduce reliance on confinement production and liquefied manure management systems. Accordingly, there is no need to develop new or different emissions estimating methodologies, and EPA can and should make a finding that methane from industrial dairy and hog operations endangers public health and welfare.

C. EPA can significantly reduce methane emissions from industrial hog and dairy operations by setting standards based on pasture-based systems.

Because the Administrator should find that methane emissions from industrial hog and dairy operations satisfy the endangerment standard, EPA has a statutory duty under section 111(b) within one year to establish standards of performance for new and modified industrial hog and dairy sources based on application of pasture-based practices, the best system of emission reduction achievable, within one year of the endangerment finding. EPA also has a duty under section 111(d) to develop guidelines requiring states to follow the same approach for existing

²⁵⁴ EPA, U.S. GHG INVENTORY, *supra* note 50, at A-298.

²⁵⁵ *Id.* at A-312 to -319.

²⁵⁶ *Id.* at A-326 to -332.

²⁵⁷ *Id.* at A-332.

²⁵⁸ 40 C.F.R. § 98.323; *see also* Technical Support Document (Nov. 2009); *see also* Industrial Wastewater Treatment Sources (2018); Technical Support Document, 6-1 (2010).

²⁵⁹ 40 C.F.R. Part 98, Subpart JJ; *see also* EPA-430-F-09-026R, Final Rule: Mandatory Reporting of GHGs (Nov. 2009).

sources within their state. Petitioners provide this information to educate EPA and do not conflate the endangerment finding and subsequent regulatory analyses.

Once EPA makes an endangerment finding and lists a source category under section 111, EPA must establish “standards of performance” for newly constructed or modified sources in the listed category.”²⁶⁰ This duty is nondiscretionary.²⁶¹ EPA may also “distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.”²⁶²

In setting a “standard of performance” for new sources,²⁶³ EPA must determine the emission reduction achievable based on the Best System of Emission Reduction (BSER) that has been “adequately demonstrated,” considering the (1) “cost of achieving such reduction”; (2) “nonair quality health and environmental impact[s]”; and (3) “energy requirements.”²⁶⁴ Under EPA’s most recent interpretation in the Affordable Clean Energy Rule, section 111 “unambiguously limits the BSER to those systems that can be put into operation at a building, structure, facility, or installation, such as “add-on controls (e.g., scrubbers) and inherently lower-emitting processes/practices/designs.”²⁶⁵ Recently, the D.C. Circuit held that Congress did not limit BSER to only those measures at the stationary source itself, vacated this interpretation and rule, and remanded the issue to EPA to interpret section 111 anew. *American Lung Ass’n v. EPA*, 985 F.3d 914 (D.C. Cir. 2021). Under the previous interpretation in the Clean Power Plan, EPA more broadly interpreted BSER to “measures that can be implemented . . . by the sources themselves,” i.e., “by actions taken by the owners or operators of the sources.”²⁶⁶ After evaluating each of these factors and determining the best system, EPA must then apply the best system to the sources to determine the “degree of emission limitation achievable.” EPA’s prior interpretation and the D.C. Circuit’s rejection of the ACE Rule both support pasture-based systems for BSER.

Moreover, EPA does not need to collect emissions data to apply the best system “adequately demonstrated” to new sources. In *Lignite Energy Council v. EPA*, the D.C. Circuit

²⁶⁰ 42 U.S.C. § 7411(b)(1)(B); *see also id.* §§ 7411(a)(2) (defining “new source” as “any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance . . . which will be applicable to such source”); § (4) (defining “modification” as “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted”).

²⁶¹ *See Zook v. EPA*, 611 Fed. Appx. 725 (D.C. Cir. 2015) (“[T]he Administrator’s duty to regulate [an air pollutant under section 111] is triggered by an endangerment finding that the Act entrusts to the Administrator’s sole judgment.”)

²⁶² 42 U.S.C. § 7411(b)(2), (d).

²⁶³ EPA can authorize states to implement and enforce new source performance standards within their borders. 42 U.S.C. § 7411(c)(1) (allowing EPA to delegate implementation and enforcement authority to any state that develops and submits an adequate implementation plan to EPA for approval). However, even if EPA delegates limited authority to a state, EPA can still enforce applicable standards in the state. *Id.* § (c)(2).

²⁶⁴ *Id.* § 7411(a)(1).

²⁶⁵ Repeal of the Clean Power Plan, 84 Fed. Reg. 32520, 32524 (Jul. 8, 2019).

²⁶⁶ Carbon Pollution Emission Guidelines for Existing EGUs, 60 Fed. Reg. 64661, 64720 (Dec. 22, 2015).

upheld EPA’s new source performance standard, even though the agency was unable to collect data for the application of the best system, because the “absence of data is not surprising for a new technology,” and “section 111 ‘looks toward what may fairly be projected for the regulated future, rather than the state of the art at present.’” 198 F.3d 930, 933-34 (D.C. Cir. 1999) (citations omitted). “Of course, where data are unavailable, EPA may not base its determination that a technology is adequately demonstrated or that a standard is achievable on mere speculation or conjecture, but EPA may compensate for a shortage of data through the use of other qualitative methods.” *Id.* at 934 (internal citations omitted).

In addition to developing nationally applicable standards for new and modified sources, EPA must establish guidelines for states to develop their own standards of performance for existing sources located within their respective borders.²⁶⁷ Under section 111(d), EPA has broad authority and flexibility to set emission guidelines for unregulated air pollutants,²⁶⁸ and states must follow these guidelines when developing standards for existing sources located in their jurisdiction.²⁶⁹ However, section 111(d) grants states the authority to consider a source’s remaining useful life and other factors when applying a standard of performance to the source.²⁷⁰

1. Pasture-based production is the best system of emission reduction.

Pasture-based dairy and hog production is the “best system of emissions reduction . . . [that] has been adequately demonstrated,” based on a variety of factors, including implementation costs, operation and maintenance costs, “nonair quality” health impacts, “nonair quality” environmental impacts, and energy requirements.²⁷¹ Thus, EPA should establish national standards for new and modified sources within industrial dairy and hog source categories based on the level of methane and GHG emission reductions achievable by applying pasture-based practices.

Methane Emissions Reductions

As several recent studies demonstrate, industrial hog and dairy operations can dramatically reduce methane emissions by adopting pasture-based production systems.

Enteric Emissions

Industrial dairy operations generate significant amounts of enteric methane emissions because they feed animals in a manner other than grazing with liquefied manure management systems to confine thousands of animals in specialized confinement facilities. In contrast, well-managed pasture-based dairy operations have lower enteric emissions because they stock fewer

²⁶⁷ 42 U.S.C. § 7411(d).

²⁶⁸ *Id.* For example, EPA has previously established regulations for existing sources in the form of emission guidelines that describe the BSER, the degree of emission reductions achievable, costs and environmental impacts of application, the time required to implement, and a goal for reductions based on BSER analysis. *See supra* note 32.

²⁶⁹ If any state’s plan does not comply with EPA regulations, EPA can reject the state’s plan, or develop a plan for the state.

²⁷⁰ *See* 42 U.S.C. § 7411(d).

²⁷¹ *Id.* § 7411(a)(1).

cows than industrial operations. Hog and dairy producers can thus reduce enteric emissions by (1) reducing the amount of time hogs and dairy cows spend in confinement, and (2) increasing the amount of time animals spend in well-maintained pastures or paddocks grazing and foraging.

Further, hog and dairy producers can reduce enteric emissions by maintaining pastures, paddocks, and grazing lands properly to ensure that animals have access to high-quality forage and feed. According to recent assessments, industrial dairy operations can reduce enteric methane emissions by adding high-quality forage to animal diets.²⁷² Studies also confirm that “better quality pasture and better pasture management can lead to improvements in forage digestibility and nutrient quality,” which “results in faster animal growth rates,” “increase[d] cow fertility rates, and reduce[d] mortality rates,” “thus improving animal and herd performance.”²⁷³ Likewise, “better grazing management,” which includes increased mobility and balancing of grazing and rest periods, can promote “forage production and soil carbon sequestration.”²⁷⁴ Thus, by adopting a well-managed pasture-based system, hog and dairy producers can “maintain high quality forage and reduce per-animal enteric methane emissions.”²⁷⁵

Manure Management Emissions

In addition to enteric emissions, fully confined dairy and hog production facilities generate methane from fresh manure on facility flooring. By reducing the number of cows and hogs per farm and the overall amount of manure deposited in confinement facilities, methane emissions from manure decomposing on facility flooring and in liquid manure management systems will decrease significantly. Likewise, by increasing reliance on forage feed, rather than purchased feed grown off-site, pasture-based systems significantly reduce methane emissions from spoilage and loss during transport, long-term feed storage, and handling.²⁷⁶

Moreover, fully confined dairy and hog production facilities emit significant amounts of methane from liquefied manure management systems, and these emissions increase over time.²⁷⁷

²⁷² IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 2-79; NAT’L SUSTAINABLE AGRIC. COALITION (NSAC), AGRIC. & CLIMATE CHANGE: POLICY IMPERATIVES & OPPORTUNITIES TO HELP PRODUCERS MEET THE CHALLENGE 26 (Nov. 2019) (explaining how changing the grain to forage ratio in dairy cows’ diets can significantly reduce enteric methane emissions); A. Dall-Orsoletta, et al., *Ryegrass Pasture Combined With Partial Total Mixed Ration Reduces Enteric Methane Emissions & Maintains The Performance of Dairy Cows During Mid To Late Lactation*, 99 J. DAIRY SCIENCE 4374 (2016) (finding that “inclusion of annual ryegrass pasture to the diet of [confined] dairy cows maintained animal performance and reduced enteric methane emissions”); M. Dutreuil, et al., *Feeding Strategies & Manure Management for Cost-Effective Mitigation of Greenhouse Gas Emissions From Dairy Farms in Wisconsin*, 97 J. DAIRY SCI. 5904, 5912 (2014) (finding that GHG emissions from confinement housing facilities decreased when cows on industrial dairy operations were given access to pastures); *see also* B. O’Neill, al., *Effects of a Perennial Ryegrass Diet or Total Mixed Ration Diet Offered to Spring-Calving Holstein-Friesian Dairy Cows on Methane Emissions, Dry Matter Intake, & Milk Production*, 94 J. DAIRY SCI. 1941 (2011).

²⁷³ P. GERBER, ET AL., FOOD & AGRIC. ORGANIZATION (FAO), TACKLING CLIMATE CHANGE THROUGH LIVESTOCK: A GLOBAL ASSESSMENT OF EMISSIONS & MITIGATION OPPORTUNITIES 69, 70 (2013).

²⁷⁴ *Id.* at 73.

²⁷⁵ NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 25–26.

²⁷⁶ *Id.* at 26.

²⁷⁷ *See, e.g.*, M. Dutreuil, *supra* note 272, at 5912 (finding that GHG emissions from manure storage decreased when cows from industrial dairy operations were given access to pastures for part of the year).

Conversely, pasture-based systems emit significantly less methane from manure management because animals on pastures deposit manure directly on the land, and manure management is only required when animals deposit manure in temporary or partial confinement areas, such as milking stations and walkways. Thus, even if industrial hog and dairy operations can only rely on pasture-based systems during the spring or summer, when conditions allow, they can substantially reduce methane emissions from liquefied manure management.²⁷⁸

In sum, emission standards based on widespread application of well-managed pasture-based systems will significantly reduce methane emissions from fully confined dairy and hog confinement and liquefied manure management sources.

Additional GHG Emission Reductions

Nitrous Oxide & Carbon Dioxide Emissions

In addition to releasing methane, manure decomposing in liquefied storage systems can release nitrogen into the atmosphere as ammonia (NH₃), which can transform into nitrous oxide (N₂O), another potent GHG and air pollutant.²⁷⁹ Thus, pasture-based systems decrease direct methane emissions from manure management, as well as indirect nitrous oxide emissions, by decreasing the amount of manure managed with liquefied manure systems through herd size decreases and manure decomposition on pasture.²⁸⁰

Further, pasture-based systems reduce direct and indirect nitrous oxide emissions from stored manure and wastewater applied to land. When manure is stored in liquefied manure management systems, producers must eventually dispose of the waste through land applications. When producers dispose of the waste by applying the manure to feed crops as fertilizer, significant amounts of nitrous oxide is emitted from the soil.²⁸¹ Manure applied to soil that is frozen or covered in snow also generates nitrous oxide as it decomposes on the surface.²⁸² Moreover, manure applications can result in indirect nitrous oxide emissions (from leached or volatilized N), which contributes to rising GHG emissions and climate change.²⁸³ Thus, pasture-based systems can reduce nitrous oxide emissions from manure land applications.

Allowing animals to graze on pastures will decrease the need for imported feed, which will in turn reduce CO₂ and N₂O created in growing, processing, transporting, and storing grain

²⁷⁸ See, e.g., Baldé, *supra* note 98 (finding that methane emissions from long-term liquid manure storage are highest “when high manure temperature and high volume coincide[]”).

²⁷⁹ FAO, TACKLING CLIMATE CHANGE THROUGH LIVESTOCK, *supra* note 273, at 17, 20.

²⁸⁰ See, e.g., J. Owen, et al., *supra* note 98, at 555.

²⁸¹ EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-11; see also I. Shcherbak, et al., *Global Meta-Analysis of the Nonlinear Response of Soil Nitrous Oxide (N₂O) Emissions to Fertilizer Nitrogen*, 111 PNAS 9199 (2014) (finding that N₂O contributes to global climate change and ozone depletion, and N₂O emissions rise rapidly as applied N rates exceed crop needs).

²⁸² NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 26.

²⁸³ See EPA, U.S. GHG INVENTORY, *supra* note 50, at 5-11.

feed for hog and dairy cows in confinement systems.²⁸⁴ Pasture-based production systems can also reduce overall GHG emissions by lowering CO₂ emissions from energy consumption.²⁸⁵ Industrial hog and dairy operations consume significant amounts of energy during animal production because they rely on highly specialized and industrialized facilities to confine large numbers of dairy cows and hogs.²⁸⁶ These operations also consume energy during manure management because they rely on highly industrialized facilities, technologies, and equipment to collect, manage, store, and monitor liquefied manure for long periods. Likewise, these operations also directly emit CO₂ during manure land application because they rely on specialized equipment for spray irrigation, soil injection, crop fertilization, and runoff monitoring. Pasture-based systems reduce indirect CO₂ emissions generated during the construction, modification, and expansion of industrialized confinement and manure management facilities.²⁸⁷

Carbon Sequestration

Pasture-based systems can reduce carbon dioxide in the atmosphere by increasing the amount of C stored in soil through improved land management practices and land restoration.²⁸⁸ For example, by replacing annual crops with deep-rooted perennial forage plants, pasture-based systems minimize soil disturbance and erosion, and maximize biomass production, resulting in

²⁸⁴ See G. Malcolm, et al., *Energy & Greenhouse Gas Analysis of Northeast US Dairy Cropping Systems*, 199 AGRIC. ECOSYSTEMS & ENVIRONMENT 407 (2015) (dairy cropping systems lowered total fossil energy inputs per Mg of milk produced by 18-15%, “largely by importing [77-71%] less feed crops that would have been grown elsewhere”); A. Fredeen, et al., *Implications of Dairy Systems on Enteric Methane & Postulated Effects on Total Greenhouse Gas Emission*, 7 ANIMAL 1875 (2013).

²⁸⁵ M. Pagani, et al., *An Assessment of the Energy Footprint of Dairy Farms in Missouri & Emilia-Romagna*, 145 AGRIC. SYS. 116 (2016) (dairy operations can reduce energy inputs by switching to forage-based farming and reducing reliance on fertilizer, feed, and fuel).

²⁸⁶ J. Tallaksen, et al., *Reducing Life Cycle Fossil Energy & Greenhouse Gas Emissions For Midwest Swine Production Systems*, 246 J. CLEANER PRODUCTION (2020) (hog production facilities use significant amounts of fossil energy for heating, cooling, and ventilation); P. Lammers, et al., *Energy Use In Pig Production: An Examination of Current Iowa Systems*, 90 J. ANIMAL SCI. 1056 (2012) (hog production facilities account for 25% of energy use on industrial hog operations); L. Murgia, et al., *A Partial Life Cycle Assessment Approach to Evaluate the Energy Intensity & Related Greenhouse Gas Emission in Dairy Farms*, 44 J. AGRIC. ENGINEERING 186, 190 (2013) (feed preparation and distribution operations require the largest amount of total fuel consumption (52%)).

²⁸⁷ See M. Koesling, et al., *Embodied & Operational Energy in Buildings on 20 Norwegian Dairy Farms: Introducing the Building Construction Approach to Agriculture*, 108 ENERGY & BUILDINGS 330 (2015). (“Choosing a design that requires less material or materials with a low amount of embodied energy, can significantly reduce the amount of embodied energy in [dairy] buildings.”).

²⁸⁸ NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 9; see, e.g., P. Stanley, et al., *Impacts of Soil Carbon Sequestration on Life Cycle GHG Emissions in Midwestern USA Beef Finishing Systems*, 162 AGRIC. SYS. 249 (2018) (“[Adaptive multi-paddock] grazing can contribute to climate change mitigation through [soil organic carbon] sequestration”); A. Franzluebbers, et al., *Crop & Cattle Production Responses to Tillage & Cover Crop Management in an Integrated Crop-Livestock System in the Southeastern USA*, 57 EUROPEAN J. AGRONOMY 62 (2014).

increased soil carbon sequestration.²⁸⁹ Likewise, pasture-based systems increase soil carbon by increasing soil health and biodiversity in degraded or eroded lands.²⁹⁰ Thus, well-managed, regenerative pasture-based systems can lead to significant, long-term soil sequestration of carbon, and EPA's emission standards for industrial hog and dairy operations should reflect the amount of carbon dioxide emission reductions achievable under pasture-based systems.

Additional Emission Reductions

In addition, reducing GHG emissions from industrial hog and dairy operations will also reduce dust, odor, zoonotic pathogens, and other harmful pollutants emitted from confinement facilities and liquefied manure management systems.²⁹¹ These emissions degrade local air quality, increase odor, decrease property values, and threaten health and well-being of local residents.²⁹² Thus, allowing animals to graze on pasture-based systems will dramatically reduce odor and air pollution in rural communities. Pathogen exposure and illness in rural, agricultural communities will also decrease because fewer contaminants will enter the air during manure land disposal.²⁹³

Additional Environmental & Public Health Benefits

In addition to reducing GHG emissions, well-managed pasture-based systems provide several additional public health and welfare benefits to rural communities and farmers.²⁹⁴

²⁸⁹ NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 17–21; *see, e.g.*, R. Ghimire, et al., *Long-term Management Effects & Temperature Sensitivity of Soil Organic Carbon in Grassland and Agricultural Soils*, 9 SCI. REPORTS 12151 (2019) (“Reducing tillage” and “growing perennial grasses could minimize [soil organic carbon] loss and have the potential to improve soil health and agroecosystem resilience under projected climate warming.”); W. Teague, et al., *supra* note 76 (“Incorporating forages and ruminants into regeneratively managed agroecosystems can elevate soil organic C, improve soil ecological function by minimizing the damage of tillage and inorganic fertilizers and biocides, and enhance biodiversity and wildlife habitat.”); M. Machmuller, et al., *Emerging Land Use Practices Rapidly Increase Soil Organic Matter*, 6 NATURE COMM. 6995 (2015) (pasture-based intensively grazed dairy systems can restore soil quality and mitigate climate change by increasing soil C).

²⁹⁰ *See supra* note 289.

²⁹¹ *See supra* notes 65 and 80.

²⁹² *See supra* notes 66 and 83; *see also* *McKiver v. Murphy Brown, LLC*, 980 F.3d 937 (4th Cir. 2020).

²⁹³ *See, e.g.*, R. Dungan, *supra* note 66 (finding that the risk of infection after inhaling pathogens aerosolized during irrigation of diluted dairy wastewaters were greatest in individuals closest to the operation due to “higher pathogen dose”); T. Burch, et al., *supra* note 66, at 1, 10-11 (“Reducing pathogen prevalence and concentration in source manure would most effectively mitigate [human health risks from spray irrigation of livestock manure].”).

²⁹⁴ *See, e.g.*, IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 4-61 (“There is strong scientific consensus that a combination of forestry with agricultural crops and/or livestock, agroforestry systems can provide additional ecosystem services when compared with monoculture crop systems.”); J. Guyader, et al., *Forage Use to Improve Environmental Sustainability of Ruminant Production*, 94 J. ANIMAL SCI. 3147 (2016) (“The potential environmental benefits of forage-based systems may be expanded even further [than GHG emission reductions] by considering their other ecological benefits, such as conserving biodiversity, improving soil health, enhancing water quality, and providing wildlife habitat.”).

Water Quality

When industrial hog and dairy operations apply too much manure to a small area, or when they apply manure at high rates for long periods, contaminants in the manure, such as nitrogen and phosphorus, fecal bacteria, pathogens, and antibiotic residents, accumulate in the soil and enter waterways through soil erosion and runoff.²⁹⁵ Likewise, when producers apply more manure to croplands than crops can use, the excess nitrogen can mineralize into nitrate, which is an extremely soluble form of nitrogen that can move through soil with water, potentially leaching into groundwater or surface waters.²⁹⁶ Further, nutrients, pesticides, heavy metals, and other harmful contaminants can also enter water sources from feed crops (e.g., soybean and corn). A recent analysis of groundwater impacts from industrial dairy operations in California revealed that “94 percent of groundwater nitrogen loading on dairies . . . occurs on croplands,” with “‘unaccounted-for’ manure nitrogen on many dairies.”²⁹⁷

Because liquefied manure storage systems allow manure to accumulate for long periods, these systems increase the amount of manure applied to land at one time, which increases the risk of oversaturation and runoff.²⁹⁸ In addition to improper manure disposal, including applications to saturated or frozen ground, liquefied manure management systems increase the risk of manure entering local water sources during heavy rain events, spills, and storage lagoon and equipment failures.²⁹⁹ Further, because industrial hog and dairy operations need to transport and store massive amounts of imported feed to produce animals in confinement facilities, these operations increase runoff from feed production, transportation, and storage.

As several studies demonstrate, manure runoff and discharges to surface waters have several adverse impacts on public health and ecological systems.³⁰⁰ For example, manure from

²⁹⁵ EPA, *Nutrient Pollution, The Issue* (last access Mar. 23, 2020), <https://www.epa.gov/nutrientpollution/issue>; EPA, LITERATURE REVIEW OF CONTAMINANTS IN LIVESTOCK & POULTRY MANURE & IMPLICATIONS FOR WATER QUALITY 1 (2013) (“The geographic concentration of livestock . . . can lead to concentrations of manure that may exceed the needs of the plants and the farmland where it was produced.”) [hereinafter CONTAMINANTS IN LIVESTOCK MANURE]; see also APHIS, DAIRY MGMT. PRACTICES, *supra* note 122, at 38 tbl.A.4.a (demonstrating that most large farms use spray irrigation or surface application systems, and large farms are far more likely to use subsurface injection and spray irrigation than small farms).

²⁹⁶ See, e.g., EPA, CONTAMINANTS IN LIVESTOCK MANURE, *supra* note 295, at 2 tbl.1-1 (summarizing the impacts of key pollutants from livestock operations and animal manure); FAO, SOIL POLLUTION: A HIDDEN REALITY 20–21 (2018).

²⁹⁷ CENT. VALLEY DAIRY REPRESENTATIVE MONITORING PROGRAM, SUMMARY REPRESENTATIVE MONITORING REPORT 10, 26 (Apr. 19, 2019).

²⁹⁸ See *supra* EPA, U.S. GHG INVENTORY, *supra* note 50, at A-348 tbl.A-190; S. COX, ET AL., U.S. GEOLOGICAL SURVEY, CONCENTRATIONS OF NUTRIENTS AT THE WATER TABLE BENEATH FORAGE FIELDS RECEIVING SEASONAL APPLICATIONS OF MANURE, WHATCOM COUNTY, WASHINGTON, AUTUMN 2011–SPRING 2015 (2018).

²⁹⁹ EPA, CONTAMINANTS IN LIVESTOCK MANURE, *supra* note 295, 22, 35, 72.

³⁰⁰ See CASE STUDIES ON CAFO GROUNDWATER IMPACT, *supra* note 65 (over-application of dairy lagoon effluent resulted in groundwater contamination by nitrate, as well as antibiotics, estrogens, and other stressors); S. Stackpoole, et al., *Variable Impacts of Contemporary Versus Legacy Agricultural Phosphorus On US River Water Quality*, 116 PNAS 20562 (2019); C. Long, et al., *Use of Manure Nutrients From Concentrated Animal Feeding Operations*, 44 J. GREAT LAKES RESEARCH 245 (2018) (CAFOs applied excess manure nutrients to cropland by over-estimating crop yields in calculating plant nutrient requirements in 67% of cases).

industrial hog and dairy operations can spread harmful contaminants, such as fecal bacteria and zoonotic pathogens, to local water sources, resulting in waterborne and foodborne disease outbreaks, antibiotic-resistant infections, and other adverse community impacts.³⁰¹ Moreover, runoff from manure applications can increase concentrations of heavy metals (from supplemented animal feed), which can harm beneficial soil organisms, impair plant metabolism, and decrease crop productivity.³⁰² Because heavy metals can persist and accumulate in living organisms, these metals also threaten the health and well-being of local residents and animals.³⁰³ Further, manure applications can increase concentrations of other highly persistent pollutants, such as veterinary antibiotic residues, which can lead to antimicrobial-resistant bacteria in soils.³⁰⁴

In addition, both manure disposal and feed production degrade local water quality by increasing the amount of oxygen-depleting nutrients in the environment.³⁰⁵ Nutrient loading contributes to oxygen depletion and excessive algae blooms in surface waters, which leads to degraded water quality, fish mortality, and other harmful ecological impacts.³⁰⁶ Moreover, algae blooms in recreational and drinking water sources can produce dangerous toxins.³⁰⁷ For example, cyanobacteria (commonly referred to as blue-green algae) multiplies or “blooms” when water is rich in nutrients from manure runoff or storage overflows, and a cyanobacterial algal bloom can produce cyanotoxins, which are harmful to people, aquatic life, and the environment.³⁰⁸

Industrial dairy and hog operations often generate more waste than the surrounding land can utilize for crop production because they confine animals in fully confined production facilities, which are concentrated in certain regions.³⁰⁹ In contrast, well-managed pasture-based systems evenly distribute manure on the land, and limit herd sizes to the amount of agricultural

³⁰¹ See *supra* notes 65 and 80; see also O. Alegbeleye, et al., *Manure-Borne Pathogens as an Important Source of Water Contamination*, 227 INT’L J. HYGIENE & ENVTL. HEALTH 113524 (2020).

³⁰² FAO, SOIL POLLUTION, *supra* note 296, at 16, 20.

³⁰³ *Id.*

³⁰⁴ *Id.* at 16, 34.

³⁰⁵ See S. Porter, et al., *Using a Spatially Explicit Approach to Assess the Contribution of Livestock Manure to Minnesota’s Agricultural Nitrogen Budget*, 10 AGRONOMY 480 (2020) (total amount of N from both commercial fertilizer and manure exceeded the N crop need in all rate scenarios).

³⁰⁶ EPA, CONTAMINANTS IN LIVESTOCK MANURE, *supra* note 295, at 47–48, 63.

³⁰⁷ *Id.* at 48 tbl.6-1 (summarizing types of harmful or nuisance inland algae, toxin production, and potential adverse impacts).

³⁰⁸ See *id.*; CDC, [Facts about Cyanobacterial Harmful Algal Blooms for Poison Center Professionals](#) (2018).

³⁰⁹ See, e.g., C. Heaney, et al., *supra* note 82; see also J. Powell, et al., *Measures of Nitrogen Use Efficiency & Nitrogen Loss from Dairy Production Systems*, 44 J. ENVTL. QUAL. 336 (2015) (“Dairy farms that import all grain and protein supplements have more than double the amount of manure N to manage per hectare (363 vs. 172 kg N ha⁻¹ of corn) and therefore incur much higher losses of NH₃ ha⁻¹ compared with farms that [do not import grain].”); K. Zirkle, et al., *Assessing the Relationship Between Groundwater Nitrate & Animal Feeding Operations in Iowa*, 566 SCI. TOTAL ENVIRONMENT 1062 (2016) (finding a significant relationship between the total number of animal feeding operations within 2 km of a well and groundwater nitrate concentration).

land available for optimum grazing and foraging.³¹⁰ By setting appropriate stocking rates and recovery periods, these systems avoid nutrient overloading and decrease the spread of harmful pollutants.³¹¹ Other benefits of pasture-based systems include improved soil conditions and nutrient cycling; improved drinking water quality and public health; and reduced or eliminated need for synthetic nitrogen or other agricultural input.³¹²

Community Benefits

Reducing GHG emissions from industrial hog and dairy operations will also reduce disproportionate concentrations of air and water pollution in rural communities. For instance, industrial dairy operations rely on corn silage cropping systems to both feed cows and absorb land-applied nitrogen, but such silage emits volatile organic compounds and generates more ozone than passenger vehicles in the San Joaquin Valley, one of the most ozone polluted air basins in the U.S.³¹³ Allowing cows to graze on pasture, instead of distributing corn silage to cows in confinement feeding systems, reduces these ozone-forming emissions.

As discussed above, pasture-based production also reduces harmful airborne gas and odor emissions from industrial hog and dairy confinement facilities and manure storage. Further, pasture-based systems reduce the overall amount and concentration of liquefied manure in polluted regions because pasture-based dairy and hog producers do not need to dispose excessive amounts of liquefied manure and wastewater onto nearby fields. As a result, pasture-based systems reduce the risk of runoff, soil degradation, and drinking water contamination. Additional

³¹⁰ See, e.g., C. Ziegler, et al., *Management Effects on Forage Productivity, Nutritive Value, & Legume Persistence in Rotationally Grazed Pastures*, 58 CROP SCIENCE 2657 (2018); E. Coffey, et al., *Effect of Stocking Rate & Animal Genotype on Dry Matter Intake, Milk Production, Body Weight, & Body Condition Score in Spring-Calving, Grass-Fed Dairy Cows*, 100 J. DAIRY SCI. 7556 (2017); see also J. Powell, et al., *Potential Use of Milk Urea Nitrogen to Abate Atmospheric Nitrogen Emissions from Wisconsin Dairy Farms*, 43 J. ENVTL. QUAL. 1169 (2014) (pasture-based dairy farms had the lowest N emissions due to direct deposition of urine in pasture, and farms that used tie-stall barns with daily hauling of manure had highest N emissions due to greater surface exposure of urine and continuous mixing of feces and urine by animals and scrapers during manure removal).

³¹¹ See, e.g., C. Rotz, et al., *An Environmental Assessment of Grass-Based Dairy Production*, 184 AGRIC. SYS. 102887 (2020) (“With less [nutrient] loss per unit of land [than confinement systems],” “grass-based dairy systems provide a benefit by reducing nitrogen and phosphorous losses from farms and potentially reducing pollution to downstream surface waters.”).

³¹² See NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 27; see, e.g., J. Doltra, et al., *Forage Management to Improve On-Farm Feed Production, Nitrogen Fluxes & Greenhouse Gas Emissions From Dairy Systems in a Wet Temperate Region*, 160 AGRIC. SYS. 70 (2018); S. Dahal, et al., *Strategic Grazing in Beef-Pastures for Improved Soil Health & Reduced Runoff-Nitrate*, 12 SUSTAINABILITY 558 (2020) (finding that strategic grazing systems have several positive ecosystem impacts, “including an increase in active carbon, consistent respiration rate, and cleaner runoff water a reduction in nitrate in runoff water”).

³¹³ C. Howard, et al., *Reactive Organic Gas Emissions from Livestock Feed Contribute Significantly to Ozone Production in Central California*, 44 ENVTL. SCI. TECH. 2309, 2309–14 (2010); J. Hu, et al., *Mobile Source & Livestock Feed Contributions to Regional Ozone Formation in Central California*, 46 ENVTL. SCI. & TECH. 2781 (2012); see also D. Gentner, et al., *Emissions of Organic Carbon & Methane From Petroleum & Dairy Operations in California’s San Joaquin Valley*, 14 ATMOS. CHEM. PHYS. 4955–78 (2014) (finding that dairy operations and petroleum operations were each responsible for 22% of anthropogenic non-methane organic carbon emissions, and 13% of potential anthropogenic ozone formation).

community health benefits include reduced exposure to airborne pathogens from manure disposal on nearby fields.

Agricultural Benefits

Reducing GHG emissions from industrial hog and dairy operations will increase climate resiliency and adaptive capacity in the U.S. hog and dairy sector. As discussed above, the expansion of highly concentrated and industrialized operations makes U.S. hog and dairy production more vulnerable to extreme weather events, power outages, and other climate change impacts.³¹⁴ Pasture-based systems are not only more resilient to climate change impacts, but they also mitigate the direct climate change risks to U.S. dairy and hog production, from heat waves to water shortages to new disease and insect threats.³¹⁵ Well-managed pasture-based systems can reduce the overall stress on hogs and dairy cows brought on through climate change.³¹⁶ Further, animals “engag[ing] in natural behaviors outside as opposed to being crowded together indoors tend to be healthier and need fewer antibiotics, which reduces production costs and the rate of antibiotic resistance in food-borne bacteria.”³¹⁷ In addition to reducing the GHG footprint of hog and dairy operations, pasture-based systems protect soil, air, and water quality, and increase resiliency in rural areas with the highest exposure and risk to climate change impacts.³¹⁸ All these benefits work together to make hog and dairy production systems more resilient to climate change impacts.

Thus, to achieve climate goals and co-benefits, EPA should calculate emission reduction standards based on the amount of reductions achievable through adoption of pasture-based systems. In doing so, EPA will significantly reduce fossil fuel consumption,³¹⁹ and overall GHG

³¹⁴ See *supra* notes 229 to 232; see, e.g., K. Martin, et al., *The Unknown Risks to Environmental Quality Posed by the Spatial Distribution & Abundance of Concentrated Animal Feeding Operations*, 642 SCI. TOTAL ENVIRONMENT 887 (2018) (increased storm intensity and longer dry periods due to climate change could exacerbate the environmental impacts CAFOs in Coastal Plain, a low-lying region vulnerable to flooding).

³¹⁵ See IPCC, CLIMATE CHANGE & LAND, *supra* note 42, at 5-48 and 5-100 (discussing the benefits of diversified production systems and agro-ecological approaches); J. Steiner, et al., *Vulnerability of Southern Plains Agriculture to Climate Change*, 146 CLIMATE CHANGE 201 (2018) (explaining how farms can improve adaptive capacity through enterprise adaptations emphasizing “adjustment of livestock herd size and composition to match forage supply with demand,” including integrated crop-livestock systems).

³¹⁶ NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 27.

³¹⁷ *Id.*; see also G. Amott, et al., *Review: Welfare of Dairy Cows in Continuously Housed & Pasture-Based Production Systems*, 11 ANIMAL 261, 261-73 (2017) (“cows on pasture-based systems had lower levels of lameness, hoof pathologies, hock lesions, mastitis, uterine disease and mortality compared with cows on continuously housed systems”); F. Grandl, et al., *Impact of Longevity on Greenhouse Gas Emissions & Profitability of Individual Dairy Cows Analysed with Different System Boundaries*, 13 ANIMAL 198 (2019) (“increasing the length of productive life of dairy cows is a viable way to reduce the climate impact [and] to improve profitability of dairy production”).

³¹⁸ NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 26; see also D. O’Brien, et al., *A Life Cycle Assessment of Seasonal Grass-based & Confinement Dairy Farms*, 107 AGRIC. SYS. 33 (2012) (confinement systems had a greater impact on global warming, eutrophication, acidification, land use, and non-renewable energy use than grass-based system per unit of milk and per on-farm area).

³¹⁹ See, e.g., E. Llanos, et al., *Energy & Economic Efficiency in Grazing Dairy Systems under Alternative Intensification Strategies*, 91 EUROPEAN J. AGRONOMY 133, 133-40 (2018) (“dairy farms with a higher proportion of pasture consumption . . . used less fossil energy per liter of milk”).

emissions from agricultural activities.³²⁰ EPA will also help make the U.S. agricultural sector more resilient to climate change impacts.³²¹

Implementation Costs

Pasture-based systems are economically viable and beneficial. Because pasture does not require costly infrastructure or equipment, farmers do not need to obtain large amounts of funding to build or maintain infrastructure (e.g., buildings or liquefied manure management systems, pipelines).³²² Nor do farmers need to enter into complicated funding and purchasing arrangements with government entities or private investors to remain profitable or economically viable.³²³

Adopting sustainable land management practices and technologies requires an average of \$500 per hectare (or approximately \$202.34 per acre) in upfront investments, and “[m]any sustainable land management technologies and practices are profitable within three to ten years.”³²⁴ Moreover, sustainable land management practices “can improve crop yields and the economic value of pasture”; “improve livelihood systems”; and “provide both short-term positive economic returns and longer-term benefits in terms of climate change adaptation and mitigation, biodiversity, and enhanced ecosystem functions and services.”³²⁵ In addition, “[n]ear-term change to balanced diets . . . can reduce the pressure on land and provide significant health co-benefits through improving nutrition.”³²⁶

³²⁰ See, e.g., Dutreuil, et al., *supra* note 272, at 5904–17 (“incorporation of grazing practices for lactating cows in the conventional farm led to a 27.6% decrease in total GHG emissions [-0.16 kg of CO₂ eq./kg of energy corrected milk]”).

³²¹ See, e.g., C. Rotz, et al., *Environmental Assessment of Grass-Based Dairy*, *supra* note 311, at 6 (“fossil energy use was much less for the all-grass production system than for the [confinement] system using grain supplementation, primarily due to the energy required to produce and transport grain”); B. Horan, et al., *Defining Resilience in Pasture-Based Dairy-Farm Systems in Temperate Regions*, 60 *ANIMAL PROD. SCI.* 55, 55–66 (2019) (explaining how resilient grazing systems minimize the need “for machinery and housing, and exposure to feed prices”).

³²² See, e.g., J. Hanson, et al., *Competitiveness of Management-Intensive Grazing Dairies in the mid-Atlantic Region from 1995 to 2009*, 96 *J. DAIRY SCI.* 1894, 1901 (2013) (“Management-intensive grazing operations require less equipment for crop production and smaller freestall areas in barns (because cows spend more of their time grazing in pasture) [than confinement systems.]”); see also *id.* at 1900 (“Because confinement operators had more crop equipment than [pasture-based] operators, their depreciation and maintenance costs were higher.”).

³²³ *Id.* at 1901 (“Lower upfront investment costs make [well-managed pasture-based systems] easier to finance and thus more accessible to new entrants lacking capital [than confinement systems.]”).

³²⁴ IPCC, *CLIMATE CHANGE & LAND*, *supra* note 42, at 40.

³²⁵ *Id.*

³²⁶ *Id.*

Further, pasture-based systems have several economic and environmental benefits for farmers and agricultural communities.³²⁷ For example, integrating perennial forage plants into corn and soybean fields is not only an effective method of improving biodiversity and reducing soil and groundwater contamination from manure land applications, but also one of the least expensive conservation practices available to farmers, with an average annual cost of \$60 to \$85 per treated hectare.³²⁸ In addition, by diversifying corn and soybean fields with perennial forage plants, farmers can reduce reliance on mineral fertilizer, pesticides, and fossil fuel energy; and improve crop yields, profitability, environmental quality, and weed and pest suppression.³²⁹

Pasture-based systems are more profitable and efficient than industrial, confinement-based systems “on a per hundredweight, per cow, and per acre basis, and no less profitable on a whole-farm basis.”³³⁰ Pasture-based systems also have lower operational expenses due to reduced hired labor and capital costs, as well as reduced veterinary, breeding, and medicine costs per cow.³³¹ In addition, pasture-based systems are less vulnerable to price declines and market instability than industrial operations because profits are more stable on pasture-based operations.³³² Further, because climate change will likely increase the cost of imported feed,³³³ pasture-based systems will be less vulnerable to climate-related impacts on feed production.

³²⁷ M. Liebman, et al., *Enhancing Agroecosystem Performance & Resilience Through Increased Diversification of Landscapes & Cropping Systems*, 3 *ELEMENTA SCI.* 41 (2015); A. Franzluebbers, et al., *Building Agricultural Resilience With Conservation Pasture-Crop Rotations in AGROECOSYSTEM DIVERSITY*, 109–121 (2019) (arguing that “integrating pastures and crops with other ecologically based practices leads to dramatic improvement in soil organic C and N contents and associated soil quality properties”); M. Sanderson, et al., *Diversification & Ecosystem Services For Conservation Agriculture: Outcomes From Pastures & Integrated Crop-Livestock Systems*, 28 *RENEWABLE AGRIC. & FOOD SYS.* 129 (2013); H. Asbjornsen, et al., *Targeting Perennial Vegetation in Agricultural Landscapes For Enhancing Ecosystem Services*, 29 *RENEWABLE AGRIC. & FOOD SYS.* 101 (2014).

³²⁸ J. Tyndall, et al., *Field-Level Financial Assessment of Contour Prairie Strips for Enhancement of Environmental Quality*, 52 *ENVTL. MGMT.* 736 (2013).

³²⁹ A. Davis, et al., *Increasing Cropping System Diversity Balances Productivity, Profitability & Environmental Health*, 7 *PLoS ONE* e47149 (2012).

³³⁰ J. Hanson, et al., *supra* note 322, at 1894; *see also* J. Gillespie, et al., *Pasture-Based versus Conventional Milk Production: Where Is the Profit?*, 46 *AGRIC. & APPLIED ECON.* 543, 554 (2014) (net return over total cost was approximately \$36,000 higher on pasture-based operations than matched conventional operations due to “higher gross value of milk production and lower operating expenses on pasture-based operations”).

³³¹ J. Hanson, et al., *supra* note 322, at 1894, 1898; J. Gillespie & R. Nehring, *supra* note 330, at 552 (“total feed cost was lower on pasture-based operations [than confinement operations] on both per-cow and total expense bases”); *see also* J. Hanson, et al., *supra* note 322, at 1899 (pasture-based operators “had higher cattle sales per cow than confinement operators” because “cows that are grazed have a longer productive life and [a lower] annual culling percentage for the herd”); *CTR. FOR INTEGRATED AGRIC. SYS., PASTURED HEIFERS GROW WELL & HAVE PRODUCTIVE FIRST LACTATION* (2013) (“heifers on managed pastures match the weights and age at first calving of their confined counterparts,” and “outperformed the confinement heifers in terms of average daily gain during the pasture season and milk production in their first lactation”).

³³² J. Hanson, et al., *supra* note 322, at 1900, 1901 (“Management-intensive grazing systems may also enhance the sustainability of small dairy operations by allowing entry of greater numbers of young farmers.”).

³³³ A. CRANE-DROESCH, ET AL., *ERS, USDA, CLIMATE CHANGE & AGRICULTURAL RISK MANAGEMENT INTO THE 21ST CENTURY* (2019) (“All climate scenarios considered suggest that climate change would lower domestic production of corn, soybeans, and wheat,” suggesting that “prices would be higher than they would otherwise.”).

Given these factors and benefits, pasture-based systems are the best system of emission reduction. Therefore, EPA should establish new source performance standards based on the methane reductions achievable with pasture-based dairy and hog production. EPA should also require states to do the same for existing sources within their borders by promulgating emission guidelines that identify pasture-based systems as the best system for reducing methane emissions from existing industrial dairy and hog sources.

2. Factory Farm Gas is a false solution.

The factory farm gas scheme – so-called biogas energy – recovers methane from anaerobic digestion of manure, produces dirty energy, and does not meet the best system of emission reduction. Industrial hog and dairy operations cannot achieve the maximum emission reduction with anaerobic digesters to produce biogas from decomposing liquefied manure.³³⁴ Biogas recovery would not reduce enteric emissions, provide for carbon sequestration in soil, and would not reduce nitrous oxide emissions from manure land application, among other forgone GHG emissions reductions. Industrial hog and dairy operations' continued use of liquefied manure management systems will have adverse and long-lasting environmental, economic, and public health impacts.

i. *Factory Farm Gas has no place in a clean energy economy.*

Corporate conglomerates with an ownership interest in the oil and gas industry, and their allied industrial hog and dairy operations, tout so-called biogas as a cleaner and more environmentally friendly source of energy than fossil fuel gas, and the solution to reducing emissions, achieving full electrification, and fighting climate change.³³⁵ These claims are not only false, but they are deliberately intended to safeguard the role of fossil gas in the transition from dirty fossil fuels (e.g., oil, coal, and natural gas) to clean zero-emission sources of energy (e.g., solar and wind). Some of the most vocal proponents of biogas are front groups for investor-owned utilities with an institutional interest in continuing the investment and use of fossil gas.³³⁶ As stated by a dairy executive on record with the Guardian, however, biogas is not a realistic replacement for fossil gas because it is “‘way too expensive’ to use in homes or businesses” and “doesn’t make all that much sense from an environmental standpoint.”³³⁷

So-called biogas as BSER will increase reliance on dirty energy, delay the transition to clean renewable energy, and hinder ongoing efforts to meet emission reduction targets. A standard based on smaller herd sizes and pasture-based management systems will not only

³³⁴ This section focuses exclusively on biogas produced from the anaerobic decomposition of waste on industrial hog and dairy operations. For convenience, the section refers to manure-to-biogas systems as “biogas.”

³³⁵ See, e.g., SOUTHERN CAL. GAS CO., *Biogas & Renewable Energy* (last accessed Mar. 11, 2020), <https://www.socalgas.com/smart-energy/renewable-gas/biogas-and-renewable-natural-gas>; DUKE ENERGY CORP., *Biogas: An Alternative Energy Source with a Bright Future* (last accessed Mar. 11, 2020), <https://www.duke-energy.com/our-company/environment/renewable-energy/biopower>.

³³⁶ See, e.g., S. Cagle, *U.S. Gas Utility Funds ‘Front’ Consumer Group To Fight Natural Gas Bans*, THE GUARDIAN (Jul. 26, 2019), <https://www.theguardian.com/us-news/2019/jul/26/us-natural-gas-ban-socalgas-berkeley>.

³³⁷ *Id.*

achieve more methane emission reductions, but it will also recognize additional GHG reductions and environmental benefits.

Factory Farm Gas increases dependence on dirty fossil fuels.

So-called biogas is not a clean alternative to fossil fuels because biogas supplies cannot meet energy demand for buildings and vehicles. For example, the amount of biomethane potentially available in California from all sources would only meet 3 percent of the state's demand for natural gas.³³⁸ Moreover, "[a]ssuming California could access up to its population-weighted share of the U.S. supply of sustainable waste-product biomass," biomethane "would not displace the necessary amount of building and industry fossil natural gas consumption to meet the state's long-term climate goals."³³⁹ Likewise, switching to biofuel would not meet long-term targets for heavy duty truck emissions.³⁴⁰

Thus, because biogas can only supply a small fraction of total fuel needs, biogas increases reliance on dirty fossil fuels and undermines long-term climate goals. As one recent study in California concluded, one of the most effective and cost-efficient strategies for reducing GHG emissions by 80 percent by 2050 is "building electrification, which reduces the use of gas in buildings," *not* biomethane.³⁴¹ In addition, "electrification across all sectors, including in buildings, leads to significant improvements in outdoor air quality and public health."³⁴²

³³⁸ CAL. ENERGY COMMISSION (CEC), INTEGRATED ENERGY POLICY REPORT UPDATE, VOL. II, at 42 (Aug. 1, 2018) (concluding that biogas "is limited and at best could meet only 0.6 percent to 4.1 percent of California's total gas consumption"); CEC, BUILDING A HEALTHIER & MORE ROBUST FUTURE: 2050 LOW-CARBON ENERGY SCENARIOS FOR CALIFORNIA 59 (2019) (finding that transitioning to biofuels will not sufficiently reduce emissions to meet 2050 targets); UNION OF CONCERNED SCIENTISTS, THE PROMISES & LIMITS OF BIOMETHANE AS A TRANSPORTATION FUEL 2-3 (2017) (noting that "[i]ncreasing the number of [biofuel] vehicles in California could ultimately increase the state's consumption of natural gas").

Several states have made similar findings. *See, e.g.*, WASH. STATE UNIV., PROMOTING RENEWABLE NATURAL GAS IN WASH. STATE 34 (2018) (finding that biomethane or biofuel could potentially meet 3 to 5 percent of current natural gas consumption in Washington); OREGON DEP'T OF ENERGY, 2017 BIOGAS & RENEWABLE NATURAL GAS INVENTORY (2018) (finding that biomethane or biofuel could potentially meet 10 to 20 percent of natural gas consumption in Oregon).

³³⁹ CEC, DEEP DECARBONIZATION IN A HIGH RENEWABLES FUTURE 33 (2018).

³⁴⁰ CEC, BUILDING A HEALTHIER & MORE ROBUST FUTURE, *supra* note 338, at 59.

³⁴¹ CEC, NATURAL GAS DISTRIBUTION IN CALIFORNIA'S LOW-CARBON FUTURE: TECH. OPTIONS, CUSTOMER COSTS & PUB. HEALTH BENEFITS iii (2019).

³⁴² *Id.*; *see also* B. Zhao, et al., *Air Quality & Health Cobenefits of Different Deep Decarbonization Pathways in California*, 53 ENVTL. SCI. TECH. 7163 (2019) (finding that "a technology pathway focusing on electrification and clean renewable energy results in four times more health cobenefits than a pathway featuring combustible renewable fuel application").

Moreover, several states and cities across the United States have already started to phase out fossil fuel-based natural gas.³⁴³

Factory Farm Gas requires substantial investment in stranded assets.

So-called biogas is not economically viable. Farm owners and operators need a tremendous amount of capital to develop, operate, and maintain anaerobic digesters. Typically, farms need approximately \$2 to \$6 million to build an anaerobic digester, depending on the volume of manure the digester will process and other factors (e.g., location).³⁴⁴ Because it is nearly impossible for most farms to generate enough revenue to cover upfront capital costs, farms must rely heavily on grants and public funds.³⁴⁵ These investment costs do not include the upfront cost of constructing or connecting to a pipeline, which requires additional public funding or financing from utility rate-payers.

This infrastructure is not only expensive to construct, but also expensive to maintain and operate.³⁴⁶ The profitability of the biogas system also depends on the ability to negotiate a contract or power purchase agreement with a utility company interested in purchasing the electricity output at a reasonable rate.³⁴⁷ Moreover, the revenue potential is limited because the expected lifetime of a digester system is only 10 years, excluding the individual components, which often require more frequent maintenance and replacement (e.g., engines).³⁴⁸

In the climate and energy scenarios to meet IPCC reduction goals, these capital investments will become stranded assets when the economy shifts to non-combustion building and transportation solutions. The California Public Utilities Commission (CPUC) has, as a result, recently opened a proceeding to manage the transition from gas as an energy source.³⁴⁹

³⁴³ See, e.g., CEC, INTEGRATED ENERGY REPORT, *supra* note 338, at 38–42 (describing California’s efforts to transition from natural gas); Lauren Sommer, *San Francisco Proposes Natural Gas Ban, Following Other Bay Area Cities*, KQED (Sep. 24, 2019), <https://www.kqed.org/science/1945656/trade-in-your-gas-stove-to-save-the-planet-berkeley-bans-natural-gas>; Rick Sobey, *Brookline Bans Natural Gas, Heating Oil Pipes for New Buildings*, BOSTON HERALD (Nov. 21, 2019), <https://www.bostonherald.com/2019/11/21/brookline-bans-natural-gas-heating-oil-pipes-for-new-buildings-gas-is-the-past>.

³⁴⁴ In 2019, the average cost for a publicly funded dairy digester project in California was \$5.4 million. CAL. DEP’T OF FOOD & AGRIC. (CDFA), 2019 DAIRY DIGESTER RES. & DEV. PROGRAM: APPLICATIONS; *see also*

³⁴⁵ *See id.* California offers dairies up to \$3 million per project, so long as the applicant contributes at least 50 percent of total project cost in matching funds, which can come from private investors or another government funding program. CDFA, 2019 DAIRY DIGESTER RES. & DEV. PROGRAM: REQUEST FOR APPLICATIONS 6 (Dec. 8, 2018).

³⁴⁶ See H. Lee & D. Sumner, *Dependence on Policy Revenue Poses Risks for Investments in Dairy Digesters*, 72 CAL. AGRIC. 226 (2018).

³⁴⁷ See EPA, AGSTAR, *Project Financing* (last accessed Mar. 11, 2020), <https://www.epa.gov/agstar/project-financing> (“A utility contract or power purchase agreement has a major influence on the profitability of a project.”).

³⁴⁸ See, e.g., PENN STATE UNIV. EXTENSION, *Agric. Anaerobic Digesters: Design & Operation* (Dec. 2016), <https://extension.psu.edu/agricultural-anaerobic-digesters-design-and-operation>.

³⁴⁹ CPUC, Order Instituting Rulemaking to Establish Policies, Processes, & Rules to Ensure Safe & Reliable Gas Systems in California and Perform Long-Term Gas System Planning (Jan. 27, 2020).

EPA should not base its performance standard on farms paying out-of-pocket or obtaining public funding for false solutions that perpetuate resource-intensive industrial animal agriculture systems, increase climate change risks, and require substantial infrastructure investments with significant risk.

Factory Farm Gas increases emissions from industrial hog and dairy operations.

Proponents of so-called biogas claim that biogas is a “clean” energy because it captures methane emissions from liquefied manure decomposition for electricity or transportation fuel. However, liquefied manure decomposition is not a necessary part of hog or dairy production, and industrial hog and dairy operations can avoid these emissions by adopting a pasture-based model of production.³⁵⁰ In other words, the industrial model is a production choice made by the operator and methane from liquefied manure does not reflect an inevitable waste product.

Instead of encouraging operators to eliminate or reduce emissions from liquefied manure management systems, biogas *increases* emissions from methane enteric emissions by incentivizing industrial hog and dairy operations to increase herd size to maximize methane production and cover the substantial cost of building and maintaining biogas infrastructure:

[R]ather than avoiding methane generation altogether, [digesters] can actually create incentives to generate methane from manure. The more methane that is produced then converted to electricity or biogas, the higher the revenue for the digester operator . . . Especially in light of the [significant] financial strains that digester investment can bring about, this is a potential perverse incentive³⁵¹

As this Petition documents above, the industrial model of dairy and hog production evolved from the pasture-based model and represents a management decision to liquefy manure while maximizing herd size. This makes the methane from liquefied manure at industrial dairy and hog operations intentionally produced and that which would not otherwise occur as waste methane. In such a situation, corresponding methane leaks from biogas systems are additional, negate the climate benefits of methane capture and destruction, and must be factored into EPA’s analysis.³⁵²

³⁵⁰ In pasture-based operations, manure management is only required when animals deposit manure in temporary or partial confinement areas, such as milking stations and walkways.

³⁵¹ CAL. CLIMATE & AGRIC. NETWORK, DIVERSIFIED STRATEGIES FOR REDUCING METHANE EMISSIONS FROM DAIRY OPERATIONS 3 (2015); see also M. Lauer et al., *Making Money from Waste: The Economic Viability of Producing Biogas & Biomethane in the Idaho Dairy Industry*, 222 APPLIED ENERGY 621 (2018) (“At least, 3000 cows per farm are needed for an economically feasible use of dairy manure for the production of biogas.”); Z. Debruyne, et al., *Increased Dairy Farm Methane Concentrations Linked to Anaerobic Digester in a Five-Year Study*, 49 J. ENVTL. QUAL. 509 (2020) (methane emissions from biogas facility increased over time due “an increased use of food waste feedstocks”).

³⁵² E. Grubert, *At Scale, Renewable Natural Gas Systems Could Be Climate Intensive: The Influence of Methane Feedstock & Leakage Rates*, 15 ENVTL. RES. LETTERS 084041 (2020).

Thus, biogas is not an effective emission reductions strategy because it encourages industrial operations to produce more manure as a biogas feedstock, which results in more GHGs and air pollutants in the atmosphere.

Factory Farm Gas increases emissions from electricity generation.

So-called biogas is dirty energy because generating electricity and heat from biogas increases emissions. To generate on-farm electricity, operators typically burn biogas with internal combustion engines, which emit significant criteria pollutants, including particulate matter, carbon monoxide, and sulfur dioxide.³⁵³ Biogas combustion also emits ozone-forming criteria pollutants (i.e., nitrogen oxides (NO_x)).³⁵⁴ In fact, twenty biogas systems using internal combustion engines would emit as much ozone-forming (smog) NO_x pollution as a modern natural gas-fired power plant, but generate only 4 percent of the electricity.³⁵⁵

Moreover, because some biogas producers are located in areas with existing air pollution problems, these emissions exacerbate pollution disparities and make local communities more vulnerable to climate change.³⁵⁶ Thus, using biogas for electricity generation contributes to rising GHGs and climate change risks by increasing carbon dioxide and other localized criteria pollutants in the atmosphere.

Factory Farm Gas facilitates emissions from natural gas.

The limited amount of so-called biogas inherently means that fossil gas use will continue to hinder the transition to zero carbon energy. When operators upgrade biogas to biomethane, they can inject it into natural gas pipelines because it has the same composition as fossil natural gas.³⁵⁷ As a result, there are no additional benefits to combusting biomethane mixed with natural gas. When the mixed gas is combusted as fuel, it enters the atmosphere as carbon dioxide, another greenhouse gas. Thus, the use of biomethane will perpetuate GHG emissions from fossil

³⁵³ CAL. STATE UNIV., FULLERTON, AIR QUALITY ISSUES RELATED TO USING BIOGAS FROM ANAEROBIC DIGESTION OF FOOD WASTE 1, 8–9 (2015).

³⁵⁴ M. KOSUSKO, ET AL., AIR QUALITY, CLIMATE & ECON. IMPACTS OF BIOGAS MGMT. TECHNOLOGIES 1 (2016).

³⁵⁵ Cal. Assembly Budget Subcomm. No. 3, Resources & Transportation, *Hearing Agenda*, at 17 (Apr. 19, 2017).

³⁵⁶ *Id.*; M. KOSUSKO, ET AL., *supra* note 354, at 1, 2 fig.2; CAL. AIR RES. BD. (CARB), ASSESSMENT OF THE EMISSIONS & ENERGY IMPACTS OF BIOMASS & BIOGAS USE IN CALIFORNIA 1, 81 (Feb. 2015) (“[B]iopower production could increase NO_x emissions by 10% in 2020, which would cause increases in ozone and PM concentrations in . . . areas . . . where ozone and PM concentrations exceed air quality standards constantly throughout the year”), 48–49, 100 (noting that “[i]ncreases in ozone . . . could seriously hinder the effort of air pollution control districts to attain ozone standards in areas like the Central Valley”).

³⁵⁷ N. WENTWORTH, A DISCUSSION ON THE FUTURE OF NATURAL GAS IN CALIFORNIA 3 (2018) (“For the case of [renewable natural gas or biomethane], methane is captured from sources that would typically emit the methane to the atmosphere and processes the methane into pipeline-quality natural gas to transport to the customer. Emissions from end-use combustion remain the same as do fugitive emissions from the in-state distribution of the gas.”).

natural gas combustion.³⁵⁸ Emissions reductions, not fuel substitution, must occur to meet GHG emissions reduction targets.

Further, when natural gas leaks before it reaches the end user, it enters the atmosphere as methane, a greenhouse gas far more potent than carbon dioxide. Therefore, methane leakage from production, transportation, storage, and distribution infrastructure will offset any emissions diverted by replacing oil and coal with natural gas derived from liquefied manure.³⁵⁹ Likewise, the construction and maintenance of biogas infrastructure can also produce significant GHG emissions, which further offsets any purported benefits to fuel-switching.

In sum, biogas conflicts with climate goals because it requires continued use of fossil fuels, delays the transition to zero-carbon electricity, and contributes to rising GHGs and localized air pollution. Therefore, any standard that promotes biogas will waste significant time and resources, and stymie ongoing efforts to achieve emission reduction targets and other environmental benefits with electrification and clean renewable energy.³⁶⁰ Unlike biogas, pasture-based systems do not prop up the continued combustion of fossil fuels. Thus, the best system of emissions reductions for methane emissions from industrial hog and dairy operations is pasture-based production systems.

ii. *Factory Farm Gas entrenches the industrial model of animal agriculture.*

In addition to conflicting with state and international goals to significantly reduce GHG emissions,³⁶¹ so-called biogas increases air and water pollution in communities with a disproportionately high pollution burden.

³⁵⁸ *Id.*; see also CEC, NATURAL GAS DISTRIBUTION IN CALIFORNIA, *supra* note 341 (noting that “the CO₂ emissions from burning . . . renewable gasoline and biomethane . . . would have occurred anyway as the biomass decayed”).

³⁵⁹ See R. Alvarez, et al., *Greater Focus Needed on Methane Leakage from Natural Gas Infrastructure*, 109 PNAS 6435, 6436–37 (2012) (switching gasoline with compressed natural gas or biofuel would not reduce climate impacts unless the leakage rate of natural gas infrastructure was under 1.6%); E. Grubert, *supra* note 352, at 1 (“methane leakage from biogas production and upgrading facilities . . . is [anticipated to be] in the 2%–4% range”); T. Flesch, et al., *Fugitive Methane Emissions From An Agricultural Biodigester*, 35 BIOMASS & BIOENERGY 3927 (2011) (“average fugitive emission rate [of manure digester] corresponded to 3.1% of the CH₄ gas production rate”); see also CEC, NATURAL GAS DISTRIBUTION IN CALIFORNIA, *supra* note 341, at 8 (“non-combustion greenhouse gas emissions must be reduced, including [emissions from] methane leakage,” to achieve reduction targets), 51 (“Remaining non-combustion GHG emissions include CO₂ released during the production of cement” and “nitrous oxide resulting from the application of fertilizer . . .”).

³⁶⁰ See *supra* note 343.

³⁶¹ See IPCC, GLOBAL WARMING OF 1.5°C, *supra* note 112; see also California’s [Executive Order S-3-05](#) (setting a target for 80% reduction in California’s GHG emissions by 2050); New York’s [Climate Leadership & Community Protection Act](#), Art. 75, Sec. 75-0107 (requiring 85% reduction in New York’s GHG emissions by 2050); Colorado’s [Climate Action Plan](#) (requiring 90% reduction in GHG emissions by 2050); New Mexico’s [Energy Transition Act](#) (requiring 100% reduction in GHG emissions by 2050); Press Release: [Governor Whitmer Announces Bold Action to Protect Public Health & Create Clean Energy Jobs by Making Michigan Carbon-Neutral by 2050](#) (Sep. 23, 2020); Sierra Club, [Map of U.S. Cities Committed to 100% Clean Energy](#).

Environmental & Public Health Impacts

So-called biogas increases methane emissions from enteric fermentation by incentivizing producers to increase the number of animals in confinement with low-quality diets.³⁶² Likewise, biogas dramatically increases ammonia emissions from liquefied manure management systems,³⁶³ which leads to increased odor, fine particulate matter, and other negative impacts (e.g., ecosystem change).³⁶⁴ Further, according to recent studies, biogas digestate storage emits significant amounts of volatile organic compounds, odorous pollutants, and hazardous air pollutants.³⁶⁵

By incentivizing increased manure generation and reliance on liquefied manure management systems, biogas also increases methane and nitrous oxide emissions from the subsequent disposal and land application of liquefied manure and wastewater on agricultural lands. In addition, biogas production increases the harmful soil and water impacts of nutrient loading and runoff by increasing the concentration of industrial dairy and hog operations in rural communities, and the amount of liquefied manure applied to nearby fields.³⁶⁶

Community Impacts

By incentivizing industrial dairy and hog operations to increase herd size and manure production, biogas threatens to exacerbate existing social and environmental inequities in communities with a high concentration of industrial hog and dairy operations.³⁶⁷ Biogas significantly increases the pollution burden in the communities surrounding industrial hog and dairy operations, which already suffer from disproportionately high environmental, and public

³⁶² According to several recent assessments, one of the most effective ways to reduce enteric methane emissions from hogs and dairy cows is to improve animal diets through high-quality forage feed, which is more nutritious and digestible than grain feed. See NSAC, AGRIC. & CLIMATE CHANGE, *supra* note 272, at 26 (explaining how changing the grain to forage ratio in dairy cows' diets can significantly reduce enteric methane emissions).

³⁶³ See M. Holly, et al., *Greenhouse Gas & Ammonia Emissions from Digested & Separated Dairy Manure During Storage & After Land Disposal*, 239 AGRIC., ECOSYSTEMS & ENVIRONMENT 410, 417 (2017) (manure processed in anaerobic digesters had 81% more ammonia emissions than other manure management systems, "meaning that if [anaerobic digestion] is implemented at all dairies in the U.S., this could result in an increase of 143 Gg [ammonia] emissions per year").

³⁶⁴ See *supra* notes 143 to 146.

³⁶⁵ Y. Zhang, et al., *Characterization of Volatile Organic Compound Emissions from Swine Manure Biogas Digestate Storage*, 10 ATMOSPHERE 411 (2019) (biogas digestate storage emitted 49 compounds of VOCs, including 22 hazardous air pollutants listed by EPA and other odorous compounds)

³⁶⁶ See, e.g., M. Lauer, et al., *supra* note 351 ("[A]naerobic digestion cannot prevent the negative impact of nitrogen contamination imposed by concentrated livestock farming on water systems . . ."); CARB, EVALUATION OF DAIRY MANURE MANAGEMENT PRACTICES FOR GHG EMISSIONS MITIGATION IN CALIFORNIA 70-71 (2016); see also C. Liu, et al., *Temporal Effects of Repeated Application of Biogas Slurry on Soil Antibiotic Resistance Genes & Their Potential Bacterial Hosts*, 258 ENVTL. POLLUTION 113652 (2020).

³⁶⁷ See *supra* notes 64 (disproportionate impacts of industrial dairy operations), 83 (industrial hog operations), and 184 (climate change); see also J. Lenhardt, et al., *Environmental Injustice in the Spatial Distribution of CAFOs in Ohio*, 6 ENVTL. JUSTICE 133 (2013) ("[B]lack and Hispanic populations, as well as households with relatively low incomes, are disproportionately exposed to CAFOs [in Ohio.]").

health risks and socioeconomic vulnerabilities, because biogas combustion emits large amounts of localized air pollutants.³⁶⁸ In addition, by enabling industrial hog and dairy operations to continue to rely on confinement production and liquefied manure management systems, such operations will continue to pose the greatest threat to local residents, wildlife, and natural resources.³⁶⁹ Surrounding communities will also continue to suffer disproportionate economic and physical harm due to odors, pathogens, and other intolerable nuisance conditions caused by liquefied manure management and land application.³⁷⁰ Thus, biogas production entrenches a highly polluting model of dairy and hog production with disparate impacts on frontline and vulnerable communities. And biogas production increasingly relies on the revenue from “offsets” or pollution trading scheme credits sold to entities that continue to emit GHGs and co-pollutants (e.g. an oil refinery, power plant, cement plant), which results in continued or increased pollution in often majority Black, Latino, or other communities. When pollution trading provides revenues for biogas operators, then communities on both sides of the transaction can suffer.

In sum, any standard that purports to reduce methane with biogas technology will not only increase emissions and endanger public health and welfare, but also entrench the use of manure lagoons and other industrialized animal production systems. Moreover, this technology does not address other problems associated with industrialized animal agriculture, including water pollution and the public health impacts of air pollution from these industrial operations on surrounding communities.

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³⁶⁸ See *supra* notes 353 and 356; see also CARB, BIOGAS IMPACT REPORT, *supra* note 356, at 1 (describing how “biopower production” will increase air pollution “in large areas of the Central Valley where ozone and PM concentrations exceed air quality standards constantly throughout the year”); 100 (“Increases in ozone are localized around the biopower facilities and downwind areas,” and “could seriously hinder the effort of air pollution control districts to attain ozone standards in areas like the Central Valley . . .”).

³⁶⁹ See *supra* Part IV.B.

³⁷⁰ See *supra* note 367; see also S. Wing, et al., *Odors from Sewage Sludge & Livestock: Associations with Self-Reported Health*, 129 PUBLIC HEALTH REPORTS 505 (2014) (residents near manure application sites have reduced quality of life due to excessive pests and odors).

CONCLUSION

EPA must add industrial dairy and hog operations to its list of categories of stationary sources under section 111 of the Clean Air Act because these source categories satisfy the requisite standard. Accordingly, within one year of listing industrial dairy and hog operations, EPA must initiate a rulemaking to implement standards of performance and emission guidelines to reduce methane emissions from new and existing sources within these sources categories. Further, EPA will be able to fulfill its statutory responsibility to promulgate such standards based on pasture-based dairy and hog farms as the Best System of Emissions Reduction.

Date: April 6, 2021

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Subject: LGA Airport Access Improvement Project Purpose and Objectives and
Analysis of Alternatives Report - Draft Final dated July 30, 2018

Reviewer/Organization: FAA

Comment No.	Section	Page	Reviewer Comments	Response
1	ALP	1 and 2	Proposed ALP drawing does not depict actual preferred alignment of AirTrain on off-airport property between the airport boundary and proposed Willets Point Station, though alignment is actually depicted on Figure 2-23 of the Alternatives Analysis Report. Lacking depiction of the final preferred alternative, an unconditional approval of the ALP concurrent with the NEPA EIS decision would not be possible. Any subsequent ALP review and approval process could cause impacts and delays to the overall project schedule.	
2	Global		In general, screening criteria are not uniformly applied to the alternatives. Operational service changes create arguments against alternatives being carried forward but are not acknowledged in reference to the preferred alternative. Constructability issues are made to be insurmountable for certain alternatives, yet the same issues for the preferred alternative (transitioning across major interchanges) seem to be glossed over. Please see specific examples that follow.	
3	Global		Many points of discussion relating to the Sponsor's Preferred Alternative seem to be informed by preliminary design (duration of closures of LIRR or the 7 train for example). Please provide any preliminary design documentation that has been prepared to the FAA for consideration and review. As we have stated previously, our standard for proceeding with an EIS is to have design advanced to the point that it informs the impact analysis. Any gaps in design information will need to be accommodated by a potential consultant selected to assist in EIS preparation, which will add additional scope and time to the process.	
4	1.3.1.2	1-3	Discussion of LGA slots should indicate what the current slot limit is as it provides helpful context.	

Comment No.	Section	Page	Reviewer Comments	Response
5	1.3.2	1-4	Please define acronym SBS in discussion of Q70 SBS service. Discussion of New York AirPorter service triggers the question of how AirTrain would truly be considered in ridership options when the competing car services offer door to door service.	
6	1.3.3	1-6	Refer to separate LGA Ground Access Survey comments relating to the source of data used in Tables 1-1, 1-2, 1-3, and 1-4.	
7	1.3.4	1-8	Text refers to 1500 parking spaces at LGA for employees, yet each alternative only considers accommodating a parking lot of 500 spaces off airport. Why is the discrepancy between the two so large? How was 500 determined to be the appropriate level of off airport parking?	
8	1.4	1-9	Reference is made to Gov. Cuomo's 2015 Airport Advisory Panel report's recommendations for projects. Through the panel recommended ferry service and a hotel, neither of those is discussed here.	
9	1.4.1 and General		This section and elsewhere in the document describes a "major redevelopment" of LGA and cites to the recommendations of Governor Cuomo's advisory panel. This type of description raises concerns about segmentation and compels a thorough discussion of cumulative impacts from past and future actions, and inclusion of any connected actions. Though the text indicates that each recommendation addressed distinct aspirations, each with its own purpose, functionality, and timeframe, this sentiment is not reflected in the report to the Governor that is cited here and throughout the document. Please indicate why this project is being targeted to initiate construction on an aggressive schedule if each recommendation is subject to its own timeframe.	

Comment No.	Section	Page	Reviewer Comments	Response
10	1.4.1	1-10	<p>The status of the consolidated rental car facility and hotel mentioned in the text must be more thoroughly explained. The status of future projects should be detailed and provided. If projects yet to be funded or approved are not to be considered as part of the project, then this information would be needed to inform a thorough and robust cumulative impacts assessment within the EIS. .</p> <p>The link to the report provided in Footnote 13 doesn't work.</p>	
11	1.4.2	1-11	<p>Is there cross-over between the "major obstacles" in the LASA Study and the new proposal? If so, how does this new proposal address the major obstacles that came up in the LASA study?</p>	
12	1.4.2	1-12	<p>The rationale for excluding the Ferry Service at this time but holding it as an option for future transit consideration does not follow. This study is for access improvement. If it doesn't meet the purpose and need for access improvement now, then it shouldn't in the future. Consideration of it in the future must re-evaluate all of the options similarly dismissed in this analysis based on new criteria that would make it viable.</p>	
13	1.5	1-12	<p>The first criteria of the Purpose and Need is for convenient access to New York City. Seeing as the airport is located in New York City itself, I would presume this is intended to refer to Manhattan rather than the entirety of New York City. If this is the case, then it should state that convenient access to Manhattan is the goal.</p>	
14	1.5.2	1-14	<p>How much have speed limits impacted the slower travel MPH and higher travel times? NYC Mayor lowered speed limit on city surface streets in 2014, within the timeframe that data is being pulled from for this report.</p>	

Comment No.	Section	Page	Reviewer Comments	Response
15	1.5.2	1-15	<p>FAA's comments on the referenced LGA Ground Access Mode Choice study still hold and have not been formally responded to. Please consider all of those comments relevant to this study's use in this report.</p> <p>The last paragraph also establishes a fundamental issue with how travel time data is treated throughout the analysis. The 30 minute standard assumes that a passenger is starting at the Penn Station or GCT train platform and the train is present. It does not account for transit time to the train platform or the wait time at the originating platform in determining whether or not the trip meets the 30 minute travel time. Yet other modes of transportation (car, bus, ferry) are found to not meet the 30 minute travel standard while accounting for the time to reach the mode from the point of origin. It contributes to uneven application of screening criteria across modes. A 36-minute door-to-door car ride may actually be quicker than a 28 minute train ride when the time to travel from the door to the station platform is factored in.</p>	
16	1.5.2	1-16	Table 1-6 indicates no change to transit/AirTrain combined travel time from 2025 to 2045. However, no mention is made as to how Subway/LIRR will address increased ridership/population growth in region and its impact on transit service reliability.	
17	1.5.2	1-17	Uncertainty of automobile travel times is described, but no mention is made of uncertainty of transit travel times.	

Comment No.	Section	Page	Reviewer Comments	Response
18	1.5.4	1-18	<p>The second paragraph identifies the need to relocate employee parking in order to increase airside space. This raises the question, what aeronautical uses are planned for the current employee parking areas? The requirement for providing off-airport employee parking is cited as project objective #5 and used to eliminate several alternatives which fail to provide it. If additional aeronautical needs would require use of the existing Parking Lot P-10 and/or other employee lots, the proposed development in those areas should be evaluated as part of this EIS to the extent practicable, or otherwise be included in a cumulative impacts analysis. The last sentence of that paragraph states, "a long term solution for Airport employee parking is a major component of the LGA Redevelopment Program." As such, any factors driving the need to relocate employee parking must be considered as part of this environmental review.</p> <p>The third paragraph starts mid sentence.</p>	
19	1.6	1-19	Where is basis for 30 minute travel time from Penn or GCT to LGA established?	
20	2.2.1	2-1 and 2-2	Discussion of alternatives analysis process should be limited to how it relates to Port's objectives only. There should be no discussion of the alternatives screening process that the FAA will conduct in the EIS here or anywhere in this document.	
21	2.3.1	2-4	Objective 1 – predictable travel time between midtown and LGA. How do you define predictable?	
22	2.3.1	2-4	<p>Objective 1 – How was 30 minute travel time established as the baseline?</p> <p>Globally: Current capacity and reliability issues with NYCT and MTA/LIRR transit systems do not appear to be addressed within the report, but these systems will be relied upon to meet the 30 min travel time from LGA to GCT.</p>	

Comment No.	Section	Page	Reviewer Comments	Response
23	2.3.1	2-4	<p>Objective 6 – This objective provides a link between the proposed development and other future actions. If the design of either this project or a future project is influenced by the other, then it should be accounted for within the same analysis</p> <p>The status of the future projects should be detailed and provided. If projects yet to be funded or approved are not to be considered as part of the project, then this information would be needed to inform a thorough and robust cumulative impacts assessment within the EIS.</p>	
24	2.3.1	2-4	<p>Objective 7 – Not precluding future service to Terminal A is an objective. The entirety of the service should be analyzed to the extent practicable within the forthcoming EIS. Assumptions should be made regarding the future service to Terminal A, especially since challenges that would need to be addressed to accommodate such service are used as rationale for dismissing other alternatives within this document.</p>	
25	2.3.1	2-4	<p>Objective 8 – Minimization of community impacts is something that should be considered throughout the impact analysis, but it should not be used as a criteria for screening alternatives from consideration for impact analysis. The decision regarding the preferred alternative should be made following informed disclosure of impacts from various alternatives. Using minimization of impacts to screen out alternatives leads to arbitrary and unevenly applied criteria that are not fully informed by the full range of impacts associated with each alternative. It also only allows one alternative to possibly meet the criteria since the goal is minimization of impact.</p>	

Comment No.	Section	Page	Reviewer Comments	Response
26	2.3.2	General	There is inconsistent use of employee parking (objective 5) as a screening criterion in this section. For example, TSM, TDM, and Use of Other Airports are excluded in part because they would not meet Objective 5. However, an exclusive roadway for buses and ferry service would also not meet objective 5, yet that objective was not cited as a reason for not advancing those projects.	
27	2.3.2.3	2-7	The discussion on TDM seems to focus on reducing employee vehicle access to the airport. Employee vehicle trips represent a much smaller number than passenger vehicle trips. Please provide additional explanation on if/how TDM could be used to reduce passenger vehicle trips.	
28	2.3.2.5	2-8	Off airport roadway expansion alternative doesn't consider the full extent of the expansion required as it is limited by congestion issues in Manhattan.	
29	2.3.2.7	2-9	Although reasons were given why the Ferry Service alternative was not selected for further consideration, the Governor's 2015 Airport Advisory Panel did include future Ferry Service in its recommendations. How would that proposed service fit into the analysis of all potential transportation options considered here for LGA?	
30	2.3.2.7	2-9	The NYCEDC study concluded that ferry service <i>would</i> be reliable and convenient. If this alternative is going to reach a different conclusion it should explain why it is refuting NYCEDC study.	
31	2.3.2.7	2-9	If this analysis does not seek to refute the NYCEDC study, consider advancing the ferry alternative to Level 2 screening. This approach would make it more defensible to propose a project to introduce ferry service in the future.	

Comment No.	Section	Page	Reviewer Comments	Response
32	2.3.2.8	2-10	<p>Rail or Subway Extensions – In reference to the LASA study, MTA concluded that existing and planned transit network did not have sufficient capacity to accommodate additional service to provide peak hour service to LGA. Although the AirTrain would be separate from the MTA's existing transit modes (NYC Subway and LIRR) how would those modes provide sufficient capacity to reach the AirTrain?</p> <p>Is the LASA Study available to the public? Discussion of how this alternative meets Objectives 5 and 6 is missing from the text.</p>	
33	2.3.2.9	2-11	<p>Fixed Guideway – It states that the fixed guideway alternative would be independent of the existing MTA subway and rail systems. From an infrastructure standpoint, that may be true, but it would be dependent on both of those systems to provide sufficient capacity and frequency to deliver passengers to the off airport fixed guideway terminal station.</p> <p>In that respect, how many trains would be operated, how frequently will they arrive and depart from on-airport/off-airport stations?</p> <p>Based on the text, it appears that Rail or Subway Extensions would be better at achieving Objectives 1, 2, and 3 than Fixed Guideway. There is no summation of degree to which each alternative meets the required objectives.</p>	
34	2.3.3	2-13	<p>Table 2-1. For alternatives such as the Ferry Service, listed as "Not considered as a standalone alternative. May be implemented as a separate initiative." How will these be addressed from a NEPA cumulative impacts analysis perspective?</p>	

Comment No.	Section	Page	Reviewer Comments	Response
35	2.4.1	2-14	<p>Level 2 Evaluation Criteria – Why were the evaluation criteria limited to these 4 criteria? There are numerous other NEPA resource categories. Is there a reason no other potential impact categories were included in the screening of alternatives?</p> <p>Additionally, the criteria should be clearly defined and applied uniformly to each of the development alternatives.</p>	
36	2.4.1	2-14	<p>Discussion of constructability factor indicates that some design work on each has been completed in order to determine minimization of impacts to existing infrastructure and construction techniques. Please provide any design work for our consideration.</p> <p>Additionally, discussion of problematic site conditions triggers questions with regard to any geotechnical boring that may have been done to support design for each alternative. Please share the results of any such work as well.</p>	
37	2.4.1	2-15	<p>FAA's NEPA process is intended to ensure consideration and disclosure of community impacts. There is no substantive requirement to avoid community impacts. Therefore, the sponsor must articulate its own reason seeking to avoid community impacts rather than citing to FAA's NEPA guidance.</p>	
38	2.4.2	2-15	<p>Describe how the three proposed alignments were selected and why other alternatives were excluded.</p>	
39	2.4.2	2-15	<p>All of the Rail/Subway Alternatives focus exclusively on extending the N/W Astoria Subway line to LGA. Why was no rail alternative considered that would have spurred LIRR via its junction with the NY Connecting Railroad just to the west of St. Michael's cemetery and only a mile from airport property?</p>	

Comment No.	Section	Page	Reviewer Comments	Response
40	2.4.2	General	The evaluation of alternative section for each rail or subway extension alternative raises issues that would also apply to the sponsor's preferred alternative, yet are not addressed with regard to the fixed guideway from Willets Point. For example, under operations, each subway alternative mentions the need to adjust N and W line service. Adjustments would also need to be made to LIRR service at Willets, especially with regard to hitting the 30 minute transit time criteria (Objective 1) and improving travel options criteria (Objective 3) as well as the overall goal of the Purpose and Need to provide predictable and reliable service. Additionally, constructability obstacles for subway and rail extensions would also be present for the preferred alternative, especially with regard to not precluding future service to terminal A (Objective 7). How are these factors addressed for the sponsor's proposed alternative?	
41	2.4.2.3	2-22	For all elevated track alignments, are there estimates for how many footings would need to be installed to support either an AirTrain or NYCT extension?	
42	2.4.2.4.1	2-25	Discussion of tunneling options should explain why tunnel routes would need to follow streets and not establish a more direct path to the destination.	
43	2.4.2.4.2	2-28	Vent plants and tunnels can be designed so that they fit the character of the neighborhood.	
44	2.4.3	2-28	Is six miles from LGA a criteria or it just happened that all of the sites considered were located within six miles? If it is a criteria explain why. Additionally, why were only five locations considered as connections for the fixed guideway? How were these locations determined? What criteria were used to develop this list? Why was Junction Boulevard (an express stop on the 7 line) excluded?	
45	2.4.3	Figure 2-6	The map should show the other subway and LIRR stops not considered for connections to the fixed guideway.	

Comment No.	Section	Page	Reviewer Comments	Response
46	2.4.3.1.1	2-29	Transit time to Astoria is shown as 15-20 minutes. Text on 2-16 says transit time to Astoria-Ditmars (the next stop) is 22-25 minutes. That seems like a big gap in transit times between stops.	
47	2.4.3.1.2	2-32	Under operations, this should acknowledge modifications to the N and W service, as would be required for the subway and rail extensions. Additionally, the repetitive discussion of the Hell Gate railroad trestle as a restriction on so many development alternatives indicates that this structure should be shown on the maps depicting each alternative alignment.	
48	2.4.3.2.1	2-33	Discussion of transit time to Woodside should indicate that the 16 minute subway ride is express service and also show what the time is for a local train.	
49	2.4.3.2.2	2-35	Evaluation of Woodside leaves out the critical point that the LIRR station here serves almost every branch of the LIRR whereas the Willets Point LIRR station only serves the Port Washington branch. Additionally, failure to meet Objective 8 should not be the sole basis for discontinuing consideration of an alternative. This applies to each proposed alignment eliminated for this reason.	
50	2.4.3.4.2	2-41	Based on other comments regarding application of 30 minute transit time, as well as lack of rationale for 30 minutes as the standard, a Fixed Guideway from Jamaica should not be screened out for failure to meet 30 minute transit time alone. Based on the text, it is unclear that the sponsors preferred alternative will reliably meet the 30 minute travel time standard without service adjustments to the LIRR.	
51	2.4.3.5	2-42	Fixed Guideway Willets Point Alternative – It states that currently LIRR service is limited to only Mets home games/US Open Tennis Tournament, but no discussion of how additional LIRR service would be added to accommodate servicing the new AirTrain terminus.	

Comment No.	Section	Page	Reviewer Comments	Response
52	2.4.3.5.1	2-42	<p>There isn't a figure outlining the Willets Point Fixed Guideway Alternative like there was for each of the others. Is this because there are several alignment options within this alternative?</p> <p>Also, discussion indicates that travel time via the 7 train is 24-28 minutes to Willets Point. Combined with the estimated transit time to LGA and the walk from the 7 station to the AirTrain Station, as well as average wait time for an AirTrain, transit to Willets Point via subway would appear to not meet the 30 minute travel time standard of Objective 1. Additionally, service via LIRR is currently so intermittent as to not reliably meet the 30 minute transit time as well. How would LIRR service change to meet this objective? What changes to LIRR operation, equipment, or infrastructure would be needed to support the operational changes needed?</p>	
53	2.4.3.5.2	2-43	<p>There is no discussion of operational changes that are needed to support this alternative. See other comments regarding this issue throughout this comment set.</p>	
54	2.4.3.5.2	2-44	<p>Under Community Impacts, it states that the alignment would be within transportation right of way and parking lots. The proposed ALP revision for this alignment appears to impact parkland as well, including the World's Fair Marina promenade. This should be identified in the description of the community impacts. It is mentioned under 2.4.3.5.3 for the Above-Grade Alignment Option, but should be included here as well.</p> <p>It is premature to state that an alignment from Willets Point to LGA would not result in substantial construction or permanent impacts to residential neighborhoods.</p>	
55	2.4.3.5.3	2-46	<p>All of the constructability issues identified for the below-grade alignment option would apply to an eventual extension of service to terminal A for the preferred alternative in accordance with Objective 7.</p>	

Comment No.	Section	Page	Reviewer Comments	Response
56	2.4.3.5.3	2-47	Similar constructability issues for the above grade option with regard to crossing major interchanges were raised regarding other alternatives, yet seem to be minimized here.	
57	2.4.3.5.4	2-54	In the discussion of Segment 3, how would the design of the previously approved terminals be influenced by the AirTrain? Similarly, how would the AirTrain design be influenced by the terminals?	
58	2.4.3.5.4	2-55	Figure 2-19 depicts Alternative 4 as the Sponsor's preferred alternative, however no explanation or rationale is given within the text of this section as to how this decision was reached. Reference must be made to the later sections that explain the preferred alternative decision rationale or move this figure to that section of the document.	
59	2.4.4.1.2	2-56	Terminal A extension is second development action that is not included but could be considered in the future. The forthcoming EIS should consider all future action subject to NEPA simultaneously. This should include development discussed in the Governor's Report from 2015. Any action yet to be funded or approved and not considered as part of the project, would inform a thorough and robust cumulative impacts assessment within the EIS.	
60	2.4.6.2.1	2-59	Is the South Field Lot East Site only used for Mets games overflow? It looks nearly at capacity in Figure 2-22 without a game going on.	
61	2.5	2-60	The statement regarding the NY State legislation allowing property acquisition for a specific alignment (Alternative 4) appears to indicate that this alignment was pre-determined to be the chosen alignment prior to the EIS process thereby potentially limiting the range of possible alternatives.	
62	2.6	2-62	Table 2-2, For Alternatives 2 and 4 (Segment 1, Roosevelt Ave.), it states there will be no anticipated disruption of LIRR service. However, the ALP drawing depicts vertical circulation from LIRR, which would appear to imply construction of elevator/escalators from LIRR platforms. It would appear that this could potentially impact service during construction.	

3/29/2019

Comment No.	Section	Page	Reviewer Comments	Response
63	2.6	2-62	Table 2-2, For Alternatives 1 and 2 (Segment 2, GCP Median.), it states there the GCP must be shifted 8ft to the southward to accommodate AirTrain guideway. Why couldn't the GCP be shifted 8ft northward away from residences toward the Promenade, thereby helping to minimize impacts to residents?	

14 of 14



LEAGUE *of* UNITED LATIN
AMERICAN CITIZENS

Civil Rights Violation Regarding Forced Medication

WHEREAS, the League of United Latin American Citizens is this nation's oldest and largest Latino organization, founded in Corpus Christi, Texas on February 17, 1929; and

WHEREAS, LULAC throughout its history has committed itself to the principles that Latinos have equal access to opportunities in employment, education, housing and healthcare; and

WHEREAS, LULAC advocates for the well-being of, but not exclusively of, Hispanics throughout our country; and

WHEREAS, safe drinking water is a necessity for life; and

WHEREAS, the purpose of a public water supply is to supply water to the entire community which is composed of people with varying health conditions, in varying stages of life, and of varying economic status; not to forcibly mass medicate the population which is a civil rights violation; and

WHEREAS, fluoridation is mass medication of the public through the public water supply; and

WHEREAS, current science shows that fluoridation chemicals pose increased risk to sensitive subpopulations, including infants, the elderly, diabetics, kidney patients, and people with poor nutritional status; and

WHEREAS, minority communities are more highly impacted by fluorides as they historically experience more diabetes and kidney disease; and

WHEREAS, minorities are disproportionately harmed by fluorides as documented by increased rates of dental fluorosis (disfiguration and discoloration of the teeth); and

WHEREAS, the National Research Council in 2006 established that there are large gaps in the research on fluoride's effects on the whole body; a fact that contradicts previous assurances made by public health officials and by elected officials, that fluorides and fluoridation have been exhaustively researched; and

WHEREAS, a growing number of cities and health professionals have rejected fluoridation based on current science and the recognition of a person's right to choose what goes into his/her body; and

WHEREAS, the CDC now recommends that non-fluoridated water be used for infant formula (if parents want to avoid dental fluorosis – a permanent mottling and staining of teeth), which creates an economic hardship for large numbers of families, minority and otherwise; and

WHEREAS, the League of United Latin American Citizens (LULAC), founded in 1929, has historically been a champion of the disenfranchised and a leader in the fight for social and environmental justice; and

WHEREAS, City Council Districts I-6 of San Antonio (predominantly minority districts) voted overwhelmingly that the public water supply should not be contaminated with fluoridation chemicals; and

WHEREAS, the election to fluoridate the water, essentially disenfranchised the right of these minority Districts to safe drinking water for all; and

WHEREAS, the U.S. Health and Human Services and the EPA (January 2011) have recently affirmed the NRC Study results that citizens may be ingesting too much fluoride and that the exposure is primarily from drinking water; and

WHEREAS, the proponents of fluoridation promised a safe and effective dental health additive, but the San Antonio Water System's (SAWS) contract for fluoridation chemicals proves a "bait and switch"; as SAWS is adding the toxic waste by-product of the phosphate fertilizer industry, that has no warranty for its safety and effectiveness for any purpose from the supplier (PENCCO, Inc.) or the source (Mosaic Chemical); and

THEREFORE, BE IT RESOLVED, that LULAC commends efforts by organizations that oppose forced mass medication of the public drinking supplies using fluorides that are industrial grade, toxic waste by-products which contain contaminants (arsenic, lead, mercury) which further endanger life; and

BE IT FURTHER RESOLVED, that LULAC supports efforts by all citizens working to stop forced medication through the public water system because it violates civil rights; and

BE IT FURTHER RESOLVED, that LULAC opposes the public policy of fluoridation because it fails to meet legislative intent; and

BE IT FURTHER RESOLVED, that LULAC demands to know why government agencies entrusted with protecting the public health are more protective of the policy of fluoridation than they are of public health.

Approved this 1st day of July 2011.

Margaret Moran
LULAC National President



Southeast

Crescent Regional
Commission Coalition

CRITERIA FOR FEDERAL CO-CHAIR TO THE SOUTHEAST CRESCENT REGIONAL COMMISSION

March 29, 2021

President Joseph Biden
Office of the President
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden:

In November 2020, the Southeast Crescent Regional Commission Coalition along with community and economic development signatories from around the southeast region signed a letter to your Transition Team asking that they recommend you appoint an interim co-chair to the Southeast Crescent Regional Commission.

Our consortium of public, private, academic, policy, advocacy, community and economic development professional are now writing to respectfully recommend that you consider these criteria as you seek potential candidates for federal **co-chair to lead the Southeast Crescent Regional Commission**.

The Southeast Crescent Regional Commission Coalition circulated a poll in the region to inquire about recommendations for the federal co-chair role. We believe the successful candidates should:

- Have a clearly articulated working knowledge of the historical, political, and social challenges and opportunities of the region



SOUTHEAST CRESCENT REGIONAL COMMISSION CRESCENT COALITION

- Be skilled in economic development strategies including innovative ways to invest in persistent poverty communities and people
- Have the ability to navigate the relationships between federal, state, local government as well as community, people, and organizations
- Have the ability to build strong, productive coalitions across public, private, and community sectors
- Have experience working in the southeast region of the US
- Have experience in executive management of complex operations

We have received dozens of submissions from around the region. The names on the attached list represent some of those that community and economic development leaders believe have developed a sound analysis on the region and have the experience to set the tone for commitment to comprehensive community and economic development, particularly in historically distressed areas.

We hope you will consider those names, but more importantly that you will adopt the aforementioned criteria when deciding to **appoint a federal co-chair to the Southeast Crescent Regional Commission.**

Sincerely,



Ava Gabrielle-Wise
Southeast Crescent Regional Commission Coalition



SOUTHEAST CRESCENT REGIONAL COMMISSION CRESCENT COALITION



March 26, 2021

Via Email

Karen L. Martin, Environmental Protection Agency
White House Environmental Justice Advisory Council
Email: whejac@epa.gov

Re: WHEJAC March 30, 2021 Meeting Public Comments

Dear Ms. Martin and Members of the White House Environmental Justice Advisory Council,

We are providing these comments to the White House Environmental Justice Advisory Council ("WHEJAC") to advise the White House Council on Environmental Quality (CEQ) on how CEQ should increase the Federal Government's efforts to address current and historic environmental injustices and develop environmental justice strategies to help federal agencies address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. We write in the interest of our Nation's youth and posterity to inform the WHEJAC to advise CEQ to align its strategies with protecting the fundamental constitutional rights of children, such as children within environmental justice communities, including communities of color, low-income communities, and indigenous communities. These communities have contributed the least to emissions and have long suffered from systemic environmental racism and social and economic injustices. The social and physical scientific experts are clear that if you focus your efforts on protecting children within environmental justice communities, the entire community reaps the benefits; whereas protecting adults alone will not serve to protect children.

Children are uniquely vulnerable to human-caused climate change and other forms of environmental pollution because of their developing bodies, higher exposure to air, food, and water per unit body weight, unique behavior patterns, dependence on caregivers, and longevity on the planet.¹ Young people are often on the frontlines of human rights abuses, experiencing the most severe impacts of bigotry, oppression, and violence, sometimes in their own homes and often at the hands of adults in positions of power who do not act in the best interest of children. They are also inevitably at the forefront of the movements that emerge to address these issues, as we saw in the Child Labor Law Movement, the Civil Rights Movement, and today the Water is Life, Fight For our Lives, Black Lives Matter and Climate Justice Movements, to name a few. As such, children's rights and well-being must dictate the environmental justice strategies implemented by the Biden-Harris administration.

Congressional support of children's rights and the *Juliana* case is clear as demonstrated by the Children's Fundamental Rights & Climate Recovery resolution, cosponsored by 63 members of Congress (S. Con. Res. 47 & H. Con. Res. 119), and by two congressional amicus briefs filed in the Ninth Circuit in support of the case. Twenty-four members signed onto the March 2020 amicus brief. There is a renewed opportunity for the Biden-Harris administration to secure a lasting climate legacy and join Congress in protecting the rights of our Nation's children.

¹ Samantha Ahdoot, Susan Pacheco & Council on Environmental Health, *Global Climate Change and Children's Health*, 136 *Pediatrics* e1468 (2015); RP Philipsborn & K Chan, *Climate Change and Global Child Health*, 141 *Pediatrics* e20173774 (2018); PE Sheffield & PJ Landrigan, *Global Climate Change and Children's Health: Threats and Strategies for Prevention*, 119 *Envtl. Health Persp.* 291 (2011).

www.ourchildrenstrust.org

We seek to emphasize this point by sharing some of the stories from the 21 young Americans, including 11 Black, Brown, and Indigenous youth who filed their constitutional climate change lawsuit, *Juliana v. United States*, against the executive branch of the U.S. government in 2015. They assert that the U.S. national energy system, which is dominated by the use of fossil fuels, is violating their constitutional rights to life, liberty, property, equal protection of the law, which includes a climate system capable of sustaining human life, and access to essential public trust resources.

Juliana Plaintiff Jaime B. is 20 years old and is a Diné (Navajo) person of Window Rock, Arizona. Jaime is of the Tangle People Clan, born for the Bitter Water Clan, with her maternal grandfathers of the Red House Clan, and paternal grandfathers of the Towering House Clan. She grew up in Cameron, Arizona on the Navajo Nation Reservation. In 2011, due to extreme heat, extended drought, and a scarcity of potable water, Jamie's cultural homeland became uninhabitable. Jaime and her family were forced to flee and resettle to the urban center of Flagstaff. Their home had no running water, and to find drinking water for her family, as well as the goats and sheep, Jaime and her family traveled to a distant spring and filled 50-gallon drums. Jaime and her extended family on the Reservation recall times when there was enough water on the Reservation for agriculture and farm animals, but now the springs they once depended on year-round are drying up. Jaime and her mother were no longer able to live sustainably in Cameron because of the high financial cost of hauling water into Cameron for their use and for their farm animals. As a member of the Navajo nation, Jaime has a profound cultural and spiritual connection to the land on which she was raised, and that on which her ancestors have lived for generations. Jaime is concerned that her extended family, who still live on the Reservation, will also be displaced from their traditional lands, which would erode her culture and entire way of life. While on the Reservation, Jaime and her family were forced to stop farming. Although they had dryland farmed and used drought resistant corn, which relied solely on the water from winter snowmelt, the dry topsoil was too deep to find damp earth, up to 12 inches in most areas. Jaime does not know of anyone who farms anymore on the Reservation. Jaime and her family engaged in subsistence farming, and they used to raise livestock, grow corn, tomatoes, and squashes in Cameron. They did not have to buy food from the grocery store; however, now, everything they eat is from the grocery store and most of the food is processed or canned. The increasing temperatures on the Reservation where Jaime still lives in the summers are unlivable and she is trapped indoors. In addition to the severe climate harms Jaime and her people have already suffered resulting from burning fossil fuels, they are also severely disadvantaged in terms of having access to the energy produced by the nation's energy system. Many on the reservation are without consistent access to electricity and running water.

Juliana Plaintiff Aji Piper has explained in testimony to Congress, at the very first U.S. House Select Committee on Climate Crisis, that as a young black man, he has grown up with the long-lasting consequences of unconstitutional discrimination from government-sanctioned and engineered segregation. His childhood was shadowed by trauma from an abusive father. The trajectory of his father's life was formed in part by generational trauma of unlawful discrimination. Generations of black families have lived with the lasting legacy of government-sponsored racial discrimination, not just in the South, but in places like Seattle, where white suburbs formed out of federal government policies with restrictive covenants on housing developments and federally-guaranteed loans to homeowners that only whites could take advantage of. Cities across the country are segregated because of these federal policies that were finally declared unconstitutional after World War II by the Supreme Court, and that the legislative branch attempted to redress decades later in the Fair Housing Act of 1968. But the damage had been done and the legacy of that unconstitutional government conduct remains today in the color and shape of our communities, the makeup of our schools, the voting districts, and the disparity in those who were able to acquire home equity and wealth and those who were not. Unconstitutional systemic government actions have long-lasting social consequences. Innocent children inherit those legacies. In his congressional testimony in April 2019, Aji recognized that young people often experience the worst impacts of environmental pollution:

Climate change is no different. My generation, and generations to come, have the most to lose from the sweeping impacts of climate change. As a result, youth throughout the world have taken the lead in the movement to address this existential threat. Just last month, over a million students the world over walked out of class to demand urgent and sane climate action from the adults in charge. The entrenched federal government policies of orchestrating, promoting, supporting, subsidizing, sanctioning, and permitting a fossil fuel energy system will perpetrate as long-lasting harm on generations of innocent children as did this body's legal sanctioning and promotion of segregation. When government sanctions and controls a system that unconstitutionally deprives children of their basic fundamental rights to life, liberty and property, that system must be dismantled, and it is up to all three branches of this federal government to act now while there is still time to uphold the rights of my generation, to stop the perpetuation of intergenerational injustice.

Juliana Plaintiff Vic Barrett is a first-generation Garifuna-American. His people are an afro-indigenous community originally from the island of St. Vincent in the Caribbean. In the 18th and 19th centuries, they were pushed from their homeland on St. Vincent by British colonial power, settling on the eastern coast of Central America in Honduras and Belize. Despite overwhelming adversity, they organized their community and emancipated themselves to protect their future as a people. The struggle continues for Vic and his people because as temperatures increase, sea levels rise, storms become more intense and frequent, and the coral reefs and fisheries upon which they depend disappear, their future is uncertain. Once again, they are being pushed from the lands they call home. The ocean-front land that his family has inhabited for generations and that he is supposed to inherit, will be underwater if the U.S. federal government continues to promote a fossil fuel-based energy system. Vic has directly experienced the consequences of climate change. Growing up in New York, he was impacted by the climate change-fueled Hurricane Sandy, which left his family and his school without power for days. He still experiences grave anxiety about experiencing another climate-driven disaster like Superstorm Sandy, and the harm that these storms will have on himself and his family.

These stories constitute just a small sample of what American children are experiencing due to the climate crisis the federal government continues to exacerbate by and through its national energy system. We represent the youth of America from all communities on the climate crisis, and we respectfully request your attention on the needs of children to ensure that your environmental justice strategies are protective of children and the communities where they live.

Sincerely,
/s/

Andrea Rodgers
Senior Litigation Attorney

Liz Lee
Government Affairs Attorney

Our Children's Trust

Our Children's Trust is the world's only nonprofit public interest law firm that provides strategic, campaign-based legal services to youth from diverse backgrounds to secure their legal rights to a safe climate, including the 21 youth plaintiffs in Juliana v. United States.

John F. Mueller, Jr.

5255 S. Irvington Pl., Tulsa, OK 74135
jfmjr66@gmail.com 918-237-5296 (mobile)

I am a retired, licensed civil engineer with more than 25 years in public works, mostly water supply and water and wastewater treatment. I am commenting today to strongly urge the participants and the powers-that-be to do two things: First, accept the fact that community water fluoridation (CWF) is a little known yet most egregious example of environmental *injustice*; I refer to the League of United Latin American Citizens (LULAC) published resolution, in July of 2011, titled "Civil Rights Violation Regarding Forced Medication." (A pdf copy is being attached to an email with supplemental materials.) Among the multiple Whereases in that resolution, I quote the following few for context:

"WHEREAS, fluoridation is mass medication of the public through the public water supply; and
WHEREAS, minority communities are more highly impacted by fluorides as they historically experience more diabetes and kidney disease; and
WHEREAS, minorities are disproportionately harmed by fluorides as documented by increased rates of dental fluorosis (disfiguration and discoloration of the teeth)."

And again I quote:

"THEREFORE, BE IT RESOLVED, that LULAC commends efforts by organizations that oppose forced mass medication of the public drinking supplies using fluorides that are industrial grade, toxic waste by-products which contain contaminants (arsenic, lead, mercury) which further endanger life; and
BE IT FURTHER RESOLVED, that LULAC supports efforts by all citizens working to stop forced medication through the public water system because it violates civil rights."

Number 2- I ask the White House Environmental Justice Advisory Council (WHEJAC) to recommend an immediate moratorium on fluoridation until safe levels of exposure are determined by a proper Risk Assessment. I understand the recommendation would be made to the Council of Environmental Quality (CEQ), to the White House Environmental Justice Interagency Council (EJIAC), and to associated partnering agencies in the Department of Health and Human Services, now under the most welcome leadership of Secretary Xavier Becerra, sworn in just last Friday, I've read.

An immediate suspension of adding fluoridation chemicals to the public water supply would be a most tangible and meaningful effort by the Federal Government to address environmental injustice, while reducing water infrastructure corrosive damage and utility expenses. Granted, the optics of such a move and published in the Federal Register would attract responses ranging a full spectrum from apathy to widespread acclaim, from shock to bewilderment, and to utter disdain and harsh criticism. So be it. Thank you for this opportunity to comment.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EPA – PAL – VI-001/2019

PETITION FOR RECONSIDERATION,
REOPENING OR REVOCATION OF EPA
PLANTWIDE APPLICABILITY LIMIT
PERMIT NO. VI-001/2019 FOR
LIMETREE BAY TERMINALS, LLC AND
LIMETREE BAY REFINING

PETITION FOR RECONSIDERATION
AND REVERSAL OF RESCISSION OF
EPA REACTIVATION POLICY

February 1, 2021

Respectfully Submitted by the St. Croix Environmental Association, Natural Resources Defense Council, Center for Biological Diversity, Sierra Club, and Elizabeth Neville.

On December 1, 2020, acting on behalf of the Trump Administration Environmental Protection Agency (“EPA”), former Administrator Andrew Wheeler issued¹ a Clean Air Act Plantwide Applicability Limit (“PAL”) Permit, No. VI-001/2019 (“Permit”)², to Limetree Bay Terminals, LLC and Limetree Bay Refining (collectively, “Limetree”), on St. Croix in the U.S. Virgin Islands. The Trump Administration PAL Permit authorizes Limetree to reactivate oil refining activity at one of the ten largest refineries in the world (the “Refinery”), after it shut down in 2012 in the face of significant financial and environmental problems.

The former Administrator’s decision also abruptly rescinded the Agency’s 42-year-old Reactivation Policy, which effectively served to speed up permitting of a long-shutdown oil refinery, without any obligation to install Best Available Control Technology nor conduct air quality impact analyses. This permitting decision violates the Clean Air Act, the Administrative Procedure Act, and the Endangered Species Act. It contravenes sound environmental policy, protection of the health of the people of the Virgin Islands, its air quality, water quality and endangered species, and a nearby national wildlife refuge. The Permit’s issuance further runs afoul of Executive Order 12898: Environmental Justice;³ Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency;⁴ Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis;⁵ Executive Order on Tackling the Climate Crisis at Home and Abroad;⁶ and Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking (Jan. 27, 2021). EPA’s issuance of the Permit is based on clearly erroneous findings of fact and conclusions of law. The former Administrator’s actions warrant reconsideration.

The St. Croix Environmental Association (“SEA”), Natural Resources Defense Council (“NRDC”), Center for Biological Diversity (“CBD”), Sierra Club, and Elizabeth Neville (collectively, “Petitioners”) respectfully petition EPA and the Acting Administrator to reconsider, remand, reopen or (preferably) revoke the Permit pursuant to 40 C.F.R. 124.19(j), Sections 165 and 307(b) of the Clean Air Act, 42 U.S.C. §§ 7475 and 7607(b); the Administrative Procedure Act (APA), 5 U.S.C. §§ 555(b) and 558(c); and the First Amendment to the U.S. Constitution, in order to correct significant deficiencies with the permit and the process to issue it. An Executive Summary of this Petition follows, then a Summary of Requested Actions and Relief, followed by the Petition content identifying the facts, legal arguments and policy grounds supporting Petitioners’ request that EPA reconsider this Trump Administration permitting decision and policy rescission.

¹ Former EPA Administrator Andrew Wheeler issued the Permit on Dec. 2, 2020. This is unusual because typically the relevant EPA Region – Region 2 here – would issue the permit.

² Final PAL Permit for Limetree Bay Terminals, EPA – PAL -VI-001/2019 (Dec. 1, 2020), Doc. ID. No. EPA-R02-OAR-2019-0551-0162 (“Final PAL Permit”).

³ Exec. Order 12,898, *Federal Actions to Address Environmental in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7,629 (Feb. 16, 1994) (“Exec. Order 12,898”).

⁴ Exec. Order 13,166, *Improving Access to Services for Persons with Limited English Proficiency*, 65 Fed. Reg. 50,121 (Aug. 16, 2000) (“Exec. Order 13,166”).

⁵ Exec. Order 13,990, 86 Fed. Reg. 7,037 (Jan. 20, 2021) (“Exec. Order 13,990”).

⁶ Exec. Order 14,008, 86 Fed. Reg. 7,619 (Jan. 20, 2021) (“Exec. Order 14,008”).

EXECUTIVE SUMMARY OF FACTS

This case represents an unconscionable abuse by the Trump Administration to favor fossil fuel companies, political donors, investors, and expediency in fulfilling their priorities, at the expense of a community with acute environmental justice needs; public health and concern for cancer risks; clean air and clean water; concern for climate change; endangered species; protection of a cherished national wildlife refuge; and the rule of law.

The permit authorizes the long-shuttered Limetree oil refinery to reactivate refining operations at one of the ten largest oil refineries in the world, under excessively high emissions caps for dangerous air pollutants based on inflated caps keyed to the Refinery's emission levels between 2009 and late 2010, when the facility operated at extremely high levels — processing around 525,000 barrels of oil per day in 2010.

EPA's own environmental justice analysis found the community surrounding the Refinery to be "burdened by several complex environmental challenges nearby," including the St. Croix Renaissance Industrial park that was recently reported to cause health issues due to irritants from Red Mud and odor complaints from sources in the area that resulted in the closing of nearby schools, fires from the Anguilla landfill, proximity to a wastewater treatment plant, noise and traffic issues associated with the nearby Henry E. Rohlsen Airport, and emissions from large ships docked at its coast.⁷ The industrialized nature of South Central St. Croix in the vicinity of the Limetree facility stands in contrast to the rest of the Island of St. Croix and even more broadly, the rest of the U.S. Virgin Islands, which is not as industrialized.

EPA is aware that the area around the Refinery has "high risk vulnerability."⁸ Census data estimates that the population is 75% minority,⁹ with an estimated 26.9% of the population surrounding the refinery living below the poverty line.¹⁰ A 2015 report by EPA's air office found that during this time, the Refinery had the single highest cancer Maximum Individual Risk of all.¹¹

⁷ U. S. EPA Region 2, Final Environmental Justice Analysis for Limetree Bay Terminal and Refining (Limetree) PAL Permit St. Croix, U.S. Virgin Islands, pg. 2, September 19, 2019, available at https://www.eenews.net/assets/2019/11/15/document_gw_01.pdf ("Final EJ Analysis").

⁸ *Id.*, at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See U.S. EPA Office of Air Quality Planning and Standards, Final Residual Risk Assessment for the Petroleum Refining Source Sector (Sept. 2015), at 6, at 51, Appendix 5, Doc. ID. No. EPA-HQ-OAR-2010-0682-0800; see also <https://www.epa.gov/stationary-sources-air-pollution/comprehensive-data-collected-petroleum-refining-sector> (Comprehensive Data Collected from the Petroleum Refining Sector) ("FRRRA for the Petroleum Refining Source Sector").

In 2011, the Refinery, then owned by Hovensa, violated the Clean Air Act (“CAA”) by making emissions-increasing modifications without first obtaining required Clean Air Act pre-construction permits and installing required pollution control devices. EPA required the Refinery owners to pay a \$5.3 million civil penalty and spend \$700 million on new pollution controls. The Refinery remains subject to that federal Consent Decree. The following year, Hovensa shuttered the refinery after accumulating losses of \$1.3 billion dollars over three years and announced they would operate as an oil storage facility only.¹²

Four years later, in December 2015, the Refinery was sold to Limetree, whose parent company, ArcLight Capital, said it planned to operate the facility as an oil terminal, rather than a refinery. ArcLight’s founder and managing partner is a major campaign donor to Republican candidates and like-minded political groups, and accompanied President Trump on a trade mission to China in November, 2017,¹³ where the president sought to broker billions of dollars in deals with a Chinese oil and gas giant, Sinopec, which owns and operates a portion of the Refinery’s oil storage terminal on St. Croix.¹⁴

Internal EPA emails, obtained through the Freedom of Information Act (“FOIA”), reveal that in August, 2018, then-Administrator Andrew Wheeler directed the Agency’s Office of Policy and Office of Federal Activities to “lead in the coordination of the Limetree matter,” to help them “resume operations.”¹⁵ The EPA project manager appointed by Wheeler reported that he told Limetree representatives, their attorneys, and “primary financiers (ARCLIGHT)” that he would “serve as their front door and switchboard operator for anything they need from EPA.”¹⁶ The FOIA documents reveal that EPA “[e]stablished a routine of bi-weekly meetings with [Limetree] and their lead counsel.”¹⁷ Topics discussed included Limetree’s “27 requests for modification” to its Consent Decree with EPA and the Department of Justice.¹⁸

Limetree submitted its application for a PAL permit on November 27, 2018. An internal EPA email noted that declaring the permit application complete “before the end of the calendar year was critical to [Limetree] as it allowed for inclusion of 2009 emission data in the ten-year baseline.”¹⁹ This referred to Limetree’s application requesting highly inflated emissions caps in a PAL permit, for the PAL’s crucial “baseline emissions,” which would produce the highest possible emissions caps.

¹² Limetree Reactivation Fact Documents Post-Wehrum Letter, Doc. ID. No. EPA-R02-OAR-2019-0551-0238 (Dec. 2, 2020) (“Reactivation Facts Document”).

¹³ Corbin Hiar, “Trump admin provides ‘customer’ service to troubled refinery,” E&E News (Nov. 21, 2019), available at <https://www.eenews.net/stories/1061609813> (“EE News Article”).

¹⁴ See Jennifer Jacobs & Justin Sink, *Trump’s China Trip to Broker Billions of Dollars in Energy Deals*, Bloomberg (Oct. 2017) <https://www.bloomberg.com/news/articles/2017-10-27/trump-china-trip-to-broker-multibillion-dollar-u-s-energy-deals> (“Bloomberg Article”).

¹⁵ FOIA Documents provided to Petitioners, attached as Exhibit 2, at 15.

¹⁶ *Id.*, at 14.

¹⁷ *Id.*, at 12.

¹⁸ *Id.*, at 12.

¹⁹ *Id.*, at 5.

On November 30, 2018, Limetree announced it had “closed a \$1.25 billion financing to (sic) restart its refinery” on St. Croix.²⁰ In record time for a permit of this complexity, on December 28, 2018, EPA Region II rushed out a “completeness determination” letter for the Limetree PAL permit application, while simultaneously indicating that the determination did “not constitute a finding that EPA has all of the information necessary for completing its review....,” and explicitly noting that an environmental justice analysis had yet to be done.

EPA Region II ordinarily handles this type of permitting in the U.S. Virgin Islands. In a highly unusual intervention, however, former EPA Administrator, Andrew Wheeler, signed and issued the Final PAL Permit to Limetree on December 1, 2020. Shedding light on then-Administrator Wheeler’s intervention and the Trump Administration’s motivation to rush out the Limetree PAL Permit, a January 26, 2021 news article observed that “[a]chieving full operation is required for Limetree Bay owners’ EIG Global Energy Partners and Arclight Capital Partners to retain a crude supply and product offtake contract with BP Plc. Full startup has been delayed a year and the project has run more than \$1 billion over budget.” BP “warned delays past mid-January would allow it to exercise a clause in its contract and exit the agreement to supply crude oil and market the resulting fuels.”²¹

Although Limetree is planning to produce up to 200,000 barrels of oil per day,²² the Trump Administration’s PAL Permit includes seven massively inflated emissions caps based upon the refinery’s historic production of over 500,000 barrels of oil per day. The permit acknowledges that the company could “relax[] previously enforceable [emissions] limitations,” and was “seek[ing] to eliminate restrictions currently contained in two of [the Refinery’s]” Clean Air Act PSD permits.²³ Similarly, the Agency acknowledged that Limetree’s emissions could result in violations of both the SO₂ and PM_{2.5} NAAQS [National Ambient Air Quality Standards, and the Trump Administration’s Environmental Justice modeling failed to mention public health impacts or propose sufficient mitigation measures.²⁴

Lastly, the EPA Response to Comments Document (“RTC”) for the Final Permit announced abruptly that the Trump Administration was withdrawing EPA’s 42 year-old

²⁰ *Limetree Bay Ventures Closes \$1.25 Billion Financing to Restart Its Refinery in St. Croix*, <https://www.limetreebayenergy.com/limetree-bay-ventures-closes-1-25-billion-financing-to-restart-its-refinery-in-st-croix/> (“Limetree Financing Article”).

²¹ *Limetree Bay oil refinery begins producing transportation fuel*, *Hydrocarbon Processing*, <https://www.hydrocarbonprocessing.com/news/2021/01/limetree-bay-oil-refinery-begins-producing-transportation-fuel>.

²² *Limetree Bay: About Us*, available at [https://www.limetreebayenergy.com/about-us/#:~:text=The%20refinery%20will%20be%20capable.Petroleum%20\(BP\)%20since%202016](https://www.limetreebayenergy.com/about-us/#:~:text=The%20refinery%20will%20be%20capable.Petroleum%20(BP)%20since%202016) (“Limetree Bay: About Us”).

²³ U. S. EPA, Region 2, Response to Comments on the Clean Air Act Plantwide Applicability Limit Permit for the Limetree Bay Terminal and Limetree Bay Refining St. Croix, U.S. Virgin Islands, at 63, Nov. 2020, available at https://www.epa.gov/sites/production/files/2020-12/documents/response_to_comments-limetree_pal_permit.pdf (“RTC”).

²⁴ *Id.*, at 60.

Reactivation Policy for ensuring PSD permits for reactivation of permanently shutdown sources and units.²⁵ The RTC declared EPA had not applied the Reactivation Policy to Limetree. Petitioners and the public were denied any fair notice of this decision or opportunity to comment on it, prior to this sudden rescission of the longstanding policy and EPA's decision to do so during issuance of the Limetree PAL Permit.

Since receiving its Final Permit less than two months ago, the Refinery has experienced an upset incident for which it evacuated employees,²⁶ and a fire.²⁷ Despite the open period for appeals to the Environmental Appeals Board, Limetree has resumed operations to begin producing transportation fuels,²⁸ prior to the Final PAL Permit becoming effective.

²⁵ *Id.*, RTC at 106-113.

²⁶ *Gas and Steam Engulf Sky Over Limetree Bay, Company Says it was 'Minor Refinery Upset'*, The Virgin Islands Consortium (Dec. 8, 2020), <https://viconsortium.com/vi-community-center/virgin-islands-gas-engulfs-skies-over-limetree-bay-company-says-it-was-minor-refinery-upset> ("Minor Refinery Upset").

²⁷ *Limetree Bay Remains Mum on Thursday Fire at Facility*, The Virgin Islands Consortium (Dec. 28, 2020), <https://viconsortium.com/vi-business/virgin-islands-limetree-bay-remains-mum-on-thursday-fire-at-facility-> ("Fire at Facility").

²⁸ Laura Sanicola, *Limetree Bay oil refinery begins producing transportation fuel –sources*, Reuters (Jan. 25, 2021), <https://www.reuters.com/article/refinery-restart-limetree-idUSL1N2K0175> ("Reuters Article").

SUMMARY OF REQUESTED RELIEF AND ACTIONS

- The EPA should reconsider, then remand, reopen or revoke the Limetree PAL Permit.
- The EPA should submit an *amicus* brief or other filing to the EPA Environmental Appeals Board, asking the Board to remand the PAL Permit to the Agency for reconsideration, reopening and/or revocation. The EPA should agree there are clear errors of law and facts underlying the PAL Permit issued by the Trump Administration.
- The EPA should treat the reactivation of the Limetree Refinery as a new source or major modifications to an existing source, for purposes of PSD preconstruction permitting.
- The EPA should not approve any PAL Permit for the Limetree Refinery, due to its history of substantial Clean Air Act violations, excessive cancer risks, and the grossly inflated, harmful emissions limits that would correspond with operation prior to the Refinery's 2012 shutdown.
- The EPA should conduct environmental justice modeling of all adverse health and environmental impacts related to reactivation of the Limetree Refinery and issuance of the PAL Permit, after the Trump Administration failed to conduct adequate modeling.
- The EPA should conduct an environmental justice audit of the Agency programs and offices involved in issuance of the Limetree PAL Permit, and prepare a report for the public addressing whether those activities are consistent with all environmental justice executive orders and presidential memoranda.
- The EPA should release to the public all internal EPA communications and external communications concerning the Limetree PAL Permit application and Final Permit, all activities leading up to Agency action on those documents, and any other issues within EPA's jurisdiction related to reactivation of the Limetree Refinery.
- The EPA should work with the Federal Land Manager for the National Park Service to assess and address any adverse impacts related to visibility and Air Quality Related Values at the nearby Virgin Islands National Park and Hassel Island.
- The EPA Office of Inspector General should investigate the circumstances surrounding issuance of the PAL Permit and any abuse and misconduct that had an adverse effect on EPA programs and operations, including but not limited to those involving protection of public health and air quality, environmental justice, enforcement, endangered species, protection of Air Quality Related Values in Class I areas, insofar as the Limetree PAL permit and related issues are concerned. The OIG also should evaluate the EPA programs and activities implicated in the Limetree PAL Permit to determine whether those activities supported clean air, clear water, cleaner communities, environmental justice, and concern for dangerous climate change.
- The EPA should investigate any and all compliance issues related to the Limetree Refinery's restart prior to final Agency action on the PAL Permit, as reported in recent news accounts. Final Agency action does not occur until after administrative review procedures are exhausted; until EPA Region II issues a final permit decision; and until notice of the Agency's final action with respect to this permit is published in the Federal Register. None of these three things has happened.
- The EPA should investigate any other potential compliance issues related to the Limetree Refinery, such as the "compliance issues" with the hazardous air pollution standards for marine tank vessel loading operations identified in internal EPA emails.

- The EPA should investigate any improprieties and harm to public health, air quality, water quality and environmental justice communities in St. Croix arising out of any modifications to the Refinery's Consent Decree by the Trump Administration.
- If the EPA does propose to approve a future PAL Permit for the Limetree Refinery, the Agency should (1) only do so after subjecting all reactivated emissions units to Best Available Control technology, and the source to adequate analyses of impacts to air quality and Air Quality Related Values in Class I areas; (2) not allow baseline emissions to be based upon operational and emissions levels that are unrepresentative of the Refinery's current planned production; (3) subtract from all PAL levels the emissions from any emissions units that were permanently shutdown after the baseline emissions period, consistent with the EPA Reactivation Policy and this Petition; (4) require additional ambient air quality monitors and require the Refinery to report NAAQS exceedances within 24 hours (compared to the current 15 day reporting period); (5) prepare a health risk assessment analyzing the impacts of the Refinery's emissions in the context of the community's specific health needs; (6) engage in early and ongoing public participation for any revisions to the PAL; and (7) provide translation of vital documents for the limited English proficiency population affected by the Refinery.

I. BACKGROUND AND HISTORY OF LIMETREE REFINERY

A. Pre-2018 Limetree Refinery Operating History

The Limetree Refinery (“Refinery”) was constructed pursuant to a 1965 agreement between former owners HOVIC and HOVENSA and has presented environmental problems for decades.²⁹ Between 1982 and 2008, nearly 42 million gallons of petroleum were reclaimed from groundwater at the site of the Refinery, which is nearly four times the amount of oil released in the Exxon Valdez spill.³⁰ At the height of its production in 2010, the Refinery was processing 525,000 barrels of oil per day.³¹ It was also around this time that the Refinery faced significant environmental and financial problems. The Refinery was emitting its highest levels of air pollutants between 2009 and late 2010, and in January 2011, EPA found that HOVENSA had violated the Clean Air Act due to non-conforming emissions, fined the Refinery \$5.3 million, and ordered it to pay \$700 million to upgrade its pollution controls.³² In January 2012, HOVENSA shutdown the Refinery for financial reasons; in the preceding three years, it had incurred losses in excess of \$1.3 billion.³³ Shortly after the shutdown, HOVENSA expressed intentions to operate the Refinery as a long-term oil storage terminal.³⁴

In September 2015, EPA published a cancer risk assessment for the petroleum refining source sector, based on 2011 emissions inventories, distillation feed sampling and analysis, and emissions testing. EPA published detailed cancer risk modelling results for 144 oil refineries in the United States and U.S. territories, with 115 having “a facility-wide cancer [Maximum Individual Risk] greater than or equal to one in a million.”³⁵ The then-HOVENSA refinery had the single highest cancer Maximum Individual Risk of *all* refineries that EPA evaluated, based

²⁹ See, e.g., Statement of Basis/Proposed Final Remedy Decision, Area of Concern (AOC) #3 REGION, https://www3.epa.gov/region02/waste/fshovens_statementof_basis_aoc3.pdf.

³⁰ Eunice Bedminister, *Hovensa Cleanup Comes to 42 Million Gallons So Far*, TheDominican.net, Mar. 10, 2008, <https://www.thedominican.net/articlesone/hovensa.htm>.

³¹ HOVENSA LLC, Clean Air Act Settlement, Jan. 26, 2011, available at <https://www.epa.gov/enforcement/hovensa-llc-clean-air-act-settlement>.

³² Press Release, *Nation's Second Largest Refinery to Pay \$700 Million to Upgrade Pollution Controls at U.S. Virgin Islands Facility*, Jan. 26, 2011, available at <https://www.justice.gov/opa/pr/nation-s-second-largest-refinery-pay-700-million-upgrade-pollution-controls-us-virgin-islands>.

³³ Jason Bronis, *Hovensa LLC to shut Virgin Islands oil refinery*, Associated Press (Jan. 18, 2012), <https://www.toledoblade.com/Energy/2012/01/18/Hovensa-LLC-to-shut-Virgin-Islands-oil-refinery.html>.

³⁴ See Reactivation Facts Document, *supra*, n. 12, at 1 (Press Release, Hess Corporation, Hess Announces Charge Related to Closure of Hovensa Joint Venture Refinery (Jan. 28, 2012) (on file with Hess) (“Following the shutdown, the complex will operate as an oil storage terminal.”)); (Source staff, *Governor Slams Hovensa Proposal, Threatens Lawsuit*, ST. JOHN SOURCE, Aug. 7, 2012 (“Since the closure, [Hovensa] has championed the idea of converting the refinery into an oil storage facility.”)), ST. JOHN SOURCE, Aug. 7, 2012.

³⁵ See *supra*, n. 11, FRRA for the Petroleum Refining Source Sector, at 6, 51.

on its allowable emissions.³⁶ Notably, the EPA Report indicated that the HOVENSA refinery had “shutdown” after submission of the information collection responses to EPA.³⁷ The HOVENSA refinery had the ninth highest cancer Maximum Individual Risk of all refineries that EPA evaluated, based on its actual emissions.³⁸

The 138 oil refineries currently operating in the United States and U.S. territories emit 178 million metric tons of CO₂ equivalent greenhouse gasses (“GHG”), based on 2019 EPA data.³⁹ This makes the sector the nation’s 4th largest emitter of GHGs, behind power plants, petroleum and natural gas systems, and chemical plants. In 2011, the first year for which GHG emissions data is available for the then- HOVENSA refinery on St. Croix, the Refinery’s GHG emissions were an astonishing 4,445,885 metric tons of CO₂ equivalent greenhouse gasses.⁴⁰ Those 2011 emissions earned the St. Croix Refinery the status of the 5th worst GHG polluter among all oil refineries in the United States and U.S. territories.⁴¹

Facility	City	State	Total Reported Emissions	Source
EXXONMOBIL BY SEA	HOUSTON	TX	10,213,530	Reference
EXXONMOBIL ALVIN REFINERY AND CHEMICAL PLANT	HOUSTON REFINERY	TX	6,212,081	Reference
Calcasieu Bay Refinery	THAL CITY	LA	4,845,124	Reference
CECO PETROLEUM CORP. - LAKE CHARLES MANUFACTURING COMPLEX	Monroe	LA	4,513,884	Reference
Limetree Bay Refineries, LLC	CHOCOMAQUO	VI	4,456,881	Reference

The Refinery’s GHG emissions would have been even higher in calendar years 2009 and 2010, based on the facility’s production levels. These are the two years on which the Trump Administration based the Limetree PAL Permit’s grossly inflated emissions caps for permissible criteria air pollutants and, by extension, GHG pollutants.

In December 2015, HOVENSA sold the Refinery to Limetree.⁴² Like its predecessor, Limetree did not express a continuous intent to restart the shutdown Refinery. Instead, Limetree’s parent company had plans to operate the facility as an oil terminal, rather than an oil refinery, and to potentially dismantle part of the refinery and sell off the scrap metal.⁴³ Economic factors may have discouraged Limetree from restarting operations. As of July

³⁶ *Id.*, at Appendix 5, Table 1, at 4 (identifying the HOVENSA refinery by Facility ID, NEI46556) & Appendix 5, Table 2c, at 2 (facility NEI46556 has a cancer MRI of 9.40E-05, or 94 in a million, higher than any other refinery listed).

³⁷ *Id.*, at Appendix 5, Table 1, at 4 (row for NEI46556).

³⁸ *Id.*, at Appendix 5, Table 2a, at 2 (facility NEI46556 has a cancer MRI of 3.02E-05, or 30.2 in a million).

³⁹ See U.S. EPA, 2019 Greenhouse Gas Emissions from Large Facilities, <https://ghgdata.epa.gov/ghgp/main.do#>.

⁴⁰ *Id.*, (search for 2011 St. Croix refinery GHG emissions conducted on January 31, 2021).

⁴¹ *Id.*, (search conducted on January 31, 2021, for 2011 St. Croix refinery GHG emissions compared to all oil refineries in U.S. & U.S. territories).

⁴² Press Release, *USVI Signs \$800M Deal to Sell Shuttered Oil Refinery*, Dec. 3, 2015 available at <https://www.voanews.com/americas/usvi-signs-800m-deal-sell-shuttered-oil-refinery>.

⁴³ See Justin Jacobs, HOVENSA Files for Bankruptcy, Ending a Long-Running Dispute, *Petroleum Economist*, Sept. 22, 2015 (“Limetree’s parent company ArcLight Capital owns pipelines and storage facilities across the US and will seek to operate the terminal, rather than the

2018, the investment required to “refurbish and restart a portion of the [Refinery] was reported to be \$1.4 billion.”⁴⁴

In 2017, the managing partner and founder of ArcLight Capitol, one of Limetree’s Investor parent companies, and a major campaign donor to Republican campaigns, traveled to China on the same plane as then-President Trump on a trade mission to China in November, 2017,⁴⁵ where the president sought to broker billions of dollars in deals with a Chinese oil and gas giant.⁴⁶

B. 2018 Initiation of “Limetree Matter”

Internal EPA emails, obtained through the Freedom of Information Act (“FOIA”), reveal that in August, 2018, then-Administrator Andrew Wheeler directed the Office of Policy and Office of Federal Activities at EPA to “lead in the coordination of the Limetree matter,” to help them “resume operations.”⁴⁷ Another internal email shows the EPA project manager appointed by Wheeler told Limetree representatives, their attorneys, and “primary financiers (ARCLIGHT)” that he would “serve as their front door and switchboard operator for anything they need from EPA.” *Id.*

More Agency emails and calendars obtained through FOIA show EPA “[e]stablished a routine of bi-weekly meetings with [Limetree] and their lead counsel,” which involved political appointees from EPA’s Office of Air & Radiation, Office of Enforcement & Compliance Assurance, and Region II. Topics discussed included Limetree’s “requests for modification” to its Consent Decree with EPA and the Department of Justice. Limetree and its attorneys expressed “appreciation for [EPA’s] attention, coordination and responsiveness.” An October 5, 2018 EPA email reveals the EPA project team was “discussing [Limetree’s] perceived need/desire for a Plantwide Applicability Limit (PAL).” EPA staff notes the Agency was “unclear on the purpose it would serve for [Limetree], but continuing discussions with

refinery as a whole.”) (emphasis added); Source Staff, Sinopec, Freeport Lease HOVENSA Storage: Update, ARGUS, Dec. 1, 2015 (reporting a deal whereby Sinopec planned to “lease more than three quarters of the operational storage at the HOVENSA oil terminal,” allowing Limetree’s parent company “two years to assess what provisions [of the refinery] would be utilized and what would be dismantled and removed,” and detailing a payment structure within the agreement for “the sale of scrap metal.”)).

⁴⁴ Collin Eaton, St. Croix Oil Refinery gets \$1.4 Billion Investment, Plans to Restart, July 2, 2018 (noting an 18-month timeline for refurbishment); *see also* Kelsey Nowakowski, Monarch Energy Still Interested in HOVENSA, Despite Obstacles, Oct. 2, 2015 (reporting oil and gas analyst comments that “HOVENSA’s improvement needs are too large for it to be worth restarting. . . the refinery just isn’t competitive anymore.”)).

⁴⁵ *See supra*, n. 13, EE News Article.

⁴⁶ *See supra*, n. 14, Bloomberg Article.

⁴⁷ Ex. 2, at pg. 15.

[Limetree] on their contemplated scope of expansion projects such that we may provide accurate advice and assistance if/when an application is received.” *Id.*⁴⁸

C. Application for PAL Permit

On November 26, 2018, nearly seven years after the Refinery ceased refining operations, Limetree applied for a Clean Air Act PAL permit to EPA Region II for the purpose of reactivating refining operations.⁴⁹ On November 30, 2018, Limetree announced it had “closed a \$1.25 billion financing (sic) to restart its refinery” on St. Croix.⁵⁰

Limetree sought a PAL permit in order to establish source-wide “caps” on its regulated emissions. Limetree based its PAL application on an April 5, 2018 letter from former EPA Assistant Administrator William Wehrum (“Wehrum Letter”), that concluded the Refinery should be treated as the reactivation of a facility that was not shutdown, rather than a “new source,” under longstanding EPA Reactivation Policy and the Act’s Prevention of Significant Deterioration (“PSD”) preconstruction permitting program.⁵¹ By avoiding PSD permitting, the Refinery would be allowed to avoid Best Available Control Technology (“BACT”) for all emissions units shutdown since 2012, including units that were the subject of the 2011 EPA enforcement action, and also avoid the PSD requirements to conduct an air quality impact analysis.

In its PAL Permit application, Limetree requested emissions caps for seven distinct regulated air pollutants, set at levels corresponding to the HOVENSA refinery’s full operations in calendar years 2009 and 2010, *plus* an additional significant increase level for each regulated air pollutant.⁵² This 300-page document was submitted to the Agency on November 27, 2018,

⁴⁸ Ex. 2, pg. 14 (The internal emails released pursuant to FOIA reveal a raft of other environmental compliance issues raised in these meetings. Among other things, A November 2 Agency email indicates “[Limetree] likely to elevate complaints specific to perceived delays by [National Marine Fisheries Service]” related to the timing of its “biologic opinion under the Endangered Species Act (ESA) for impacts to coral habitat,” pg. 14, and a November 16 EPA email shows “critical and time sensitive” “compliance issues” with the hazardous air pollution standards for “marine tank vessel loading operations.” pg. 7).

⁴⁹ Limetree PAL Application (Nov. 2017), Doc. ID. No. EPA-R02-OAR-2019-0551-0236.

⁵⁰ *See supra*, n. 20, Limetree Financing Article.

⁵¹ Letter from William Wehrum, Assistant Administrator, EPA, to LeAnn Johnson Koch, Perkins Coie (Apr. 5, 2018), https://www.epa.gov/sites/production/files/2018-04/documents/limetree_2018.pdf (“Wehrum Letter”).

⁵² *See supra*, n. 2, Final PAL Permit Enclosure 1, at 3. The final PAL permit establishes plantwide emissions limits for the following pollutants at the following amounts, in tons per year (tpy): Volatile Organic Compounds (VOC)(6,094 tpy), Nitrogen Oxides (NOx)(5,594 tpy), Carbon Monoxide (CO)(3,248 tpy), Particulate Matter less than or equal to 2.5 micron (PM2.5)(399 tpy), Particulate Matter less than or equal to 10 micron (PM10)(412 tpy), Particulate Matter (PM)(466 tpy), and Sulfur Dioxide (SO2)(1,482 tpy).

and Limetree scheduled a meeting to “walk the region through” the application on December 11th.⁵³

On December 28, 2018, Region II wrote Limetree’s CEO to declare the application complete, as of December 27th.⁵⁴ Paradoxically, the letter also noted that “a determination of completeness does *not* constitute a finding that EPA has all of the information necessary for *completing* its review and, therefore, EPA reserves the right to ask [Limetree] for any additional clarification or substantiation, should they become necessary while processing this PAL application.” *Id.* (emphasis added) Indeed, the letter noted that “EPA received on December 21, 2018, via email LBT’s commitment to work collaboratively on a modeling protocol and modeling to support the Agency’s performance of an environmental justice analysis,” making clear EPA had not received that information as of the ‘completeness’ determination. Internal correspondence noted that providing the letter “before the end of the calendar year was critical to [Limetree] as it allowed for inclusion of 2009 emission data in the ten-year baseline.”⁵⁵ This referred to Limetree’s application requesting highly inflated emissions caps for seven air pollutants in its PAL permit, reflecting its highest production levels (525,000 barrels of oil per day in 2010) and the resulting highest emissions levels, in the past 10 years, for the PAL’s crucial “baseline emissions” that would produce the highest possible emissions caps.

D. Draft Permit & Public Comment

On September 20, 2019, EPA Region II issued a draft PAL permit (“Draft Permit”) to Limetree, proposing plant-wide emissions limits for seven types of pollutants: Sulfur Dioxide, Nitrogen Oxides, Volatile Organic Compounds, Carbon Monoxide, Particulate Matter, Particulate Matter 10, and Particulate Matter 2.5. The Region also announced a 45-day public comment period. Petitioners commented during this period and attach and incorporate by reference our comments herein.⁵⁶

On February 19, 2020, EPA requested concurrence from the Fish and Wildlife Service (“FWS”) with its determination that the air pollution impacts of the Permit were not likely to adversely affect four federally-protected species, omitting the roseate tern, loggerhead sea turtle, and green sea turtles from consideration.⁵⁷ EPA requested concurrence from the National Marine Fisheries Service (“NMFS”) limited to the impacts of air emissions on an additional 19 protected species on August 11, 2020.⁵⁸ EPA received concurrence from FWS and NMFS that the permitted activity was not likely to adversely affect certain listed species on February 28, 2020 and September 3, 2020, respectively.

⁵³ Exhibit 2, pg. 6 (Tomiak Email 12/6).

⁵⁴ See Letter from Sulin W. Chan, Chief, Permitting Section, Air Programs Branch, U.S. EPA Region II, to Darius Sweet, CEO, Limetree at 1, (Dec. 28, 2018), Doc. ID. No. EPA-R02-OAR-2019-0551-0047.

⁵⁵ Exhibit 2, pg. 5 (Tomiak Email 1/31).

⁵⁶ See Comments by St. Croix Environmental Association, et al. (Nov. 25, 2019), Doc. ID. No. EPA-R02-OAR-2019-0551-0001 (“Petitioners’ Comments”).

⁵⁷ *Id.*

⁵⁸ *Id.*

EPA did find, however, that permitted activity would have a disproportionate impact on the EJ community.⁵⁹

E. Issuance of Final Permit

On December 1, 2020, EPA issued the Final PAL Permit. It was not signed by the Regional Administrator for Region II, however, who has jurisdiction to issue PSD permits in the U.S. Virgin Islands.⁶⁰ Instead, then-EPA Administrator Andrew Wheeler signed the permit, personally, despite his absence from any (public) involvement with the Permit proceedings.⁶¹

Limetree states it is planning to produce up to 200,000 barrels of oil per day,⁶² but the Trump Administration's PAL Permit includes seven massively inflated emissions caps based upon the refinery's historic production of over 500,000 barrels of oil per day. In the accompanying Response to Comment document, EPA acknowledged that under its new PAL, Limetree could "relax[] previously enforceable [emissions] limitations," and that the company was "seek[ing] to eliminate restrictions currently contained in two of HOVENSA's PSD" permits. RTC, at 63. The Agency acknowledged further that "[l]ifting the PM₁₀ restrictions only serves to increase the level of uncertainty about whether the PM_{2.5} [National Ambient Air Quality Standards] will be violated as a result of impacts from Limetree." *Id.* EPA also admitted that "[g]iven the stricter 2010 short-term SO₂ standard and the results of the modeling analysis, there is too much uncertainty about whether emissions from the facility will exceed the [SO₂] NAAQS and thereby endanger the environmental justice community." *Id.*

The Trump Administration's Environmental Justice modeling proposed insufficient mitigation measures and did not mention public health impacts; moreover, EPA failed to provide materials or make public meeting accommodations for individuals with Limited English Proficiency. RTC, at 89. Similarly, The Final Permit makes no accommodations for air pollution and haze over the nearby Virgin Islands National Park. An internal EPA email noted "The [National Parks Services Federal Land Manager] will not assess the Class I area [Air Quality Related Values] through the PAL permit issuance process; EPA has discretion to reopen the PAL and consult with the FLM in the event that a Class I area AQRV problem is identified after permit issuance." ⁶³

Finally, the EPA response to comments for the Final Permit announced abruptly that the Trump Administration was withdrawing EPA's 42-year-old Reactivation Policy for ensuring PSD permits for reactivation of permanently shutdown sources and units. The response to comments declared EPA had not applied the Reactivation Policy to Limetree. Petitioners and the

⁵⁹ *Id.*

⁶⁰ U.S. EPA, *Clean Air Permitting in the U.S. Virgin Islands*, available at <https://www.epa.gov/caa-permitting/clean-air-permitting-us-virgin-islands>.

⁶¹ *See supra*, n. 52, Final PAL Permit, Enclosure 1, at 3.

⁶² *See supra*, n. 22, Limetree Bay: About Us.

⁶³ FOIA Documents provided to Petitioners, attached as Exhibit 4, pg. 5 (Email from Annamaria Colecchia, EPA Region II, to EPA and National Park Service recipients (May 27, 2020)).

public were denied any fair notice of this decision or opportunity to comment on it. Nonetheless, Administrator Wheeler issued the permit.

Per the requirements of 40 C.F.R. 124.19, Petitioners appealed the permit to the Environmental Appeals Board (EAB) and received a 30-day extension for its Petition for Review. That case is currently pending in front of the EAB. Permittee Limetree has also petitioned the EAB for review of the permit, and has similarly received an extension of time to file its petition for review.⁶⁴ Since receiving its Final Permit less than two months ago, the Refinery has experienced an upset incident for which it evacuated employees,⁶⁵ and a fire.⁶⁶ Despite a pending permit appeal in the Environmental Appeals Board, Limetree has resumed operations to begin producing transportation fuels,⁶⁷ prior to the Final PAL Permit becoming effective.

EPA Region 2 has sole permitting authority to issue Prevention of Significant Deterioration permits in the U.S. Virgin Islands. A PAL permit is a PSD Permit. *Id.* EPA has not delegated this authority to the U.S. Virgin Islands. *Id.*⁶⁸

II. STATUTORY FRAMEWORK

A. Clean Air Act Permitting Scheme

Disappointed with lackluster progress in improving the nation's air quality, Congress amended the Clean Air Act in 1977 to expand and strengthen provisions governing pre-construction review of impacts on air quality. This process, known as New Source Review ("NSR"), requires new major stationary sources of air pollution, as well as existing major sources undertaking major modifications, to obtain preconstruction permits that impose strict requirements and limitations on facilities' operation. 42 U.S.C. §§ 7475, 7503; 40 C.F.R §§ 51.165, 51.166, 52.21, 52.24.

⁶⁴ U.S. EPA, Air Permit Delegations in Region 2, available at <https://www.epa.gov/caa-permitting/air-permit-delegations-region-2>.

⁶⁵ *See supra*, n. 26, Minor Refinery Upset.

⁶⁶ *See supra*, n. 27, Fire at Facility.

⁶⁷ *See supra*, n. 28, Reuters Article.

⁶⁸ *See supra*, n.23, RTC, at 64-65. ("Since EPA is not the minor source permitting authority in the USVI, the USVI implementation plan is disapproved with respect to PSD, and 40 CFR § 52.21 is incorporated into the applicable implementation plan, by the process of elimination, Limetree's PAL is a "major NSR permit" under 40 CFR § 52.21. It therefore falls under the "Prevention of Significant Deterioration program", which is defined in 40 CFR § 52.21(b)(43) as "the EPA implemented major source preconstruction permit program[.]" The definition also provides that "[a]ny permit issued under such a program is a major NSR permit." As a permit issued under 40 CFR § 52.21, the PAL is a permit under Part C of the Clean Air Act and must not interfere with attainment or maintenance of the NAAQS.")

The Act establishes separate requirements for major sources located in “clean air” attainment areas and those major sources located in more polluted areas that have failed to attain the national air quality standards. In “clean air” areas—where the objective is the prevention of significant deterioration (PSD) of air quality—Part C of Title I of the Act, 42 U.S.C. §§ 7470–7492, specifies that no “major emitting facility” may begin construction or undertake major modifications without first demonstrating that emissions from construction or operation of the facility will not exceed applicable limitations. 42 U.S.C. § 7475(a)(3). “Modification” is defined to include, “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. § 7411(a)(4); 40 C.F.R. § 52.21(b)(2)(1).

Additionally, the PSD program requires installation of the best available control technology (“BACT”) at such major emitting facilities prior to construction or modification. *Id.* § 7475(a)(4). PSD permittees must also conduct a detailed “analysis of ambient air quality in the area.” 40 C.F.R. § 52.21(m)(3).

The PSD program applies to “major emitting facilities” 42 U.S.C. § 7479(1), and has two emission thresholds — 100 tons per year and 250 tons per year — for designating a plant a major source of pollutants. If a facility falls within any one of 28 listed industrial categories, then it is a major source if it emits at least 100 tons per year of any regulated pollutant (including particulate matter, 42 U.S.C. § 7473. 42 U.S.C. § 7479(1); 40 C.F.R. § 52.21(b)(1)(i)(a). All other facilities not among those 28 listed industrial categories are allowed to emit up to 250 tons per year of any regulated pollutant before being designated a major source. 42 U.S.C. § 7479(1); 40 C.F.R. § 52.21(b)(1)(i)(a). Petroleum refineries are among the 28 identified categories subject to a 100 ton per year major source threshold. 42 U.S.C. § 7479(1).

Alternatively, certain *existing* major stationary sources may apply for a Plantwide Applicability Limitation (“PAL”) permit, which has a 10-year duration. 67 FR 80186 (Dec. 31, 2002). A PAL permit sets plantwide emissions limits, in tons per year, for regulated pollutants. Under a PAL permit, sources are able to make physical and operational changes “without triggering major NSR or the need to conduct project-by-project major NSR applicability analyses,” as may be required under PSD permitting. *See* EPA Memorandum Re: Guidance on PAL Provisions at 1 (Aug. 4, 2020). A source can avoid much regulatory and public oversight under a PAL permit. However, PAL permits are only available “for any *existing* major stationary source,” 40 C.F.R. 51.166(w)(1)(i), and for non-major modifications. *Id.* at (w)(1)(ii).

B. Reactivation Policy

Since 1978, EPA has applied its “reactivation” guidance to “govern[] when an idled source is considered a new source for NSR permitting. The policy applies a rebuttable

presumption that a source idled for more than two years should be treated as a new source” subject to the New Source Review permitting provisions of the Clean Air Act.⁶⁹

Under the agency’s Reactivation Policy:

[r]eactivation of facilities that have been in an extended condition of inoperation may trigger PSD requirements as “construction” of either a new major stationary source or a major modification of an existing stationary source. Where facilities are reactivated after having been permanently shutdown, operation of the facility will be treated as operation of a new source. Alternatively, shutdown and subsequent reactivation of a long-dormant facility may trigger PSD review by qualifying as a major modification.⁷⁰

In assessing whether or not a facility is required to obtain a permit as a new source or a source undertaking a major modification under the reactivation policy, the Agency, and courts reviewing the Agency’s application of the policy, have weighed six factors. Specifically,

EPA has examined factors such as the amount of time the facility has been out of operation, the reason for the shutdown, statements by the owner or operator regarding intent, cost and time required to reactivate the facility, status of permits, and ongoing maintenance and inspections that have been conducted during shutdown ...

In the matter of Monroe Electric Generating Plant Entergy Louisiana, Inc., Proposed Operating Permit, Petition No. 6-99-2, p. 9-11, dated June 11, 1999 (“*Monroe Order*”).

C. 2018 Wehrum Letter

Under the Reactivation Policy factors, the Refinery should have been treated as a new source subject to PSD permitting. The Refinery ceased refining operations in January 2012, over six years before it applied for a PAL permit. Throughout that time-period, and certainly for the first two years of its shutdown, the Refinery’s former and current owners never expressed a continuous desire to restart the Refinery.

Although the facts demonstrate the Refinery had been permanently shut down, on February 1, 2018, an attorney for Limetree wrote EPA Region II officials in an attempt to establish that the Refinery is not subject to PSD review and to request the Region’s views on the

⁶⁹ Joseph Goffman, Janet McCabe & William Niebling, EPA’s Attack on New Source Review and Other Air Quality Protection Tools, at 16 n.24 (Nov. 1, 2019) <http://eelp.law.harvard.edu/wp-content/uploads/NSR-paper-EELP.pdf> (“New Source Review Attack”).

⁷⁰ Carol Browner, U.S. EPA, Order *In re Monroe Electric Generating Plant*, at 7, Pet. 6-99-2, https://www.epa.gov/sites/production/files/2015-08/documents/entergy_decision1999.pdf (“*Monroe Order*”).

issue.⁷¹ In a highly unusual move, rather than EPA Region II responding, then-Assistant Administrator for the Office of Air & Radiation, William Wehrum⁷², answered the letter.

Mr. Wehrum's April 5, 2018 letter concurred that the Refinery should not be considered a new source under the Reactivation Policy.⁷³ Although the Wehrum letter agreed that the Refinery had shut down in 2012 and remained shut down for well over two years, and was thus presumptively permanently shut down, the letter went on to conclude that based on what the Limetree attorney "explain[ed]," the facility operations were "idling" in 2012.⁷⁴ Neither the Limetree attorney's letter to Region II nor the Wehrum letter even addressed or acknowledged the repeated contemporaneous statements by Hess & HOVENSA that the Refinery had been "shutdown" in 2012 and remained shutdown thereafter. The Limetree attorney's letter used the term "idling" to describe the shutdown period from 2012-2014, with no documented citation for that characterization.⁷⁵ The only actual documentation of the "idling" characterization in the 29-page attorney letter relate to three stray instances in 2015.⁷⁶

In two cursory paragraphs of analysis, the Wehrum letter did not cite or quote any record evidence that the facility had been idling from 2012 to 2014. The letter did not address or even acknowledge the clear evidence of the Refinery's constant shutdown status, in its owners' own words; indeed, the letter failed to cite any actual record evidence. Mr. Wehrum ignored all contradictory evidence and misapplied the Reactivation Policy factors, including a facility owner's "original intent not to permanently shut down"; the "continuous intent" to reopen in the "reasonably foreseeable future"; and whether "for at least some period of the shutdown, the shutdown was intended to be permanent."⁷⁷ Instead, the Wehrum letter made a conclusory declaration that Limetree and HOVENSA had "displayed a continuous intent to restart the refinery operations,"⁷⁸ despite all aforementioned factors under the Reactivation Policy negating that conclusion.

D. Rescinding Reactivation Policy

On December 2, 2020, EPA issued Limetree the PAL permit and simultaneously announced that it would no longer follow the Reactivation Policy in its Response to Comments

⁷¹ Letter from LeAnn Johnson Koch, Perkins Coie, to John Filippelli, EPA Region II (Feb. 1, 2018), Doc. ID. No. EPA-R02-OAR-2019-0551-0237 ("Filippelli Letter").

⁷² Prior to joining EPA, Mr. Wehrum had been an attorney representing oil companies, through the American Fuel and Petrochemical Manufacturers. Jamie Corie, FOIA Documents Show EPA Air and Radiation Head Continued Meeting with Industry He Once Represented, Documented (Feb. 5, 2019), <https://documented.net/2019/02/foia-documents-show-epa-air-and-radiation-head-continues-meeting-with-industry-he-once-represented/>. Upon exiting EPA in June 2019, Mr. Wehrum resumed his representation of the American Fuel & Petrochemical Manufacturers.

⁷³ See *supra*, n. 51, Wehrum Letter.

⁷⁴ *Id.* at 2-3.

⁷⁵ See *generally, supra*, n. 71, Filippelli Letter,

⁷⁶ See *supra*, n. 71, Filippelli Letter, at 10, 13.

⁷⁷ See *supra*, n.70, Monroe Order, at 9-10; see *generally supra*, n. 51, Wehrum Letter, at 2-3.

⁷⁸ See *supra*, n. 51, Wehrum Letter, at 2.

("RTC") on the Permit, signed by Mr. Wehrum.⁷⁹ This was surprising given that EPA had until that point been applying the Reactivation Policy to the permit application, and based the draft permit on it. It was the first notice that Petitioners or any member of the public received that EPA would jettison its 42-year-old Reactivation Policy. Specifically, EPA stated:

The Agency has determined it is not appropriate to continue applying the Reactivation Policy because the policy was not well-grounded in the NSR regulations, and it is not supported by the current NSR regulations.

...

Since EPA has concluded that the Reactivation Policy is no longer an appropriate policy in the context of the existing NSR regulations, the Agency is not applying it in this permitting action.

EPA Region II, RTC on Limetree PAL Permit at 109.

III. STATUTORY BASES FOR RECONSIDERATION

A. EPA'S Permit is Flawed and Reconsideration is Appropriate Here

As noted above, we respectfully petition the EPA to convene a proceeding to reconsider, remand, reopen or revoke the Permit pursuant to 40 C.F.R. 124.19(j), Section 165 the Clean Air Act, 42 U.S.C. § 7475; the Administrative Procedure Act (APA), 5 U.S.C. §§ 555(b) and 558(c); and the First Amendment to the U.S. Constitution, and in line with Executive Orders on public health, environmental justice, and climate, in order to correct significant deficiencies in the permit.

On January 20, 2021, President Biden issued Executive Order 13990, entitled *Protecting Public Health and the Environment by Restoring Science to Tackle the Climate Crisis*, requiring all federal agencies to immediately review actions taken between January 20, 2017 to January 20, 2021 "that are inconsistent with, or present obstacles to" policies that prioritize environmental justice and climate change.⁸⁰ The Order states: "For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions." Further, the Order directs all agencies to within 30 days of the date of the Order submit to the Director of the Office of Management and Budget (OMB) a preliminary list of actions to be reconsidered. For the reasons listed below, this permit presents grave obstacles to the Agency centering environmental justice in its work, and is permitted at such a level that it is similarly inconsistent with the Administration's goals on fighting climate change. The Permit's issuance further runs afoul of

⁷⁹ The Response to Comments lists EPA Region II as its author. But, in a highly unusual step, EPA Administrator Andrew Wheeler intervened personally to issue the Permit, a permit that should have been issued by EPA Region II officials, with jurisdiction over federal permitting in the Virgin Islands. See *supra*, n. 23, RTC.

⁸⁰ Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021).

Executive Order 12898: Environmental Justice;⁸¹ Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency;⁸² Executive Order on Tackling the Climate Crisis at Home and Abroad;⁸³ and Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking (Jan. 27, 2021). The mandates of these orders just as urgently require EPA to revoke the permit.

Similarly, EPA's authority to reconsider permits compels a similar result. Specifically, the Regional Administrator has the authority to reconsider permits it issues, "at any time prior to 30 days after the Regional Administrator files its response" to a petition for review with the EAB, and

may, upon notification to the Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part.

40 C.F.R. § 124.19(j).

For the reasons elaborated upon below, the Regional Administrator should immediately act to reconsider, then remand, reopen or revoke the Limetree PAL Permit issued by the Trump Administration. EPA should submit an *amicus* brief or other filing to the EPA Environmental Appeals Board, asking the Board to remand the PAL Permit to the Region for reconsideration, reopening and/or revocation. The EPA should agree there are clear errors of law and facts underlying the PAL Permit issued by the Trump Administration.

Similarly, we ask the Agency to convene a proceeding for reconsideration under the authorities granted by the Administrative Procedures Act. 5 U.S.C.A. § 555 (b) provides that

So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

5 U.S.C.A. § 555 (b).

⁸¹ See *supra*, n. 3, Exec. Order 12,898.

⁸² See *supra*, n. 4, Exec. Order 13,166.

⁸³ See *supra*, n. 6, Exec. Order 14,008.

Similarly, section 558 provides that

When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision.

5 U.S.C.A. § 558(c).

Lastly, we request this proceeding pursuant to Petitioners' right to petition under the Petition Clause. Courts have consistently recognized that "[t]he First Amendment provides, in relevant part, that 'Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.' We have recognized this right to petition as 'one of the most precious of the liberties safeguarded by the Bill of Rights,' and have explained that the right is implied '[t]he very idea of a government, republican in form.'" *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 524–25 (2002) (citations omitted); *see also Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136 (1961) (holding that federal antitrust law "does not prohibit ... persons from associating ... in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly.").

B. EPA Should Reconsider the Permit Because the Trump Administration Should Have Treated the Refinery as a New Source or a Major Modification Subject to PSD Preconstruction Permitting

The Clean Air Act requires Prevention of Significant Deterioration ("PSD") preconstruction permits prior to construction and/or operation of a new major stationary source and for major modifications to an existing stationary source, in attainment and unclassifiable areas, for air pollutants that the source will emit. *See* 42 U.S.C. §§ 7475(a) & 7479(2)(C); *see generally* 40 C.F.R. 52.21. "Modification" is defined to include, "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." 42 U.S.C. § 7411(a)(4); 40 C.F.R. § 52.21(b)(2)(1).

Under EPA's longstanding Reactivation policy interpreting the Act and implementing regulations:

[r]eactivation of facilities that have been in an extended condition of inoperation may trigger PSD requirements as "construction" of either a new major stationary source or a major modification of an existing stationary source. Where facilities are reactivated after having been permanently shutdown, operation of the facility will be treated as operation of a new source. Alternatively, shutdown and subsequent reactivation of a long-dormant facility may trigger PSD review by qualifying as a major modification.

Monroe Order, at 7.

PSD permits shall require a new stationary source to apply “best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.” 40 C.F.R. § 52.21(j)(2). Major modifications shall apply “best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase,” *id.*, § 52.21(j)(3), and undertake an analysis of ambient air quality in the area.” *Id.* § 52.21(m)(3).

As discussed below, that EPA Reactivation policy was active when the Limetree Permit was proposed; it was active when the permit was finalized; and the policy remains active today, never having been lawfully withdrawn or supplanted. The final Limetree Permit, however, failed to follow that policy, in violation of EPA’s own rules. Further, the unusual processes and political interference that surrounded the issuance of the permit underscore the necessity of a new process. As such, it was arbitrary, capricious, and an abuse of the Administrator’s discretion to issue the permit as written, and the permit must be remanded.

1. The Limetree Refinery Should Be Subject to New Source PSD Permitting Requirements

Pursuant to the CAA, the Reactivation Policy, and the facts of the operation, the Refinery should be treated as a “new source” subject to new source PSD permitting requirements. The Refinery is a new source because it has been completely shut down and inoperable as an oil refinery for over eight years. The record establishes that “at the time of the shutdown” in 2012 (*Monroe Order*, at 8), and for “more than two years” afterwards, the refinery shutdown was “presumed to be permanent” under the Reactivation Policy, and then-owner Hovensa had no intent to restart operations. *Id.* The below bullets are a non-exhaustive list of circumstances in which Hovensa communicated its decision to permanently shutter the facility starting in 2012 and throughout the remainder of its years of ownership.

- A January 18, 2012 Hess Corporation press release announced a “shutdown of the HOVENSA L.L.C. Refinery in St. Croix, U.S. Virgin Islands.”⁸⁴
- The Hess 2012 Annual Report noted repeatedly that the Refinery had been “shutdown” in early 2012, in order to “operate the complex as an oil storage terminal.”⁸⁵
- An October 2013 PowerPoint presentation for HOVENSA’s executive committee, entitled “Shut Down Cash Cost Summary (\$MM),” details “Shutdown and Mothball” costs, “Personnel Exit Cash Costs,” “Future Oblig (Pension, etc)” costs, and other “Shutdown Cash Costs.”⁸⁶ Importantly, the presentation shows estimated shutdown costs in December 2011, actual costs in 2012, and forecast (“Fcast”) and planned (“Plan”) shutdown costs from 2013 to “2016+.”⁸⁷

⁸⁴ See *supra*, n.12, Reactivation Facts Document, at 1 (Hess. Corp., “HOVENSA Announces Closure of St. Croix Refinery” (Jan. 18, 2012)).

⁸⁵ *Id.*, at 1 (Hess 2012 Annual Report, at 2, 10, 13, 81 & 107).

⁸⁶ See *supra*, n.71, Attachment A to Filippelli Letter.

⁸⁷ *Id.*

- The record shows further that during the period from 2013 to 2017, HOVENSA made a point of telling the Virgin Islands Division of Environmental Protection each year that “it [was] not subject to payment of fees” under the Division’s operating permit program regulations.⁸⁸

It should also be noted that EPA staff appear to have agreed that the plant had permanently shut down for purposes of the Reactivation Policy, and that it should undergo new source PSD preconstruction permitting. Officials in EPA Region II prepared a document for the record entitled, “Limetree Reactivation Fact Documents Post-Wehrum Letter.”⁸⁹ This document lists 13 documents concerning the HOVENSA refinery, ranging from 2012 to 2015, which confirm that the refinery was shut down in 2012 and remained shut down throughout that period, contradicting the unsubstantiated opposite conclusion in the Wehrum letter.⁹⁰ Almost all of the above bulleted points are pulled directly from that EPA-drafted record document. Moreover, *Monroe* requires that for facilities:

to preserve their ability to reopen without a new source permit, EPA believes owners and operators of shutdown facilities must continuously demonstrate concrete plans to restart the facility sometime in the reasonably foreseeable future . . . such owner or operator cannot overcome this suggestion that the shutdown was intended to be permanent by later pointing to the most recent efforts to reopen the facility.

Monroe, 9-10.

There is no evidence in the record of Hovensa’s expression of a “continuous intent to reopen” in 2012, nor in the years that followed; to the contrary, the consistent expression of intent was the opposite - to “shutdown” the refinery and operate it as an oil storage terminal. *See* RTC, at 111.⁹¹ Second, the record is devoid of any evidence of “an original intent not to permanently shutdown,” much less the “continuing validity of the original intent not to permanently shut down.” *Monroe* Order, at 9. Third, the record is clear for “at least some period of the shutdown, the shutdown was intended to be permanent,” *id.*; again, EPA identified no contrary evidence to overcome this conclusion. Fourth, the later attempts by Limetree attorneys, starting in 2018, to

⁸⁸ *See, e.g.*, HOVENSA, 2015 Title V/Part 70 Permit Emissions Inventory, Feb. 19, 2016, Doc. Id. No. EPA-R02-OAR-2019-0551-0233 (noting that Hovensa takes position that it is not subject to fees).

⁸⁹ *See supra*, n. 12, Reactivation Facts Document. This one-page document lists no author, but metadata for the Adobe Acrobat file reveals that the author was Joseph Siegel, a senior attorney in EPA Region II. This document was posted to the permitting docket on December 2, 2020.

⁹⁰ *Id.* *See, e.g.*, Duff & Phelps, LLC, *Highest and Best Use of the HOVENSA Refinery*, at 4 (Aug. 3, 2012) (“shut-down of the Refinery was completed on February 21, 2012”; “HOVENSA plans to transition the facility into an oil storage terminal”; Letter from John P. de Jongh, Jr., Governor, to Shawn-Michael Malone, President, Virgin Islands (July 12, 2013) (discussing “actual shutdown” of refinery three weeks after January 18, 2012).

⁹¹ In fact, the Agency concedes this point: *see supra*, n. 23, RTC, at 112 (“some of the evidence the commenter proffers tends to show that HOVENSA pursued the option of permanently converting the facility to an oil storage and transfer facility.”).

“overcome [the] suggestion that the shutdown was intended to be permanent” necessarily fail; evidence of more “recent efforts to reopen the facility” are irrelevant to the inquiry under the Reactivation Policy.

By failing to treat the Refinery as a “new source” under the PSD permitting regulations, EPA acted unlawfully, and the Agency must reconsider the Permit.

2. Reactivating the Refinery Is a Major Modification

Reactivation of the refinery would certainly represent a major modification of an existing stationary source under the PSD Regulations, as a “physical change in, or change in the method of operation of, a stationary source,” and would warrant permitting as such, should the Agency for some reason decline to require new source permitting at the shutdown refinery.⁹²

The reactivation of the long-dormant refinery emissions units constitutes a “physical change” under the PSD modification trigger,⁹³ and their reactivation does not qualify for any of the regulatory exemptions from this term.⁹⁴ The reactivation of these units also qualifies as a “change in the method of operation” of the source.⁹⁵ No regulatory exemption from that trigger applies here, either, and EPA and Limetree do not claim they do.⁹⁶

The record clearly establishes the permanent shutdown status, since 2012, of the HOVENSA emissions units used to process and refine crude oil. The same contemporaneous documentation and analysis applied to the entire facility under the EPA Reactivation Policy, applies with just as great force to “modifications” involving these process units. There is no characterization of the process units for refinery operations being “idled” anywhere in the record, only “shutdown.” The Wehrum letter tried arguing, unsuccessfully, that the Refinery was not shutdown because the “terminal operations, wastewater treatment plant, and power generation have continued to operate.”⁹⁷ The Limetree attorney represented the same.⁹⁸

Neither represents or identifies record evidence to support any claim, however, of continuing operation or continuing intent to operate the *Refinery’s* significant number of process units and other emissions units used for the refinery operations.⁹⁹ The reactivation of all these

⁹² 42 U.S.C. § 7411(a)(4); 40 C.F.R. § 52.21(b)(2)(1).

⁹³ See *supra*, n. 70, Monroe Order, at 10 (citing *Wisconsin Elec. Power Co. v. Reilly*, 893 F.2d 901, 908 (7th Cir. 1990) (noting that “courts considering the modification provisions of NSPS and PSD have assumed that ‘any physical change’ means precisely that”).

⁹⁴ *Id.*, at 10-11 (discussing the most common exemptions). Neither EPA nor Limetree attorney argue that any of the PSD regulatory exemptions apply, here.

⁹⁵ *Id.*, at 11-13.

⁹⁶ See, e.g., *id.*, at 11-12 (discussing non-application of the “increase in hours exemption at a shutdown source”).

⁹⁷ See *supra*, n. 5, Wehrum letter, at 3.

⁹⁸ See *supra*, n. 71, Filippelli Letter, at 1.

⁹⁹ See Final Limetree PAL Permit, Appendix (Dec. 1, 2020) (listing over 400 “PAL Permit Units” used for the Limetree refining operations).

process units and emissions units represents a “change in the method of operation” of the whole source.¹⁰⁰ Any construction work conducted at these units, in order to return them to operation, constitutes “any physical change” under the PSD regulations’ “major modification” provision.¹⁰¹ Both cause the reactivated emissions units to trigger PSD as “major modifications” that required PSD permits.¹⁰²

As with the reactivation of the shutdown power plant units at issue in the Monroe Order, for Limetree, “[t]he primary issue in calculating the net emissions increase associated with the restart of a shutdown facility is usually calculation of the actual emissions increase.”¹⁰³ And just like the situation analyzed in the Monroe Order, “EPA has made clear that in calculating the net emissions increase for reactivation of long dormant sources potentially subject to PSD, the source is considered to have zero emissions as its baseline.”¹⁰⁴

As discussed above, the Administrator did not assign any of these emissions units zero emissions as their baseline; instead, he assigned the units an average annual emissions rate associated with their highest level of operation (and emissions) during 2009-2011. These decisions ran afoul of both the PSD regulations and the longstanding Reactivation Policy applying those regulations, enabling Limetree to avoid PSD permitting, BACT, air quality impact analysis and analysis of impacts on air quality related values (“AQRVs”) in Class I areas, for these hundreds of emissions units. What’s more, documents FOIA’ed from the Agency show that the permitting process was rushed *specifically* with an eye to locking in inflated baseline emissions from calendar year 2009. This was done so the permit could establish grossly inflated, harmful emissions caps (for the seven regulated air pollutants) that included the 500,000+ barrel per day production and associated emissions from the HOVENSA refinery in calendar year 2009.

3. EPA Should Reconsider the Permit Because the Trump Administration Approved Limetree’s Unlawful “Disaggregation” of Simultaneous Construction Activities, Allowing the Refinery Owners to Evade PSD Preconstruction Review Permitting for Major Modifications at the Source

In addition to misapplying EPA’s Reactivation Policy to aid Limetree’s attempts to evade PSD preconstruction permitting, the April 2018 Wehrum Letter also misapplied longstanding PSD-NSR policies on “aggregation,” to facilitate Limetree’s evasion of PSD permitting for the simultaneous MARPOL and Renewable Diesel construction activities.¹⁰⁵ This improper course by the Trump Administration provides an independent justification for reconsidering the Permit and its circumvention of PSD preconstruction permitting.

¹⁰⁰ 40 C.F.R. §§ 52.21(a)(2)(ii) & 52.21(b)(2)(i).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See supra*, n.70, Monroe Order, at 13.

¹⁰⁴ *Id.*, at 14.

¹⁰⁵ *See supra*, n. 51, Wehrum Letter, at 3-5.

“From the earliest days of the NSR program, [EPA] recognized that a party seeking to avoid major source NSR might attempt to break up a single physical or operational change into nominally-separate changes in order to make the emission increase associated with each change appear to be less than significant.”¹⁰⁶ The Agency “recognized that an owner or operator might apply for multiple minor permits for nominally-separate, small changes that by themselves result in *de minimis* emission increases, instead of obtaining a permit for the collection of changes that, when examined as a single project, resulted (or would result) in a significant emission increase.” *Id.*

The PSD-NSR regulations “make[] it necessary to accurately define what constitutes the ‘project’ under review to ensure that the proper emissions increase resulting from the project is used when comparing it with the applicable NSR significance threshold at Step 1 of the NSR applicability analysis. Otherwise, a source could conceivably carve up a higher-emitting project into two or more lower-emitting ‘projects’ and avoid triggering major NSR requirements.”¹⁰⁷ “Project aggregation,” therefore, ensures that nominally-separate projects occurring at a source are treated as a single project for NSR applicability purposes where it is unreasonable not to consider them a single project.”¹⁰⁸

The Trump Administration, through Mr. Wehrum, improperly signed off on this unlawful ‘carving up’ of the properly aggregated MAPOL and Renewable Diesel construction and emissions-increasing activities at the Limetree Refinery. This allowed the Refinery’s total, contemporaneous, significant emissions increases to be ‘disaggregated’ into lower-emitting ‘projects’ and avoid PSD permitting requirements. This is what the April 2018 Wehrum Letter purported to do. At the time, however, the PSD-NSR regulations and governing EPA policies did not permit the evasive approach taken in the Wehrum Letter. Indeed, the Wehrum Letter purported to apply a far laxer approach taken in a January 15, 2009 midnight rollback rulemaking that Mr. Wehrum himself had a hand in crafting, during the George W. Bush Administration. The Obama-Biden Administration EPA had subsequently stayed the effectiveness of that Bush rollback rulemaking indefinitely,¹⁰⁹ however, and the rulemaking remained stayed at the time of Wehrum’s 2018 Limetree letter.¹¹⁰

The unlawful ‘disaggregation’ approach that Wehrum applied in his April, 2018 letter to Limetree’s attorneys was the subject of a November 15, 2018 Trump EPA “[f]inal action” — not a final rule, importantly — that purported to lift the Obama-Biden EPA administrative stay and announce an effective date of November 15, 2008, for the lax, harmful Bush EPA “2009 NSR

¹⁰⁶ 75 Fed. Reg. 19,570/2 (April 15, 2010) (internal citations omitted).

¹⁰⁷ 83 Fed. Reg. 57,324, 57,325-326 (Nov. 15, 2018).

¹⁰⁸ *Id.*, at 57,326/1.

¹⁰⁹ See 83 Fed. Reg. 57,324, 57,327 (Nov. 15, 2018) (discussing the history of EPA aggregation policies, the June 15, 2019 rulemaking, the February 13, 2009 EPA grant of reconsideration of the Bush EPA rollback, and the May 18, 2010 indefinite stay of the Bush aggregation rollback).

¹¹⁰ See 74 Fed. Reg. 2,376 (Jan. 15, 2009); see also 74 Fed. Reg. 7193 (Feb. 13, 2009) & 74 Fed. Reg. 7,284 (Feb. 13, 2009) (granting reconsideration of the Jan. 15, 2009 Bush EPA rule & delaying its effective date for 90 days).

Aggregation Action.”¹¹¹ The November 27, 2018 Limetree PAL Permit application and the Region II December 28, 2018 “completeness determination” (albeit wrongly, determined) *both* were based upon the Wehrum letter’s erroneous conclusions about the lawful EPA approach to aggregation for PSD permitting. Wehrum’s April, 2018 letter had applied the far narrower approach that the Trump Administration did not pretend to make effective until November, 2018 notice that “require[d] projects to have a substantial technical or economic relationship, where EPA had previously presumed that activities that occurred at the same time and that supported a source’s overall purpose were related”¹¹² for major NSR permitting purposes. “Coupled with EPA’s expressed intention to defer to the company’s determinations of applicability,” as the Wehrum letter expressly did, the approach taken in the April 2018 Trump EPA letter “is yet another guide to industry about how to avoid permitting requirements.” *Id.*

The Harvard Law School, Environmental & Energy Law Program published a November, 2019 article co-authored by two former officials from the Obama-Biden Administration EPA, Office of Air & Radiation, which had granted reconsideration of the January, 2009 Bush EPA aggregation rollback rulemaking, and stayed its effectiveness, indefinitely. *Id.* The article addressed the Wehrum letter and the Limetree refinery’s arguments as examples of “‘carv[ing] up a higher-emitting project into two or more lower-emitting ‘projects’ [to] avoid triggering major NSR requirements.” *Id.* The article continued:

One example of this in practice comes in a letter regarding a refinery in the US Virgin Islands. As part of restarting an idled refinery, the source solicited EPA’s views on several NSR issues, including whether two contemporaneous projects should be combined for permitting purposes. In this instance, the source is intending to do two things: first, to restart certain refinery equipment to produce marine fuel that meets sulfur requirements due to take effect in 2020; and, second, to repurpose other parts of the refinery to produce renewable diesel fuel to satisfy federal and state renewable fuel requirements.

While these projects are happening at the same time at a single facility, the source asserts that they are intended to produce different products with different business cases and are not interdependent. Under the old test, looking at whether the projects are occurring at the same time and supporting the source’s overall purpose, they likely would have been considered one project; they are unquestionably at the same time, and the overall purpose of a refinery is to produce fuel, even if it produces multiple varieties. But under the new test, EPA found that these actions lack the technical or economic relationship necessary to qualify as one project, because they are using different equipment and serving different markets. While the letter does not specify the emissions levels, this could allow the projects to avoid major source permitting they would otherwise have triggered. This facility is adjacent to residential neighborhoods and about a mile from an elementary school, a reminder about the real effects these policy changes can have.

¹¹¹ See 83 Fed. Reg. 57,324 (Nov. 15, 2018).

¹¹² See *supra*, n. 69, New Source Review Attack, at 15.

Id. (internal citations omitted). The Trump Administration acted improperly and unlawfully to allow disaggregation of Limetree activities that should have been aggregated and considered together for PSD permitting purposes. This provides an independent justification for reconsidering the PAL Permit and the circumvention of PSD preconstruction permitting by Limetree and the Trump Administration.

Petitioners also hereby petition the EPA to reconsider, stay and withdraw the harmful and unlawful interpretations of the NSR-PSD regulations reflected in the November 15, 2018 Trump EPA notice, 83 Fed. Reg. 57,324, and the Bush Administration's January 9, 2009 NSR Aggregation Action, 74 Fed. Reg. 2,376.¹¹³ The Agency should replace these damaging and deregulatory approaches to PSD-NSR permitting with the more responsible, protective approach followed by EPA prior to the January 2009 Bush EPA Action, and between the May, 2009 EPA stay of that harmful approach and the Trump Administration's temporary policy starting November 15, 2018. EPA should apply the longstanding, historic approach to aggregation to require PSD permitting for the physical changes and changes in the method of operation at the Limetree Refinery that the Trump Administration allowed to evade PSD permitting as two, disaggregated projects.

4. EPA Should Reconsider the Permit, Because by Evading PSD Preconstruction Permitting, EPA Failed to Perform Adequate Analyses of Impacts to Air Quality Related Values in Nearby Class I Areas, and Acid Deposition to Water Bodies

Internal EPA emails obtained through FOIA reveal Agency officials and their counterparts from the National Park Service discussing potential adverse impacts from the Limetree Refinery restart to the nearby Class I areas of the Virgin Islands National Park and Hassel Island near St. Thomas, and adverse impacts from acid rain deposition to waterbodies.¹¹⁴ None of those discussions resulted in changes or improvements to the Permit; in fact, the decision was reached to defer any analysis of impacts to AQRVs to the two Class I areas until *after* permit issuance.¹¹⁵ In the case of harmful deposition, there is no evidence of that analysis having been done, despite the response to comments saying it would be addressed.

A May 21, 2020 email from an EPA Region II official to counterparts in the Region and the National Park Service discussed a series of decisions to do nothing about any harmful impacts to visibility or AQRVs at the Virgin Islands National Park and Hassel Island near St. Thomas, until *after* the Limetree Refinery restart:

¹¹³ This petition hereby incorporates the NRDC petition for reconsideration of the 2009 NSR Aggregation Action. *See* 83 Fed. Reg., at 57,327/3 (“On January 30, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration of the 2009 NSR Aggregation Action (the “NRDC Petition”).”)

¹¹⁴ Exhibit 4, attached.

¹¹⁵ *Id.*, at 4 (May 27, 2020 email from Annamaria Colecchia, Region II, to EP & NPS addressees, summarizing decision “regarding the Limetree Bay restart and the Class I area AQRV analysis for the Virgin Islands National Park in St. John including Hassel Island near St. Thomas”).

1. EPA Region 2's PSD permitting team will connect you with the EPA team working on the Regional Haze FIP and Reasonable Progress analysis so that you can discuss with them incorporating AQRVs into the Regional Haze process;
2. The FLM will not assess the Class I area AQRVs through the PAL permit issuance process;
3. EPA has discretion to reopen the PAL and consult with the FLM in the event that a Class I area AQRV problem is identified after permit issuance.¹¹⁶

These decisions to defer and delay any potential obstacles to restart of the Refinery (and any potential safeguards to protect these Class I areas) are consistent with the rushed, politicized, and result-oriented process by the Trump Administration that one sees throughout the Permit's administrative record.

A National Park Service document obtained through FOIA, and entitled "NPS Summary Review of the St. Croix Limetree (formerly Hovensa Oil Refinery) Restart/PAL

05/28/2020," prepared *after* the May 21st email quoted above, indicates pointedly that:

Based on existing modeling for the 2012 [Regional Haze Federal Implementation Plan], this facility is a concern from a visibility standpoint. We don't have an assessment of deposition impacts. The 2012 [Federal Implementation Plan] modeling demonstrated that the facility "caused" visibility impacts based on modeling of the entire facility (not just [Best Available Retrofit Technology] eligible units). We do not have updated visibility modeling results from EPA.¹¹⁷

The NPS Summary document went on to note, pointedly (again, after the May 21 email, above):

- "In the 2012 FIP, EPA determined that [a Reasonable Progress] analysis for Hovensa (now known as Limetree) was not necessary because the facility was currently idled. EPA committed to "assess if additional control measures are warranted to meet the regional haze requirement" upon notification that the facility intends to restart."
- "Under the 2012 [Federal Implementation Plan], [Reasonable Progress] decisions for this facility are triggered by the restart - will EPA formally address this with the NPS and the public?"
- "How does EPA intend to handle [NPS Federal Land Manager] consultation requirements regarding the [Reasonable Progress] decisions for this facility? (Again, we note that per the 2012 [Federal Implementation Plan] decisions, [Reasonable Progress] analysis requirements are triggered by the restart, not the second round of RH planning.) *Id.*, at 1 (emphasis in original)

¹¹⁶ *Id.*

¹¹⁷ FOIA Documents provided to Petitioners, attached as Exhibit 1, at 1.

- “2012 Regional Haze FIP: The Hovensa facility “caused” visibility impairment in VIIS based on modeled visibility impact (CALPUFF 2007-2010).”
- “EPA acknowledges in their 2012 FIP response to comments that:
 - “[M]odeling predicts that HOVENSA has a significant impact on visibility in the Virgin Islands National Park on St. John, so if reasonable controls on emissions are available from Hovensa, they will reduce this this (sic) significant impact on the view in the Park.”
 - “[T]he HOVENSA Consent Decree is not an analysis of reasonable control measures as required for regional haze. The Consent Decree was developed for entirely different reasons. (Note, the same is true for the PAL permit.)”
 - Increased FLM involvement on “technical issues related to regional haze in the Virgin Islands” is important, “especially via informal sharing of new information.” (Note: We agree and would like to consult with EPA on the RP determinations for this facility, as triggered by the restart.)”
- “PALS Permit:
 - a. WE DO NOT KNOW THE REVISED IMPACT OF THE LIMETREE FACILITY UNDER THE NEW PALS. PALS emissions are significantly lower, but still very high. (See emissions tables below).
 - b. Limetree concludes that “As a result of these dramatically lower emissions, we do not expect there to be a need to revisit the “reasonable progress” analysis of 40 C.F.R. 51.308(d)(1) and revise the FIP.”
 - c. EPA did not respond to this assertion in their PALS Fact Sheet released with the permit. Class I impacts and RH requirements were not addressed in the fact sheet.
 - d. 40CFR52.21 (aa)(8)(ii)(b)(3) allows EPA to “Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.” However, we would need to first identify the adverse impact. Reopening the PAL to address the adverse impact is at the “Administrator’s discretion” per paragraph (b).” *Id.*, at 2-3 (all emphases in original NPS document)

The damning NPS Summary concluded by reminding Trump Administration EPA officials of a series of comments and rejoinders that EPA had made in 2012, responding to HOVENSA’s objections to the regional haze Federal Implementation Plan. *Id.*, at 4-6. These included EPA’s 2012 comments that:

- “EPA proposed the requirement for HOVENSA to submit an analysis of reasonable control measures in the event that HOVENSA resumes operation of any refinery process units as an alternative to requiring such an analysis at this time. While refinery operations are currently idled, HOVENSA has retained its air permits and has not surrendered them to EPA. Therefore, EPA cannot rely on the idling of HOVENSA’s refinery operations as an enforceable emission reduction for meeting the regional haze requirements.” (emphases in original NPS document)
- HOVENSA stated that EPA’s FIP should reflect the determination that HOVENSA’s compliance with the terms of the Consent Decree satisfies its regional haze obligations during the first planning period of the program and that any changes to the refinery’s compliance obligations would be evaluated as part of the five year review.
- Response: HOVENSA’s comment specifically says that HOVENSA’s compliance with the terms of the Consent Decree satisfies its regional haze obligations. In fact, the HOVENSA Consent Decree is not an analysis of reasonable control measures as required for regional haze. The Consent Decree was developed for entirely different reasons. A consent decree is a negotiated agreement, and was not evaluated for meeting the requirements for a reasonable control measure analysis required for regional haze. (emphases in original NPS document)
- EPA Response: “If the refining process restarts, reasonable controls may add to this improvement because HOVENSA has a total impact of 3.34 deciviews on the highest 98th percentile day.” (emphasis in original NPS document)
- “In addition, modeling predicts that HOVENSA has a significant impact on visibility in the Virgin Islands National Park on St. John, so if reasonable controls on emissions are available from Hovensa, they will reduce this this significant impact on the view in the Park.”¹¹⁸ (emphasis in original NPS document)

It is highly revealing that the NPS, in late May, 2020, needed to remind Trump Administration officials what EPA was on record having told HOVENSA, already, about its adverse impacts to visibility on the Virgin Island National Park and Hassel Island, near St. Thomas.

The Trump Administration’s Final Permit for Limetree did not resolve any of these concerns, and the Permit did not include any additional air pollution controls designed to mitigate the identified adverse impacts.

¹¹⁸ *Id.*, 1-9.

Regarding harmful acid rain deposition to waterbodies, the NPS summary notes that, “[u]nlike visibility, the PAL is the only way deposition impacts could be addressed for this restart” (emphasis in original NPS document).¹¹⁹ Internal EPA emails dating to October, 2020, obtained through FOIA, indicate that Region II claimed to have performed a deposition analysis.¹²⁰ Public commenters representing St. Croix residents objected to the proposed Limetree permit’s harmful deposition impacts.¹²¹ The Trump Administration’s response to comments purported to respond to these concerns, pointing to another response that “” discusses EPA’s acid deposition analysis.”¹²² Reading that identified response, however, there is *no* mention of acid rain deposition impacts, and certainly nothing that anyone would call a ‘deposition analysis.’¹²³ A May, 2020, NPS email had reminded EPA officials that “if there are pollutant deposition concerns, [Regional Haze] will not address those, but” EPA could address them, *if* the Agency reopened the PAL Permit *after* permit issuance.

It remains unclear in the administrative record whether or how the Trump Administration addressed these deposition concerns. But, any decision to defer those decisions until *after* Permit issuance, *if* the PAL Permit is reopened, represents arbitrary and capricious decision-making and an abuse of agency discretion. The EPA should reconsider the PAL Permit, and reopen or revoke it, in order to address concerns over adverse impacts to AQRVs and visibility in nearby Class I areas, and harmful impacts from pollution deposition to nearby waterbodies.

5. EPA Should Reconsider Its Withdrawal of the Reactivation Policy Because the Trump Administration Action Deviates from Sound Public Health & Environmental Policy. Moreover, According to the Agency’s Own Rules, Withdrawal at that Times Required Prior Notice and Comment Rulemaking

The Trump Administration’s sudden withdrawal of its longstanding Reactivation Policy is indefensible and should be reconsidered and reversed.

First, the timing and circumstances of this withdrawal show that EPA has acted arbitrarily and capriciously and has abused its discretion. For the entire duration of the permitting process, including in the draft permit and throughout the public comment period, EPA applied the Reactivation Policy in its analysis of whether to grant the Permit (albeit, wrongly). Only on the very day that EPA approved the Final Permit, well after Petitioners and others had a chance to comment on and consider the issue, EPA stated, buried on page 108 in its RTC, that it would no longer apply the Reactivation Policy. If EPA had considered this issue in a non-arbitrary and capricious manner, it would have announced this decision earlier on in the permitting process and allowed public comment on it.

¹¹⁹ *Id.* at 1.

¹²⁰ Exhibit 1, attached, at pg. 1.

¹²¹ *See supra*, n.23, RTC, at 93 (Comment 120).

¹²² *Id.*, at 94 (EPA Response 120).

¹²³ *Id.*, at 96 (EPA Response 122).

Second, and specifically, under EPA guidance rules signed by then-Administrator Wheeler and made effective on November 18, 2020 by the Trump EPA, EPA's withdrawal of the Reactivation Policy and apparent establishment of a new policy – that long-shuttered “idling” sources can obtain PAL permits – could only have been withdrawn by formal notice and comment procedures required in that rulemaking.¹²⁴ EPA violated the agency guidance rule by withdrawing the Reactivation Policy — disavowing the longstanding agency guidance in *Monroe* and other Agency reactivation guidance — without first seeking “public comment on the Agency’s intent to withdraw a significant active guidance document” and publishing a notice in the Federal Register announcing that intent.¹²⁵ There is no record evidence that EPA sought public comment on its intent to withdraw EPA’s reactivation guidance, nor published the required notice in the Federal Register. The Trump Administration EPA further violated its own guidance rule then in place, by failing to provide a 30-day public notice and comment period on the draft withdrawal of the reactivation guidance, prior to final withdrawal of the reactivation guidance.¹²⁶

There is no record evidence of EPA meeting those obligations. The Trump EPA Administrator’s action did not invoke either of the guidance rule’s exceptions to this public comment process and, at any rate, his actions did not meet any of the conditions for those exceptions.¹²⁷ Additionally, the Trump EPA violated its own guidance rule by adopting new guidance to replace the reactivation guidance, without first making “publicly available a draft significant guidance document ... for public comment before finalizing any significant guidance document,” and without “publish[ing] a notice in the Federal Register announcing the availability of a draft significant guidance document.”¹²⁸ The Agency interpretations and approach in the Limetree RTC that eliminated and supplanted the 42-year-old Reactivation Policy mark a radical shift from longstanding EPA interpretations and practices. EPA’s radical reversal, and the manner in which it was executed, denied Petitioners and the public any opportunity to comment on it. The agency also necessarily violated its own guidance document rule requirement that “EPA shall respond to concerns and comments” about its new guidance, that was then active.¹²⁹

Third, EPA’s eradication of its longstanding policy goes against the spirit of the Act and the PSD permitting program. For all of the reasons listed in the prior sections, the Clean Air Act explicitly requires new or major modifying sources to undergo PSD permitting to avoid exactly what has happened in the Limetree permitting process. Old, dirty facilities that have been mothballed for years should not be allowed to operate without installing new pollution controls that keep up with the state of the art, so as to protect the people around them and the places where the facilities operate.

¹²⁴ *EPA Guidance; Administrative Procedures for Issuance and Public Petitions*, 85 Fed. Reg. 66,230 *et seq.* (Oct. 20, 2020) (“Guidance Document Rulemaking”).

¹²⁵ *Id.* at 66,239/1 (40 C.F.R. § 2.506(b)(1) & (2)).

¹²⁶ *Id.* (40 C.F.R. § 2.506(c)(1)).

¹²⁷ *Id.* (40 C.F.R. § 2.506(d)(1) & (2)).

¹²⁸ *Id.* (40 C.F.R. § 2.506(a)(1) & (2)).

¹²⁹ *Id.* (40 C.F.R. § 2.506(c)(2)).

Fourth, the reasons EPA set forth in its Response to Comments highlight the clear error in its decision to abandon the Reactivation Policy. A permit is considered appropriate only when, as a whole, the record indicates that the permit issuer “duly considered the issues raised in the comments” and ultimately adopted an approach that “is rational in light of all information in the record.”¹³⁰

Then-Administrator Wheeler’s evasion of PSD permitting and the Response to Comments’ terse explanation for abandoning the Reactivation Policy were clearly erroneous, because they “entirely failed to consider an important aspect of the problem”: how to permit long-dormant, permanently shutdown sources under the NSR-PSD preconstruction permitting program that applies to new sources and major modifications at existing sources.

The EPA Reactivation Policy recognizes that reactivation of permanently shutdown facilities can produce significant emissions increases of regulated air pollution into an airshed, just like a “new source” does.¹³¹ The Trump Administration’s explanation entirely ignores this reality.¹³²

Moreover, the Trump EPA’s explanations for abandoning the Reactivation Policy are internally contradictory and made in clear error. The explanations consist of arguing that the Reactivation Policy is inconsistent with a 2002 New Source Review (“NSR”) rule in various ways.¹³³ However, the RTC conveniently ignores that the 2002 rule cited and relied upon the EPA Reactivation Policy — indeed then-Administrator Browner’s *Monroe* Order carrying out the Reactivation Policy — as a central element necessary to implement the 2002 rule.

Importantly, the 2002 NSR rule depends on application of the longstanding agency Reactivation Policy to “permanently shutdown” facilities.¹³⁴ The 2002 rule favorably references the *Monroe* Order as the Agency’s definitive interpretation for when stationary sources and emissions units are “permanently shutdown” for purposes of PSD permitting. There is no hint that EPA’s longstanding Reactivation Policy is inconsistent with the 2002 rule in any respect. Rather, it is the Limetree RTC’s *post hoc* gloss on the 2002 NSR rule alleging inconsistencies with the Reactivation Policy that were never hinted at in the contemporaneous preamble to the

¹³⁰ *In re: City And County Of San Francisco*, 2020 WL 7135345, at *4 (citing *In re Gov't of D.C. Mun. Sep. Storm Sewer Sys.*, 10 E.A.D. 323, 342 (EAB 2002)).

¹³¹ The Clean Air Act defines a “major stationary source” as one that emits or has the potential to emit either 100 or 250 tons per year. See 42 U.S.C. § 7479(1) (definition of major emitting facility) 40 C.F.R. § 52.21(b)(1)(i)(a) (PSD definition of major stationary source).

¹³² See *supra*, n. 23, RTC at 108-111.

¹³³ See *id.*, at 109-111.

¹³⁴ Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Final Rule and Proposed Rule, 67 Fed. Reg. 80,186 *et seq.* (Dec. 31, 2002) (“PAL Regulations”), at 80,208-80,209 & n. 30 (“[F]or any emissions unit that is permanently shut down or dismantled since the 24-month period, its emissions must be subtracted from the PAL level.” (citing *Monroe* Order for propositions that whether shutdown should be treated as permanent depends on the intention of the owner or operator *at the time of shutdown*, and that shutdowns of more than 2 years are presumed to be permanent)).

2002 rule, or the rule itself. EPA must resort to re-interpreting and misrepresenting the 2002 rule to facilitate disavowal of the Reactivation Policy and issuance of a PAL permit to Limetree. This represents arbitrary and capricious agency action.¹³⁵

EPA acted even more arbitrarily by attempting to twist and shoehorn its *ad hoc* abandonment of the Reactivation Policy into the alleged framework of the 2002 rule. Addressing the Limetree facts, the EPA argues “the idling of the refinery portions of the facility may be viewed to have occurred in the normal course of the 10-year business cycle upon which EPA based the baseline provision in the 2002 rule.”¹³⁶ This rationale is arbitrary and capricious on its face: there is no industry sector for which 9 or 10 years of non-operation by a facility represents the ‘normal course of a 10-year business cycle.’ The notion is equally absurd applied to the Refinery, whose nearly decade-long shutdown to date did not represent the normal course of a 10-year business cycle.

The RTC reads like an attempt to explain away a longstanding agency policy, by inventing inconsistencies with a nearly 19-year-old EPA rule, alleged inconsistencies that EPA never has mentioned before December 2020. As shown, the 2002 rule cites and depends on the agency Reactivation Policy to ensure protection of air quality, by assigning shutdown emissions units zero emissions.¹³⁷ The 2002 rule does so by relying on the Reactivation Policy for the identical approach to PSD permitting for permanently shutdown sources and emissions units that have been reactivated.¹³⁸ This is what EPA should have done, but did not, for the Refinery emissions units that were shut down in 2012. The Agency’s failure to do so, and its explanations for this failure, is arbitrary and capricious, and an abuse of discretion.

6. EPA Should Reconsider the Permit Because it is Based on Inappropriate Emissions Data

EPA regulations authorize a concept called a “Plantwide Applicability Limit,” which is a “source-wide cap on emissions [that] is one way of making sure that emissions increases from your major stationary source do not occur.”¹³⁹ In its original PAL Regulations, EPA said that:

we expect that PALs will encourage you to undertake such projects as: replacing outdated, dirty emissions units with new, more efficient models; installing voluntary emissions controls; and researching and implementing improvements in process efficiency and use of pollution prevention technologies, so that you can maintain maximum operational flexibility.

Id., at 80,207/3. The Limetree PAL does the opposite: it creates a “cap” on emissions astronomically higher than source-wide emissions since 2011. The PAL locks in “outdated, dirty

¹³⁵ See *State Farm*, 463 U.S. at 43 (agency action is arbitrary and capricious is based on “an explanation for its decision that runs counter to the evidence before the agency”).

¹³⁶ See *supra*, n. 23, RTC, at 110.

¹³⁷ *Id.*, at 80,285/3 (40 C.F.R. § 52.21); 67 Fed. Reg., at 80,209 & n.3.

¹³⁸ 67 Fed. Reg., at 80,208-80,209 & n.3.

¹³⁹ 67 Fed. Reg. 80,207/1 (Dec. 31, 2002) (“PAL Regulations”).

emissions units” operating without air pollution controls or poor controls in 2011, and specifically relieves refinery operators from installing “new, more efficient models.”¹⁴⁰ The grossly inflated emissions cap eliminates the incentive to install “voluntary emissions controls” prior to reactivation, and removes any incentive to “improve process efficiency,” because there is already so much headroom under the inflated emissions cap.¹⁴¹

EPA facilitated this more polluting, harmful outcome by violating its own PAL Regulations. Those regulations require that “[e]missions associated with units that were permanently shutdown after [the PAL’s initial 24-month baseline period] must be subtracted from the PAL level.”¹⁴² A “10-year actuals PAL” is created by adding “baseline actual emissions” for each regulated pollutant, from all emissions units, to an additional significant emissions increase level for each emissions unit. “Baseline actual emissions,” relevant to the Limetree PAL, are defined as:

the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding ... the date a complete permit application is received by the Administrator for a permit required under this section.¹⁴³

Baseline emissions for a PAL may be inflated even more by including “emissions associated with startup, shutdown, and malfunction.”¹⁴⁴ A source operator’s incentive is to inflate “baseline actual emissions” as much as possible, so the PAL emissions cap will be set at the highest possible level at which the facility is allowed to operate.

The Limetree PAL is based on baseline emissions from the HOVENSA refinery reflecting the average emissions rate (in tons per year, “tpy”) over the years 2009-2011, when the full refinery was operating—far and away the most polluting years in the past twelve years—plus significant emissions increases for each PAL pollutant.¹⁴⁵ Accordingly, the Permit’s Plantwide Applicability Limit for volatile organic compounds¹⁴⁶ is an astonishing 6,094 tpy; for nitrogen

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*, at 80,285/3 (40 C.F.R. § 52.21(aa)(6)(iii))

¹⁴³ *Id.*, at 80,278/3 (40 C.F.R. § 52.21).

¹⁴⁴ *Id.*, at 80,285/2 (40 C.F.R. § 52.21).

¹⁴⁵ “Limetree’s PAL levels in the permit are based on HOVENSA’s actual emissions in 2009 to 2011 plus the significant emission level under 40 CFR § 52.21(b)(23) for each PAL pollutant. The 2009-2011 timeframe is the period when some of the SO₂ NAAQS exceedances and violations were measured, so there is significant risk of an exceedance and violation because Limetree’s PAL level is similar to the actual emissions when the exceedances and violations took place.” *See supra*, n. 23, RTC, at 84.

¹⁴⁶ Volatile organic compounds emitted by oil refineries include volatile hazardous air pollutants, which consist of known carcinogens. What’s more “Studies have shown that actual toxic air emissions from many refinery sources, like flares, tanks, and cooling towers, can be 10 or even 100 times higher than what is reported to regulatory agencies. Emissions include a toxic soup of carcinogens, neurotoxins, and hazardous metals, such as benzene, hydrogen cyanide, and lead —

oxides, 5,594 tpy; and for sulfur dioxide, 1,482 tpy.¹⁴⁷ In sharp contrast, these were the facility-wide emissions for these same pollutants during the following years, in tons per year:

Year	VOCs	NO _x	SO ₂
2012 ¹⁴⁸	944	1,101	131
2014 ¹⁴⁹	659	493	47
2016 ¹⁵⁰	292	556	10
<i>PAL</i>	<i>6,094</i>	<i>5,594</i>	<i>1,482</i>

EPA violated its PAL Regulations by approving a PAL for the refinery that did not “subtract[] from the PAL level” “[e]missions associated with units that were permanently shutdown after this 24-month period” in 2009-2011.¹⁵¹ For all the reasons discussed above, *supra*, III.B.1 & III.B.2, the HOVENSA refinery was shutdown in 2012 and remained shutdown for more than two years. Even if one accepts for the sake of argument that the entire “source” was not permanently shutdown as a refinery, due to the continuing operation of the terminal and wastewater treatment plant,¹⁵² the record is clear that all other emissions units associated with processing crude oil were not operating, and have remained shutdown since 2012.

Critically, the PAL Regulations require that “emissions associated with units that were shutdown” (after 2009-2010, in the case of Limetree) must be “subtracted from the PAL level.”¹⁵³ This, EPA did not do (or claim to do): the PAL levels in the 2020 permit are based upon the average rate, in tons per year, of emissions units that were operating at the refinery

to name a few.” https://earthjustice.org/sites/default/files/files/Refineries-Fact-Sheet_04-08.pdf; EPA’s own analysis indicates “some of the chemicals released are known or suspected cancer-causing agents, responsible for developmental and reproductive problems. They may also aggravate certain respiratory conditions such as childhood asthma.” Hazardous Substance Research Centers/South & Southwest Outreach Program, “Environmental Impact of the Petroleum Industry,” available at https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/display/files/fileID/14522. As noted above, a 2015 report by EPA’s air office found that the Refinery had the single highest cancer Maximum Individual Risk of *all* petroleum refineries. *See supra*, n.35.

¹⁴⁷ *See supra*, n. 52, Final PAL Permit, Enclosure 1, at 3.

¹⁴⁸ Limetree 2012 Title V/Part 70 Permit Emissions Inventory & 2011 Revision (July 12, 2013), Doc. Id. No. EPA-R02-OAR-2019-0551-0230.

¹⁴⁹ Limetree 2014 Title V/Part 70 Permit Emissions Inventory (July 14, 2015), Doc. Id. No. EPA-R02-OAR-2019-0551-0232.

¹⁵⁰ Limetree 2016 Title V/Part 70 Permit Emissions Inventory (July 11, 2017), Doc. Id. No. EPA-R02-OAR-2019-0551-0234.

¹⁵¹ PAL Regulations, 67 Fed. Reg. at 80,285/3 (40 C.F.R. § 52.21).

¹⁵² *See supra*, n. 51, Wehrum Letter at 3.

¹⁵³ PAL Regulations, 67 Fed. Reg. at 80,285/3 (40 C.F.R. § 52.21) (emphasis added).

during 2009-2011, including units that shutdown in 2012 and remained shutdown, thereafter. This sweeping error on the part of the Administrator caused the Limetree emissions caps to be massively, unlawfully inflated, because “EPA has made clear that in calculating the net emissions increase for reactivation of long dormant sources potentially subject to PSD, the source is considered to have zero emissions as its baseline.”¹⁵⁴

It is undisputed that the Administrator did not assign these shutdown units zero emissions for their baseline emissions when establishing the PALs.

As discussed above, the PAL Regulations depend on application of the longstanding agency Reactivation Policy to determine whether emissions units were “permanently shutdown.”¹⁵⁵ This is the same Reactivation Policy that Administrator Wheeler disavowed and purported to eliminate when evading PSD permitting requirements for Limetree and when establishing the illegal PAL. The Administrator needed to resort to this drastic step in order to allow Limetree to evade the Reactivation Policy and PSD permitting. In doing so, however, the Administrator violated the EPA regulations that depend on application of that very same Reactivation Policy.

The EPA cannot have it both ways. EPA may not violate PSD regulations by arbitrarily jettisoning the Reactivation Policy, while simultaneously creating PALs under regulations that depend upon the Reactivation Policy to maintain the integrity and environmental protectiveness of permissible PALs.

C. EPA SHOULD RECONSIDER THE PERMIT BECAUSE IT FAILED TO ADHERE TO ENVIRONMENTAL JUSTICE REQUIREMENTS AND FAILED TO PROTECT THE HEALTH OF THE LOCAL COMMUNITY

The Biden Administration has pledged an aggressive, broad-based, “whole-of-government” approach to addressing environmental injustices. On January 20, 2021, President Biden issued Executive Order 13990, entitled *Protecting Public Health and the Environment by Restoring Science to Tackle the Climate Crisis*, requiring all federal agencies to immediately review actions taken between January 20, 2017 to January 20, 2021 “that are inconsistent with, or present obstacles to” policies that prioritize environmental justice.¹⁵⁶ The Order states: “For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.”¹⁵⁷ As EPA renews its commitment to environmental justice and civil rights, EPA must reconsider its decision to issue the PAL permit to the Refinery because it will have

¹⁵⁴ See *supra*, n. 70, Monroe Order, at 14.

¹⁵⁵ PAL Regulations, 67 Fed. Reg. at 80,209-80,209.

¹⁵⁶ See *supra*, n. 5, Exec. Order 13,990.

¹⁵⁷ *Id.*

disproportionately high and adverse effects on the minority and low-income community surrounding the Refinery.¹⁵⁸

1. EPA Must Reconsider the Permit Because Air Pollution from the Refinery Will Have a Disproportionately High and Adverse Impact on the Environmental Justice Community of South Central St. Croix

EPA acknowledged in its EJ Analysis that the South Central area of St. Croix where the Refinery is located is a community of concern because it is an industrialized area surrounded by a number of residents, several schools, a hospital, and other locations that include sensitive populations.¹⁵⁹ EPA found that the community has more low-income and minority populations as compared to the rest of St. Croix and, in part due to the devastating impacts of Hurricanes Irma and Maria, has “high risk vulnerability status” according to the Federal Emergency Management Agency (FEMA).¹⁶⁰

The community is also burdened by cumulative impacts from several complex environmental challenges nearby, including the St. Croix Renaissance Industrial park that was recently reported to cause health issues due to irritants from Red Mud and odor complaints from sources in the area that resulted in the closing of nearby schools, fires from the Anguilla landfill, proximity to a wastewater treatment plant, noise and traffic issues associated with the nearby Henry E. Rohlsen Airport, and emissions from large ships docked at its coast.¹⁶¹ The industrialized nature of South Central St. Croix in the vicinity of the Limetree facility stands in contrast to the rest of the Island of St. Croix and even more broadly, the rest of the U.S. Virgin Islands, which is not as industrialized.¹⁶²

EPA made the rare finding that “EPA cannot conclude that the operation of the refinery under the PAL will assure compliance with the NAAQS in the EJ community” and “there is in fact a disproportionate burden in South-Central St. Croix.”¹⁶³ EPA reached the troubling conclusion that “it is difficult to conclude that the operation of the facility under the flexibility allowed by the PAL, and the uncertainties in the modeling and background concentrations, will not contribute to a disproportionately high and adverse human health or environmental effect on the community.”¹⁶⁴ In light of these disproportionate impacts, EPA must uphold the environmental justice mandate and reconsider issuance of the PAL permit.

¹⁵⁸ *Id.*; see *supra*, n. 3, Exec. Order 12,898; *20th Anniversary of Executive Order 12898 on Environmental Justice*, Proclamation No. 9082 of Feb. 10, 2014, 79 Fed. Reg. 8819 (Feb. 13, 2014), available at <https://obamawhitehouse.archives.gov/the-press-office/2014/02/10/presidential-proclamation-20th-anniversary-executive-order-12898-enviro>.

¹⁵⁹ See *supra*, n. 7, U.S. EPA, Final EJ Analysis, at 2.

¹⁶⁰ *Id.* at 2-3.

¹⁶¹ *Id.* at 2.

¹⁶² *Id.*

¹⁶³ See *supra*, n. 23, RTC at 71, 76.

¹⁶⁴ See *supra*, n. 7, Final EJ Analysis, at 14.

2. EPA Must Reconsider Its Decision to Issue the PAL Permit Because the Permit Does Not Ensure Compliance with the NAAQS or Protect the Community in Violation of Executive Order 12898

EPA abused its discretion under Executive Order 12898 because EPA made a finding that the Refinery would have a disproportionate impact on an environmental justice community, but did not condition the permit to ensure that such impacts do not occur.¹⁶⁵ EPA must comply with Executive Order 12898 pursuant to its Clean Air Act authority and address environmental justice in the permitting process when there is any “superficially plausible” claim that a minority or low-income population may be disproportionately affected by a particular facility.¹⁶⁶ Executive Order 12898, reinforced by Proclamation No. 9082 and Executive Order 13990, requires EPA to identify and address any disproportionately high and adverse human health and environmental effects from the polluting activity contemplated by the draft permit.¹⁶⁷

The only permit condition that EPA required to address its finding of disproportionate impact is an ambient air quality monitoring network that includes resuming five SO₂ monitors in place when Hovensa operated, adding one new NO₂ monitor, and one new PM_{2.5} monitor.¹⁶⁸ Ambient air quality monitoring does not address the real threat of disproportionate harm to the community. The evidence in the record shows that the Refinery has historically—and will continue—to violate the NAAQS. EPA itself acknowledged that there may be adverse impacts on nearby communities because the historic ambient monitors in operation prior to the shutdown of the Refinery showed exceedances and violations of the 1-hour SO₂ NAAQS from 2008 to 2011.¹⁶⁹ Further, EPA admits that “the PAL does authorize increases in the short-term emission rate at different units as long as the annual PAL is not exceeded” which “has implications for the 1-hour NO₂, 1-hour SO₂, and 24-hour PM_{2.5} NAAQS.” *Id.* Given the evidence of historic pollution, the uncertainties in the Refinery’s modeling, and EPA’s finding that there the community suffers disproportionate adverse impacts, EPA should have taken affirmative action to minimize and mitigate the risk, rather than choosing this “wait and see” approach.

¹⁶⁵ See *In re Chemical Waste*, 6 E.A.D. 66, 74 (EAB 1995) (holding that “if the operation of a facility would have an adverse impact on the health or environment of the surrounding community, [EPA] would be required to include permit terms or conditions that would ensure that such impacts do not occur.”).

¹⁶⁶ See 59 Fed. Reg. 7629; see also *In re EcoEléctrica, L.P.*, 7 E.A.D. 56, 69 n.17 (EAB 1997) (PSD permit); *In re Shell Gulf of Mex., Inc. & Shell Offshore, Inc.* (“Shell 2010”), 15 E.A.D. 103, 148 (EAB 2010) (PSD permit); see also *In re Chem. Waste Mgmt.*, 6 E.A.D. 66 (EAB 1995) (articulating Board’s authority to review Executive Order concerning environmental justice and encouraging regions to examine any “superficially plausible” claim that a minority or low income population may be disproportionately affected by a particular facility).

¹⁶⁷ *Id.*; see also U.S. EPA Region 2, *Interim Environmental Justice Policy*, 22-23, 27 (Dec. 2000) (If EPA finds disproportionately high or adverse impact, “then appropriate action should be pursued to minimize or mitigate such concerns.”) available at <https://www.epa.gov/sites/production/files/2016-03/documents/eipolicy.pdf>.

¹⁶⁸ *Id.* at 59.

¹⁶⁹ See *supra*, n. 23, RTC at 60.

EPA has authority under the Clean Air Act to exercise discretion to require additional PAL permit conditions to ensure compliance with the NAAQS.¹⁷⁰ EPA must act under this authority because of its finding that it “cannot conclude that the operation of the refinery under the PAL will assure compliance with the NAAQS in the EJ community.”¹⁷¹ Without taking action to protect the community from the NAAQS violations, EPA has abrogated its responsibility to protect human health and the environment.

We implore EPA to reconsider its decision to issue the PAL permit and meet its obligations to protect the environmental justice community surrounding the Refinery from suffering disproportionately high and adverse impacts.

3. EPA Must Reconsider Its Decision to Issue the PAL Permit Because EPA Failed to Translate Vital Documents for Limited English Proficiency Individuals, Denying Them Meaningful Access to the Public Participation Process and Violating Executive Order 12898 and Executive Order 13166

Even though the U.S. Virgin Islands and the area around the Refinery has many residents with limited English proficiency, EPA denied them meaningful access by failing to release vital documents, such as the public notice and permit fact sheet, in any language besides English.¹⁷² This omission violates EPA’s environmental justice obligations under both Executive Order 12898 and Executive Order 13166.¹⁷³ EPA, relying only on outdated twenty-year old data (2000 U.S. Census), erroneously concluded it did not need to translate vital documents to LEP individuals, despite being presented with the more recent 2010 U. S. Census data which showed that a higher percentage of the population in the area has limited English proficiency.¹⁷⁴

In addition, the EPA ignored how other federal and territorial agencies have recognized and accommodated LEP individuals in this area. For example, FEMA has recognized the abundance of LEP individuals in the territory and endeavors to provide vital information and

¹⁷⁰ *Id.* at 62-64 (explaining EPA’s omnibus authority under Clean Air Act § 165(a)(7), PAL provisions of 40 CFR § 52.21, NSR Reform Rule, 67 Fed. Reg. 80196, 80210 (Dec. 31, 2002), and the State Implementation Plan process to “adjust the PAL level at its discretion based on air quality needs.”)

¹⁷¹ *See supra*, n 23., RTC at 71; *see also In re Muskegon Development Company*, 2019 WL 1987188, at *12 (Apr. 29, 2019) (quoting *In re Envotech, L.P.*, 6 E.A.D. 260, 280 (EAB 1996)) (noting that EPA can address its EJ obligations through public participation and its omnibus authority under existing statutes).

¹⁷² *See e.g.*, U.S. EPA, Public Notice, Announcement of Public Comment Period (Oct. 9, 2019), Doc. Id. No. EPA-R02-OAR-2019-0551-0213; U.S. EPA, Press Release, Announcement of Public Comment Period (Sept. 20, 2019), Doc. Id. No. EPA-R02-OAR-2019-0551-0045; U.S. EPA, Fact Sheet, Draft PAL Permit (Sept. 2019), Doc. Id. No. EPA-R02-OAR-2019-0551-0105.

¹⁷³ 59 Fed. Reg. 7629; 65 Fed. Reg. 50,121.

¹⁷⁴ PC at 16-17 (citing 2010 U.S. Census, Detailed Crosstabulations, Fig. 1-8). The 2010 U.S. Census demonstrated that close to 1/3 of the U.S. Virgin Islands population over the age of 5 speak a language other than English (28,041 people out of 98,905), and of this group, over 4,000 individuals speak English “not well” or “not at all.”

documents in Spanish and French Creole.¹⁷⁵ The Virgin Islands Housing Finance Authority has explicit policies to accommodate LEP individuals.¹⁷⁶ And the Virgin Islands Police Department has recognized a need for bilingual employees, e.g., for 911 calls, to serve the U.S. Virgin Island's LEP population.¹⁷⁷ Historic evidence of the Refinery's history of exploiting workers from non-U.S. Caribbean islands supports the idea that there are LEP individuals surrounding the Refinery.¹⁷⁸

Under these Executive Orders, EPA is required to translate vital public documents, notices, and hearings relating to human health or the environment for limited English-speaking populations.¹⁷⁹ Specifically, the requirement states: "With respect to documents intended for public outreach or a broad audience, each HQ and regional program office should ensure that the documents it considers 'vital' are translated where a significant percentage of the population is eligible to be served, or likely to be directly affected, by the offices' services, programs, or activities are LEP."¹⁸⁰

EPA's decision not to assess the LEP population or provide translation of vital documents is irrational in light of all of the information in the record about the LEP population and EPA's finding that the community is overburdened with pollution and would suffer disproportionate adverse impacts from air emissions from the Refinery. EPA's decision to deny meaningful access to the public participation process for LEP individuals is wrong and violates both Executive Order 12898 and Executive Order 13166. EPA must reconsider their error by providing vital documents for LEP individuals and hosting informational sessions and public meetings with accommodations for LEP individuals. This will ensure that the communications between EPA and LEP population near the Refinery are not impaired as a result of this population's limited English proficiency.

¹⁷⁵ PC at 16 (citing Press Release, FEMA, *U.S. Virgin Islanders, FEMA Speaks Your Language*, Oct. 30, 2017, <https://www.fema.gov/news-release/20200220/abitan-zile-vyej-ameriken-fema-pale-menm-lang-avek-ou>).

¹⁷⁶ PC at 17 (citing Virgin Islands Housing Finance Authority – CDBG-DR Division, *United States Virgin Island Housing Finance Authority Workforce Development Program Policies*, June 6, 2019, https://www.vihfa.gov/sites/default/files/Workforce_Dev_P%26P_V1_0.pdf).

¹⁷⁷ PC at 17 (citing Bill Kossler, *911 in USVI Still Lacking Spanish Speakers*, June 24, 2016, <https://stjohnsource.com/2016/06/24/911-in-usvi-still-lacking-spanish-speakers/>).

¹⁷⁸ PC at 16 (citing David Bond, *Oil in the Caribbean: Refineries, Mangroves, and the Negative Ecologies of Crude Oil*, *Comparative Studies in Society & History*, at 608 (Cambridge Univ. Press 2017) (“‘Bonded aliens,’ as imported workers were classified, were housed next to the refinery in camps surrounded by barbed wire fences. These ‘bonded aliens’ could not vote and were denied access to schools and other public services, and their employer could deport them at will. While these workers were initially brought in to serve the island’s seasonal tourism trade, the refinery quickly took advantage of this depoliticized class of worker.”)).

¹⁷⁹ 59 Fed. Reg. at 7632; see EPA Order No. 1000.32, *Compliance with Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency*, 10-11 (updated Feb. 10, 2017).

¹⁸⁰ *Id.* at 11.

In order for EPA to comply with President Biden’s mandate to immediately review all agency actions “that are inconsistent with, or present obstacles to” policies that prioritize environmental justice, EPA must reconsider its decision to issue the PAL permit without adequate protections for the community being subjected to environmental harm.

D. EPA SHOULD RECONSIDER THE PERMIT BECAUSE IT FAILED TO ADEQUATELY CONSULT ON ALL ENDANGERED AND THREATENED SPECIES THAT WILL BE HARMED BY THE PERMIT, AS REQUIRED UNDER THE ENDANGERED SPECIES ACT.

1. EPA Should Reconsider the Permit Because it was Issued Without Adequate ESA Consultation

EPA violated the ESA by failing to appropriately consult with the U.S. Fish and Wildlife Service (“FWS”) and the National Marine Fisheries Service (“NMFS”) to ensure its issuance of the Permit will not jeopardize the continued existence of threatened or endangered species in the project area. *See* 16 U.S.C. §§ 1536(a)(2).¹⁸¹

The Refinery’s air, water and other environmental impacts may affect 25 federally listed species: 9 managed by FWS (hawksbill, leatherback, loggerhead, and North and South Atlantic Distinct Population Segments (DPSs) of the green sea turtles when in terrestrial habitat; West Indian manatees; St. Croix ground lizards; and least and roseate terns); and 21 managed by NMFS (the five types of sea turtles while in the marine habitat; blue, fin, sei, and sperm whales; giant manta ray; Nassau grouper; oceanic whitetip shark; Central and Southwest Atlantic DPS of the scalloped hammerhead shark; and boulder star, elkhorn, lobed star, mountainous star, pillar, rough cactus, and staghorn corals).¹⁸² Petitioners’ comments described the negative impacts the Refinery’s water discharges, noise pollution, light pollution, climate pollution, and air pollution

¹⁸¹ EPA does not dispute that issuance of the Permit was a “final permit decision,” subject to ESA consultation requirements. 40 C.F.R. § 124.15(a); 50 C.F.R. § 402.02; *see also In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 212 (EAB 2006) (failure to consult is reviewable by the Board); *In re Desert Rock Energy Company, LLC*, 14 E.A.D. 484, 509 (EAB 2009) (remanding to agency in part to address ESA compliance).

¹⁸² Final listing rules for the roseate tern, 52 Fed. Reg. 42064 (Nov. 2, 1987); hawksbill and leatherback sea turtles, 35 Fed. Reg. 8491 (June 2, 1970), Northwest Atlantic Ocean DPS of loggerhead sea turtle, 76 Fed. Reg. 58867 (Oct. 24, 2011), and North and South Atlantic Distinct Population Segments (DPSs) of the green sea turtles, 81 Fed. Reg. 20058 (May 6, 2016); West Indian manatees, 82 Fed. Reg. 16668 (Apr. 5, 2017); St. Croix ground lizards, 42 Fed. Reg. 28543 (June 3, 1977); blue, fin, sei, or sperm whales, 35 Fed. Reg. 18319 (Dec. 2, 1970); giant manta ray, 83 Fed. Reg. 2916 (Jan. 22, 2018); Nassau grouper, 81 Fed. Reg. 42268 (June 29, 2016); oceanic whitetip shark, 83 Fed. Reg. 4153 (Jan. 30, 2018); Central and Southwest Atlantic DPS of the scalloped hammerhead shark, 79 Fed. Reg. 38213 (July 3, 2014); and boulder star, elkhorn, lobed star, mountainous star, pillar, rough cactus, and staghorn corals, 79 Fed. Reg. 53851 (Sept. 10, 2014).

would have on these species, and expressed concern that, at the time of Petitioners' comments, the record demonstrated no evidence that EPA had consulted with FWS or NMFS.¹⁸³ Many other comment letters expressed similar concerns.¹⁸⁴ Despite the scale of the Refinery's potential impacts on a significant number of imperiled species, EPA failed to adequately ensure that its action would not jeopardize these listed species. Specifically, EPA failed to conduct any consultation on loggerhead and green sea turtles and the Caribbean roseate tern and violated consultation requirements for the other listed species.

2. EPA Failed to Consult with FWS on Loggerhead and Green Sea Turtles and the Caribbean Roseate Tern

EPA failed altogether to consult with FWS on the impacts of permitting the refinery on the loggerhead sea turtle, the North and South Atlantic Distinct Population Segments (DPSs) of the green sea turtles, and the Western Hemisphere DPS of the Caribbean roseate tern.¹⁸⁵ EPA is required to consult where its actions "may affect" a listed species.¹⁸⁶ The threshold for a "may affect" determination triggering EPA's consultation duty is low.¹⁸⁷ ESA provides that in fulfilling the consultation requirements, "each agency shall use the best scientific and commercial data available."¹⁸⁸

EPA's issuance of the Permit may affect the loggerhead and green sea turtles, as well as the Caribbean roseate tern. The best available science demonstrates that loggerhead and green sea turtles are found in the project area.¹⁸⁹ In fact, green sea turtle nesting "is reported as increasing on Sandy Point."¹⁹⁰ Limetree itself reported that "[g]reen turtles, hawksbills and a

¹⁸³ PC at 17-25.

¹⁸⁴ See, e.g., Comment of Archer H. Christian, (Nov. 26, 2019), EPA-R02-OAR-2019-0551-0142.

¹⁸⁵ See Letter from U.S. EPA to U.S. FWS, *Endangered Species Act (ESA) consultation for Limetree Bay Terminals, LLC air permit* (Feb. 19, 2020), ("EPA Consultation Letter"), EPA-R02-OAR-2019-0551-0180; Letter from U.S. FWS to U.S. EPA, *Air Permit Application for Limetree Bay Terminal, St. Croix, USVI* (Feb. 28, 2020), EPA-R02-OAR-2019-0551-0184.

¹⁸⁶ 16 U.S.C. § 1536.

¹⁸⁷ See 50 C.F.R. § 402.14(a); 51 Fed. Reg. 19,926, 19,949 (June 3, 1986) ("Any possible effect . . . triggers the formal consultation requirement."); *In re Indeck-Elwood, LLC*, 13 E.A.D. 126 (EAB 2006) at 196 (same).

¹⁸⁸ 16 U.S.C. § 1536(a)(2).

¹⁸⁹ Letter from NOAA to U.S. EPA Region 2, *Concurrence Letter for the U.S. Environmental Protection Agency Region 2 Approval of the Proposed Limetree Bay Terminal Air Permit, St. Croix, U.S. Virgin Islands* at 8, 10 (Sept. 3 2020) (noting that green turtles particularly are "present year-round in the action area where they nest and use nearshore areas such as seagrass beds and coral habitats for refuge and foraging."), Doc. Id. No. EPA-R02-OAR-2019-0551-0186 ("NOAA Letter").

¹⁹⁰ *Id.* at 8.

loggerhead turtle were seen during the site surveys.”¹⁹¹ NOx pollution contributes to the threatened status of the present sea turtles and turtle species are at risk from mercury—a developmental and reproductive toxin.¹⁹² Toxins from air pollution and exposure to hydrocarbons from oil spills may also injure sea turtles.¹⁹³

EPA failure to consult with FWS on the green and loggerhead sea turtles cannot be remedied by NMFS’ post-hoc statement that the FWS “did not include green sea turtles in their concurrence letter even though nesting by this species is reported as increasing on Sandy Point, but the effects determination for green sea turtles *would likely be the same* as that for the other two sea turtle species [hawksbill and leatherback].”¹⁹⁴ First, this ignores EPA’s own failure to consider impacts to the green and loggerhead sea turtles. Second, as courts have made clear, “[t]he failure to respect the process mandated by [the ESA] cannot be corrected with post-hoc assessments of a done deal.”¹⁹⁵ Post-hoc rationalization by another agency cannot substitute for EPA’s compliance with its ESA duties—particularly where FWS is the expert consulting agency for nesting sea turtles, not NMFS.¹⁹⁶ In its Response to Comments, EPA offered no explanation for why it failed to consult on the loggerhead and green sea turtles, simply stating its “evaluation and determination and the Services’ concurrence is included in the record for this permitting action and is incorporated by reference as part of this response.”¹⁹⁷

The roseate tern, whose range encompasses all of the U.S. Virgin Islands, (2010 FWS Sandy Point, Green Cay and Buck Island National Wildlife Refuges Comprehensive Conservation Plan) at 43-44; (1993 FWS Roseate Tern Recovery Plan) at 3, 7, 10-11, 15 (noting vast migration path and largest breeding colonies in the Virgin Islands, its “stronghold”), has also been observed at Krause Lagoon, adjacent to the refinery. (Birds of St. Croix). The Permit may affect these terns by exposing them to pollutants that can cause irreversible lung damage.¹⁹⁸

¹⁹¹Environmental Assessment Report prepared for Major Coastal Zone Management (CZM) Permit Application No. CZX-10-19(L&W), at 130, *available at* https://www3.epa.gov/region02/waste/fshovens_statementof_basis_aoc3.pdf/ (“2019 Environmental Assessment”).

¹⁹² U.S. EPA, *Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur, and Particulate Matter— Ecological Criteria* at 12-100, 14-24, 14-27 (Sept. 2020), (“Integrated Science Assessment”), Doc. Id. No. EPA-R02-OAR-2019-0551-0205.

¹⁹³ 81 Fed. Reg., at 20,071 (petroleum contamination “adversely affects turtles by external fouling, ingestion, and interference with olfactory perception and food supply”).

¹⁹⁴ *Supra*, n. 189, NOAA Letter at 8.

¹⁹⁵ *Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1129 (9th Cir. 1998); *see also In re Desert Rock Energy Co., LLC*, 14 E.A.D. 484, 515-516 (EAB 2009) (quoting same).

¹⁹⁶ *See, e.g., id.* at 1127 (finding agency failed to meet its “independent responsibilities under the ESA” when it failed to “request a formal consultation”); *Resources Ltd. v. Robertson*, 35 F.3d 1300, 1304 (9th Cir. 1994) (“An agency cannot abrogate its responsibility to ensure that its actions will no[t] jeopardize a listed species[.]”) (internal quotations omitted).

¹⁹⁷ RTC at 96.

¹⁹⁸ *See e.g.,* Limetree PAL Permit Application, Executive Summary at 20, Doc. Id. No. EPA-R02-OAR-2019-0551-0037; *see supra*, n. 192, Integrated Science Assessment at 8-34, 12-80,

Despite these threats, EPA neither mentioned the roseate tern during its abbreviated consultation process with FWS, nor acknowledged that EPA previously considered the tern to “occur in the vicinity of the facility” in assessing remedies for site contamination by Hovensa.¹⁹⁹

In the Response to Comments, EPA acknowledged its omission of the roseate tern but explained that while the tern is a threatened species in the U.S. Virgin Islands, “the IPaC tool used for identifying FWS species, does not list this species in the vicinity of the project and impact area.”²⁰⁰ This response is not sufficient to support EPA’s failure to consult on the roseate tern and to use best scientific and commercial data available, particularly when other data generated and publicized by the EPA, FWS, and other sources indicates the roseate tern occurs in the project area.²⁰¹ EPA’s failure to consult on the loggerhead and green sea turtles and roseate tern constitutes a clear error and a violation of the ESA.

3. EPA Violated Procedural Obligations for Informal Consultation on Over 20 Other Federally Listed Species

EPA failed to satisfy the ESA’s procedural obligations for informal consultation with both FWS and NMFS regarding twenty-three other endangered and threatened species that the Refinery may affect.

To properly engage in informal consultation, an agency “shall include information similar to the types of information described for formal consultation at §402.14(c)(1) sufficient for the Service to determine if it concurs.” 50 C.F.R. § 402.13(c)(1). Section 402.14(c)(1) requires “a description of the proposed action, including any measures intended to avoid, minimize, or offset effects of the action.” It directs agencies “to provide sufficient detail to assess the effects of the action on listed species and critical habitat, including: (A) The purpose of the action; (B) the duration and timing of the action; (C) the location of the action; (D) The specific components of the action and how they will be carried out; (E) Maps, drawings, blueprints, or similar schematics of the action; and (F) Any other available information related to the nature and scope of the proposed action relevant to its effects on listed species or designated critical habitat.” 50 C.F.R. § 402.14(c)(1).

The ESA clarifies that the “action area” encompasses “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02. The “effects of the action” include “all consequences to listed species or critical

15-2, 15-27 (EPA assessment concluding “birds report physiological responses to air pollutants, including PM [particulate matter]”).

¹⁹⁹ EPA Statement of Basis/Proposed Final Remedy Decision, Hovensa L.L.C., VID 980536080 (February 14, 2008) at 3, available at https://www3.epa.gov/region02/waste/fshovens_statementof_basis_aoc2.pdf.

²⁰⁰ RTC at 96.

²⁰¹ *Defs. of Wildlife v. U.S. Dep’t of the Interior*, 931 F.3d 339, 346 (4th Cir. 2019) (noting “[t]he best-available-data standard also means [an agency] is not free to disregard other available biological information” and the agency “must seek out and consider all existing scientific data relevant to the decision”) (internal quotations omitted).

habitat that are caused by the proposed action.” *Id.* Effects are measured against the “environmental baseline” for the species, which should reflect the status quo of no refinery operations. The baseline also includes the “past and present impacts of all Federal, State or private actions and other human activities in the action area.”²⁰²

EPA’s February 19, 2020 consultation request to FWS did not comply with these obligations. EPA’s request to FWS was a cursory one-page letter that only covered four species in the project area (West Indian manatee, hawksbill sea turtle, leatherback sea turtle, and the St. Croix ground lizard), leaving out other species over which FWS has authority, as discussed above.²⁰³ EPA’s request for consultation, and FWS’s concurrence, also omitted key information, including that leatherback sea turtles nest at Sandy Point National Wildlife Refuge and it is a critical habitat²⁰⁴ and that leatherback, hawksbill, and green sea turtles nest at Canegarden Bay and Manchenil Beach, which are directly in the facility’s modeled air pollution plume.²⁰⁵ Limetree itself has reported “as many as 14 turtle nests in this area at one time including nests which were laid by leatherbacks” at the project site.²⁰⁶ Yet EPA’s concurrence request says little more about the Refinery except its location and that it “would like to restart operations at the former HOVENSA refinery” without any specific components of the action.²⁰⁷ It attaches just three air modeling figures to illustrate the project and concludes there will be no effect on the four species.

Further, EPA inaccurately described the action by stating that the Permit “does not introduce new emissions compared to those emitted by the HOVENSA refinery.”²⁰⁸ EPA made no mention of the baseline conditions on the project site—a total shutdown of refinery operations for the past nine years—nor described the full scope of the facility or its functions. EPA further narrowed its consultation request by only referencing the project’s potential for air impacts, saying nothing of its other operational impacts to the project area, including water pollution, vessel strikes, noise and disturbance, trash and debris, light pollution, and risk of oil and chemical spills, particularly in light of increasing frequency and intensity of storms.²⁰⁹ Based in

²⁰² 50 C.F.R. § 402.02.

²⁰³ *See supra*, n. 185, EPA Consultation Letter

²⁰⁴ NMFS, Biological Opinion on the 2018 Virgin Islands Water Quality Standards, at 34 (Sept. 9, 2019) (“Biological Opinion”), Doc. Id. No. EPA-R02-OAR-2019-0551-0170.

²⁰⁵ Florida Fish and Wildlife Conservation Commission, Florida Fish and Wildlife Research Institute, Geographic Response Plan Map: VI-2 (May 27, 2011) at 162, *available at* <https://homeport.uscg.mil/Lists/Content/Attachments/2349/ACP%20GRS%20Index.pdf>; *supra*, EPA Consultation Letter; *compare supra*, FWS Consultation Letter at 26-27 (failing to acknowledge nesting beaches in concluding “Species expected to transit past impacted areas, so any exposures would be short-term”).

²⁰⁶ 2019 Environmental Assessment Report, at 130.

²⁰⁷ *See supra*, n. 185, EPA Consultation Letter

²⁰⁸ *Id.*, at 1.

²⁰⁹ *See, e.g.*, RTC at 97 (responses to comments stating it need not address impacts from “Limetree’s vessels on the south shorelines of St. Croix including Cane Garden Beach” and other impacts from the Refinery such as polystyrene accidents, oil spills, and ship strikes because “[t]hese issues related to operations at the facility unrelated to the PAL permit”).

part on this improperly narrow view of “action area,” “effects of the action,” and “environmental baseline” in clear violation of §402.02, EPA concluded that the Permit will have no effect on these four species.²¹⁰ In response, FWS sent EPA a cursory 1.5-page concurrence with EPA’s determination of “not likely to adversely affect” that largely imported language from EPA’s request (including its omission of green and loggerhead sea turtles).²¹¹

Similar to its consultation with FWS, when it requested concurrence from NMFS on twenty-one species, EPA focused exclusively on air emissions in determining that the Permit “may affect” but was not likely to adversely affect “all listed species in general, including the leatherback turtle, the Nassau Grouper, and the endangered corals.”²¹² EPA again erred by ignoring the many non-air impacts from restarting the shuttered refinery.²¹³ In its September 4, 2020 concurrence letter, NMFS acknowledged that the action area “means all areas affected directly or indirectly by the Federal action, and not just the immediate area involved.”²¹⁴ NMFS also acknowledged that effects of the action mean “all consequences to listed species or critical habitat that are caused by the proposed action.”²¹⁵ As noted above, effects are measured against the “environmental baseline,” which reflects current conditions and threats to listed species in the area and includes the past and present impacts of all Federal, State or private actions in the action area.²¹⁶ None of these factors were mentioned, let alone assessed in the request and concurrence letters, rendering the consultation inadequate.²¹⁷

EPA’s “no effect” conclusion further improperly relied on vague assertions including that “Limetree will create an Endangered Species Management Plan to address the numerous ESA-listed species that occur in the Action Area, including listed corals, fish, marine mammals, sea turtles and birds. The plan will be provided to NMFS for review prior to the start of operations.”²¹⁸ The substance of this proposed Endangered Species Management Plan is not clear (nor is it ever mentioned again), though it suggests EPA admits that the Permit action will indeed

²¹⁰ *Id.*, at 2.

²¹¹ *Supra*, n. 185, FWS Letter at 2.

²¹² U.S. EPA, Region 2, *Request for NMFS’ concurrence on a determination that the approval of the Proposed Limetree Bay Terminal, St. Croix, Air Permit May effect but is Not Likely to Adversely Affect (NLAA) ESA-listed species under NMFS’ jurisdiction*, at 16, 23-24 (Aug. 11, 2020) (chart listing species present), Doc. Id. No. EPA-R02-OAR-2019-0551-0181.

²¹³ *See, e.g.*, RTC at 97.

²¹⁴ NMFS, *Concurrence Letter for the U.S. Environmental Protection Agency Region 2 Approval of the Proposed Limetree Bay Terminal Air Permit, St. Croix, U.S. Virgin Islands*, at 5 (Sept. 3, 2020), (“NMFS Concurrence Letter”), Doc. Id. No. EPA-R02-OAR-2019-0551-0186.

²¹⁵ *Id.* at 8.

²¹⁶ 50 C.F.R. § 402.02.

²¹⁷ *See, e.g., Am. Rivers & Ala. Rivers Alliance v. FERC*, 895 F.3d 32, 47 (D.C. Cir. 2018) (analysis arbitrary when failing to account for effects of all relevant conditions on threatened species).

²¹⁸ *Id.*, at 16.

impact listed species. EPA may not rely on uncertain, non-binding mitigation plan to arrive at its conclusion of no adverse effect.²¹⁹

The Response to Comments further underscores that EPA clearly erred in issuing the Permit without having adequately considered the aggregate effects of the action in light of the imperiled status of the species at issue and the environmental baseline.²²⁰ EPA's response to comments on this issue was brief and dismissive, incorporating by reference the faulty concurrence requests and concurrences.²²¹ EPA's cursory responses to comments do not remedy the above-described errors. EPA should vacate the Permit for failing to comply with the ESA. In the alternative, EPA should reinitiate consultation with FWS and NMFS pursuant to 50 C.F.R. § 402.16(a)(2) to correct the errors that originated in the agency's incomplete consultation requests and failure to consider relevant scientific information.

E. The Climate Change Impacts of the Refinery Contravene Executive Order 13,990 and Provide Reason for Reconsideration

The climate change impacts of the Refinery — both those to be suffered by and those being caused by the Refinery restart — render the PAL and operation of this facility fundamentally incompatible with President Biden's Executive Order 13,990. According to the Fourth National Climate Assessment, the USVI is uniquely vulnerable to the threats that climate change presents vis-à-vis rising temperatures, to freshwater supplies, to marine resources (including fisheries), and as a result of sea level rise.²²² Through its current and proposed activities, the Refinery exacerbates climate change both by emitting greenhouse gases (GHGs) and by contributing to the market for carbon-intensive fossil fuels. Due to these demonstrable and critical risks, we assert that these impacts render the Refinery Restart fundamentally incompatible with the policies and goals delineated in Executive Order 13,990.

1. **Extreme Weather Impacts**

The PAL, its documentation, and the Refinery's activities generally fail to address extreme weather events and their adverse impacts — such as those caused by an event like the devastating Hurricane Maria — and any meaningful measures to prevent or mitigate resultant Refinery pollution. Especially given the US Virgin Islands' devastating experiences with two

²¹⁹ See, e.g., *Ctr. for Biological Diversity v. Bernhardt*, 2020 U.S. App. LEXIS 38033, *36, 54 (9th Cir. 2020) (agency violated the ESA by “relying upon uncertain, nonbinding mitigation measures in reaching its no-adverse-effect conclusion”); *In re Desert Rock Energy Co., LLC*, 14 E.A.D. at 515-16 (agency could not cure consultation deficiencies with a permit condition).

²²⁰ See 16 U.S.C. § 1536(a)(2); *Am. Rivers v. U.S. Army Corps of Eng'rs*, 271 F. Supp. 2d 230, 255 (D.D.C. 2003) (“The ESA requires that all impacts of agency action . . . be addressed in the consultation's jeopardy analysis.”).

²²¹ RTC at 96.

²²² U.S. Global Change Research Program, “Fourth National Climate Assessment, Chapter 20: U.S. Caribbean,” <https://nca2018.globalchange.gov/chapter/20/>, last accessed September 3, 2019.

category five hurricanes in 2017, this failure to acknowledge the actual frequency and increasing severity of tropical cyclone²²³ activity in the territory is highly problematic.

In a disturbing encapsulation of the attention paid to this issue, an Environmental Assessment Report that Limetree prepared in pursuit of a Coastal Zone Management permit administered by the Virgin Islands Department of Planning and Natural Resources cites a 1974 study to support its assertion that “[t]he annual probability of a [tropical] cyclone is one in sixteen years.”²²⁴ This 45-year-old statistic conflicts with modern data that reports an average of 12 named storms per year globally.²²⁵ Utilizing data from 1855 – 2017, NOAA reports that tropical cyclone events occur in the USVI and Puerto Rico approximately once every two years.²²⁶ Of great concern to the Refinery restart is the prevailing scientific consensus that hurricane rainfall rates, storm surge heights due to sea level rise, and the number of the strongest hurricanes (categories 3, 4, and 5) are all projected to rise in a warming global climate.²²⁷

The actual frequency and increasing severity of hurricanes are crucial factors to consider in evaluating whether the PAL is defensible under Executive Order 13,990 because severe weather events are often tied to ecologically-devastating discharges from industrial facilities such as the Refinery. Famously, Hurricane Katrina caused the release of 1.05 million gallons of mixed crude oil from the Murphy Oil Refinery in Louisiana in 2005.²²⁸ Less famously but more pertinently, in 1989, Hurricane Hugo caused a spill of 10,000 barrels of oil from the Refinery in question.²²⁹

Extreme weather events can additionally cause discharges outside of the floodplain. For example, Hurricane Harvey caused “34,000 pounds of sodium hydroxide and 300 pounds of benzene . . . [to] escape through a damaged valve” at the Chevron Phillips chemical plant in Baytown, Texas.²³⁰ Despite clean-up efforts by employees, “most of the product ‘was lost in the

²²³ The term “tropical cyclone” is a generic term that can refer to tropical depressions, tropical storms, and hurricanes. See: NASA, “What is a Hurricane, Typhoon, or Tropical Cyclone?” <https://pmm.nasa.gov/education/articles/what-hurricane-typhoon-or-tropical-cyclone>, last accessed September 3, 2019.

²²⁴ EAR, at 83.

²²⁵ Hurricane Research Division, Atlantic Oceanographic & Meteorological Laboratory, NOAA. <https://www.aoml.noaa.gov/hrd/tcfaq/E11.html>.

²²⁶ NOAA National Centers for Environmental Information, State Climate Summaries: Puerto Rico and the US Virgin Islands: <https://statesummaries.ncics.org/chapter/pr/>

²²⁷ *Id.*

²²⁸ US EPA, “Murphy Oil Spill Fact Sheet, February 2006, <http://www.columbia.edu/itc/journalism/cases/katrina/Federal%20Government/Environmental%20Protection%20Agency/Murphy%20Oil%20Spill%20Fact%20Sheet%20Feb%202006.pdf>, last accessed September 3, 2019.

²²⁹ https://response.restoration.noaa.gov/sites/default/files/Oil_Spill_Case_Histories.pdf - Thankfully, 9,000 barrels’ worth were blown onto shore and recovered.

²³⁰ Hiroko Tabuchi, et al., THE NEW YORK TIMES, *Floods are Getting Worse, and 2,500 Chemical Sites Lie in the Water’s Path* (Feb. 6, 2018)

floodwater.”²³¹ While the government defined the Chevron Phillips site as being only at “moderate risk” of flooding, the incident during Harvey was “at least the third time in three years that the Chevron Phillips facility blamed heavy downpours for chemical leaks.”²³² Hurricane Harvey caused additional flood-related pollution when floodwaters reached petrochemical facilities and Superfund sites elsewhere in the state.²³³

2. Temperature Rise, Drought, Freshwater Resources

Projected temperature increases caused by climate change pose multifaceted hazards to the island of St. Croix. The temperature increases are estimated to be significant: “Global climate models project about a 1.5°F to 4°F increase in average temperatures for the U.S. Caribbean by 2050 [and] [e]nd-of-century estimates show temperature increases as high as about 9°F under a higher scenario[.]”²³⁴ Warming temperatures are predicted to bring about drier weather overall (factoring in extreme rainfall events, e.g. tropical cyclones), contributing to incidences of drought.²³⁵ This is a major concern in the US Caribbean, where freshwater resources are primarily surface waters, supplemented in part by desalination plants.²³⁶

3. Wildlife Impacts of Climate Change

Climate change threatens to listed species protected under the federal Endangered Species Act (ESA) and already-exploited marine food resources including fishery species such as the Caribbean spiny lobster and queen conch, snappers, groupers, and parrotfish, include damage and habitat loss from ocean acidification, coral bleaching, loss of food/habitat resources like mangroves and seagrass, and changes in the frequency and intensity of storm events²³⁷. Ocean warming “can also harm hard corals that form coral reefs by decreasing successful sexual reproduction, causing abnormal development, impairing coral larvae’s attempts to attach to and grow on hard substrate, and affecting hard corals’ ability to create their calcium carbonate skeleton.”²³⁸ Ocean warming also increases the susceptibility of corals to disease.²³⁹ Given the prevalence of ESA-listed corals near the Refinery, this is a cause for serious concern.²⁴⁰

<https://www.nytimes.com/interactive/2018/02/06/climate/flood-toxic-chemicals.html> (last visited September 3, 2019).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ NOAA Fisheries, SER-2018-19292, Re: Limetree Bay Terminal Single Point Mooring, St. Croix, USVI (SAJ-2017-00416 (SP-JCM)) Draft Biological Opinion, February 12, 2019.

4. Sea Level Rise, Coastal Flooding, and Storm Surge

Sea level rise, storm surge, and coastal flooding are climate change impacts that will have massive effects on the Refinery and St. Croix generally. It is projected that the USVI may lose 4.6% of its coastal land area due these impacts by 2100.²⁴¹ Since the mid-20th century, relative sea levels have risen by about 2mm per year along the coasts of the USVI; however, rates have noticeably accelerated (by a factor of 3) since 2010 – 2011.²⁴² Sea levels are projected to increase substantially, with studies estimating a rise of between 0.8 – 2.8 feet by 2050, and up to 6.5 feet by 2100, largely dependent on the amount of future greenhouse gases emitted.²⁴³ In addition to marine ecosystem impacts, this is a matter of concern to the Refinery, given the connection between flooding events and oil spills (referenced above) and the fact that the Refinery sits at sea level. As sea level rises, so too storm surge and high-energy wave action.²⁴⁴ These impacts present a critical risk to the Refinery and to the island, generally, through inundation and coastal erosion.

Additionally, the location of the Refinery makes it extremely vulnerable to coastal flooding and storm surge. The facility was built directly on the coast, there is no natural buffer between the facility and the sea, and it only sits a few feet above sea level. Scientific studies have indicated that storm surge and coastal flooding will worsen for St. Croix due to rising sea levels, higher energy wave action, warmer sea temperatures, stronger storms, and the degradation of “soft” infrastructure due to changing conditions (i.e. sand, shoreline, mangrove forests, coral reefs, and sea grasses) that would protect the facility.²⁴⁵

The failure to address sea level rise, coastal flooding, and storm surge is a major oversight by EPA and must be addressed by reconsideration of the PAL.

5. Emissions Increase from Refinery Restart

Finally, by its fundamental nature as a fossil fuel processor, the Refinery Restart will contribute to global GHG emissions by releasing GHGs in its refining activities and by virtue of its products produced. Based on information available from EPA, Limetree is already releasing GHGs via its current activities: carbon dioxide (99,235.50 pounds in 2017), methane (264.75 pounds in 2017), and nitrous oxide (273.27 pounds in 2017); as noted above, it can be reasonably ascertained that the Refinery Restart will increase these releases.²⁴⁶

In sum, the reality of climate change and its foreseeable impacts on the territory render this PAL fundamentally incompatible with Executive Order 13990. We accordingly implore EPA to reconsider the PAL.

²⁴¹ *Id.*

²⁴² Fourth National Climate Assessment, <https://nca2018.globalchange.gov/chapter/20/>

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ See <https://echo.epa.gov/air-pollutant-report?fid=110000307864>.

IV. CONCLUSION

For the above reasons, Petitioners respectfully request that EPA reconsider the Trump Administration's decision to issue the Limetree Permit, and act to reinstate the Agency's longstanding Reactivation Policy.

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Respectfully submitted,

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WHEJAC BUSINESS MEETING REFLECTION AND CONVERSATION

The WHEJAC will use this time to reflect on the meeting proceedings, public comment period, discuss and deliberate action items and finalize next steps.

Mr. Richard Moore, Co-Chair began by saying that many of the committee have worked together for many years, and some WHEJAC members are just beginning to get to know each other. He stated that there is a lot of work to do as he turned the floor over to his co-chair, Peggy.

Ms. Peggy Shepard, Co-Chair, began by informing the committee of the tasks for completion for the day. She stated that three working groups needed to be formed. She discussed the timeline for the working groups. She advised that in order to meet the deadlines that have been established in the Executive Order, the first set of recommendations from the three committees need to be finalized by May 13th. She noted that finalization would mean going through the drafts and having consent of the overall body prior to submission. She informed that Karen Martin would work with the committee and send out a timeline and weekly information, via email, for every workgroup. She also advised that in order to meet deadlines, some dates have already been established. She stated that the first meeting of the groups would be Wednesday, April 28th, from 2:00 pm to 6:00 pm, and the second meeting would be Thursday, May 13th, from 2:00 pm to 6:00 pm. She advised that meeting prior to these would need to have taken place as these meetings consist of sharing information and getting feedback for final recommendations.

Ms. Karen Martin, DFO, affirmed that the information given is correct. She stated that those two dates would be public meeting dates, to make decisions and vote on documents and move the recommendations up for the larger body to vote. She informed that in between that, workgroup meetings would be set up. She stated that there had been suggestions from the co-chairs that weekly meetings be set up. She stated that in the first meeting, April 28th, the

hope is to have draft recommendations to discuss in that meeting, for the members to discuss and deliberate, ask any questions, make any edits. She advised that this allows a few more weeks to go back in the subcommittee, address comments and submit the final draft recommendations for a vote in the May 13th meeting. She also stated that the one thing driving the deadline is that recommendations need to go to the Interagency Working Group that was also established under Executive Order 14008.

Ms. Peggy Shepard went on to inform the committee of the three workgroups, Justice40 Initiative, the Climate and Economic Justice Screening Tool, and the Executive Order Workgroup. She asked Karen to explain the goals of each of the groups for the record.

Ms. Karen Martin, DFO, stated that everything needed around each workgroup is outlined for the committee in the Executive Order. She stated that the documents to be distributed will outline more defined definitions for the workgroups

Dr. Cecilia Martinez, agreeing with Karen Martin, stated that the scope is really being driven by the Executive Order, which is opened to the committee's input and advice on many of the questions raised as a body. She posed the questions, how do you define benefits? How do you evaluate and monitor? What are the indicators that need to go into a climate and justice economic screening tool? She stated that all those things are things that advice is needed on. She reminded the Council that this would be a first iteration to lay down solid recommendations and foundations.

Ms. Peggy Shepard asked all members to identify which workgroup that would like to participate in. She advised that the details will be taken care of in the meeting. She opened the discussion for the Council members to express which workgroup they would like to join. Each WHEJAC member stated their first and/or second choice for workgroup participation.

Dr. Beverly Wright. Justice40. Second choice would be Executive Order Workgroup.

Mr. Harold Mitchell: Justice40 and the Climate and Economic Justice Screening Tool.

Ms. Michele Roberts: Justice40 and Climate and Economic Justice Screening Tool.

Ms. Andrea Delgado: Justice40 and Climate and Economic Justice Screening Tool.

Ms. Jade Begay: Climate and Economic Justice Screening Tool and Justice40.

Ms. Maria Lopez-Nunez: Justice40.

Mr. Tom Cormons: Justice40.

Ms. Viola Waghiyi: Climate and Economic Justice Screening Tool and Justice40.

Mr. Richard Moore: Executive Order Workgroup.

Mr. Juan Parras: Climate Justice [sic] -- I mean Climate 40 [sic] and Executive Order Workgroup.

Mr. Angelo Logan: Executive Order Workgroup.

Mr. Nicky Sheats: Climate and Economic Justice Screening Tool.

Ms. Ruth Santiago: Justice40.

Ms. Kim Havey: Justice40. Would be willing to serve anywhere. Background in Energy and work in investment of funding in environmental justice communities.

Dr. Rachel Morello-Frosch: Climate and Economic Justice Screening Tool.

Ms. Catherine Flowers: The Executive Order Workgroup and Climate and Economic Justice Screening Tool.

Ms. Susana Almanza: Executive Order Workgroup and Climate and Economic Justice

Screening Tool.

Ms. Carletta Tilousi: Executive Order Workgroup.

Mr. Hli Xyooj: Justice40 and Executive Order Workgroup.

Ms. Miya Yoshitani: Justice40 and Climate and Economic Justice Screening Tool. From California and have worked on a screening tool in the past.

Dr. Robert Bullard: Justice40.

Mr. Jerome Foster: Executive Order Workgroup and Climate and Economic Justice Screening Tool.

Ms. LaTricea Adams: Justice40 and Executive Order Workgroup.

Dr. Kyle Whyte: Executive Order Workgroup and Climate and Economic Justice Screening Tool.

Mr. Maria Belen-Power: Justice40.

Ms. Peggy Shepard: Justice40 and Executive Order Workgroup.

Ms. Peggy Shepard informed the Council that they would receive information regarding the next meetings. She stated that the diversity of each workgroup will be reviewed to ensure an adequate mix of expertise. She opened the floor for comments or observations about the meeting thus far. She confirmed that the only action items were responding to members and public commenter questions.

Ms. Karen Martin, DFO, advised that the Council's questions from the briefing on the Justice40 initiative will be compiled and sent to the presenters for answers. She stated that they will be returned to the Council and made a part of the meeting record. She advised that

the public comments will be included in the meeting summary, along with the comments that are received through email and the webform. She stated that according to FACA, the committee has 90 days to publish the meeting summary and get it approved by the chairs. She stated that the meeting materials will also be included in the meeting summary.

Ms. Susana Almanza stated that from listening to the comments, a few things that was heard was including environmental justice and equity through all the agencies. She stated that another was making sure that children are the focus, which she felt was really important. She went to say, also understanding the tribal lands, sacred sites. And that there was also a lot about city policies not doing enough to protect communities and that federal oversight is needed. She noted emphasis on the need to look at NEJAC being represented in all EPA regions. She mentioned there was a lot about federal oversight in the schools. As well, another was the need for interagency support on services and complement.

Ms. Almanza went on to list points heard regarding funding, how the other agency can also complement that service. She stated that there was a lot of talk about risks, whether it's cumulative impact and how we look at risks and how we measure risks. She also stated talks about the measurement tools and that has a lot to do with the risk. She mentioned the whole issue of laws versus enforcement and stated that there has always been concern that maybe the laws are there but the enforcement tools are not strong enough to enforce it. And that penalties are too low, so polluters can have that within their budgets. She noted that there was a lot of discussion on how we need to look at laws, and strengthen those laws, so that the enforcement and accountability is there. She stated that she was glad to the representation of the west coast, east coast, mid and south region, all giving public testimony.

Dr. Beverly Wright expressed that she was feeling overwhelmed in looking at the deadlines. She added some practical caution. She stated that the Council have deadlines to get work done and a lot of information was presented from different departments of people working on these issues. She asked what kind of support will the workgroups have in completing the tasks for presenting these recommendations? She questioned if technical support would be available to the committee from other staff.

Dr. Cecilia Martinez stated that this was a question that was posed to the DFO in terms of notetaking. She stated that with NEJAC there was support with writing and facilitating calls, et cetera.

Karen Martin, DFO, stated that she and her team will be available to support the committee and the workgroups. She stated that the workgroup will be responsible for developing the recommendations, but staff and contractor support will help to formulate, finalize and package it. She advised that there would be help in scheduling meetings and worksites to share documents. She stated that there would also be help with document presentations for meeting preparation.

Dr. Beverly Wright asked will the co-chairs and vice chairs act as chairs of the different committee?.

Ms. Karen Martin, DFO, advised that, yes, they would. She stated that chairs and co-chairs would be used to lead or shepherd the workgroup and keep everyone to task. She also stated that with this federal advisory committee there are no subcommittees, just workgroups. She stated that the workgroup gives the flexibility to bring in different technical expertise to help write recommendations.

Dr. Beverly Wright expressed concerns of not being inclusive enough in recommendations, covering all the areas that communities have concerns about, with the short timeframe. She cautioned being sure to look for technical support to some extent to make certain that various areas are covered within recommendations. She stated that she felt it was really expansive with transportation, air, et cetera, and wanted to make sure that there is time to cover it and still be able to make strong recommendations.

Dr. Cecilia Martinez agreed with Dr. Wright and stated that that is why this needs to be viewed as a phased approach. She stated that there are key things that should definitely be delivered by the deadline. She stated that the working group can define what are the first deliverables, first recommendations that are foundational to moving Justice40 forward, because Justice40, and all of these issues, are going to continue beyond May. She noted that

the Council will be involved in constantly providing recommendations as they develop. She explained that the May deadline would be really for the foundational recommendations that the Council would like to bring forth as the key points and key principles.

Dr. Robert Bullard expressed concern in looking at overarching framing and looking at the three subareas and the extent to which those three areas may somehow complement a larger framing in terms of a framework for following the dollars. He noted not following Justice40 alone but follow the dollars in terms of how funds are being spent and allocated in a way that if we don't know where the money goes, and who's benefitting and who is not, we're unlikely to address systemic built in disparity that sends money to concern areas and deny monies to others. He stated that this could not be done by April 28th or May 13th. He suggested that a long term question would be, what is the Council set up to advise the White House that somehow may be beyond this designated categories but may be trying to get at things that are unintended consequences, or policies, that somehow drive money away from need.

Dr. Bullard noted The Stafford Act as one example. He explained that after disasters, the Stafford Act is basically when you designate certain areas as being a disaster area. He noted that money is sent down and somehow it just flows away from the communities. He stated that he did not see anything that would prevent that. He stated that it may be prevented on the Executive Order, but unless the focus is on the way that regulations and policies are somehow, on their face, are biased -- it doesn't have to be racist, but biased against low income neighborhoods, against houses of less value. He explained that once you start looking at that, you can see the footprint that if you do not prevent that, you may not be able to prevent the racial redline that occurred 100 years ago. He noted that it's showing up now in urban heat violence, and it is showing up in COVID and it is showing up in flooding.

Dr. Bullard mentioned there is a historical legacy of the racism that occurred, and with the policies now that are going forward to say we're going to correct that, do we have a framework or some charge to deal with those structural things that appear to be neutral, but they are not when we use strict conflict analysis and not use an equity lens? He stated that if the Council does not attack this now, then it will be a missed opportunity.

Dr. Beverly Wright stated that that's doing business as usual. She asked can we talk about process and dissemination and administration of resources?

Dr. Cecilia Martinez stated that those were all really good points. She raised that one of the key pieces of the Executive Order, stating, again, it's not going to happen by May or June or July, but it is the development of performance metrics by agencies. She stated that that's one of the key pieces that Climate and Economic Justice Screening Tool is intended to help develop. She noted that it is to be able to assess what are the indicators that we want to measure agency performance for? She stated that if we look at Executive Order 14008, there is a mandate to publish Agency Performance Scorecards. She stated that as we move forward, beyond May and June and July, the goal is to develop robust indicators that get exactly at the issues raised. She stated that she recognize that it is going to take a process.

Dr. Martinez explained that if we think of this as sort of Phase 1, Phase 2, Phase 3 work, Phase 1 is, how to get those foundational principles and ideas to the Interagency Council, by May, June, July. Phase 2 is to continue to work on these so that we make sure that we are providing the Interagency Council, and all the agencies, the kind of indicators that we want to see, and that they will be monitored and evaluated as to whether or not they are actually reaching and making a difference in our communities. She expressed confidence that the Council was the group to be able to push and make sure that those indicators get developed.

Ms. Michele Roberts thanked Cecilia for reiterating the fact that this is a phased approach. She stated that it is a wonderful thing for everyone to be present and have something to offer. She encouraged the committee to remember that this is a phased approach, into what is necessary for the May meeting. She reminded everyone that the politics behind this is known. She also reminded the Council that it what they bring to offer is also known.

Ms. Roberts stated that she was not overwhelmed, but very hopeful. She stated that looking at everyone from that of an impacted community member to even networks with solutions, that the Council is further ahead of the game than what they would want to say or feel. She stated that the Council should look at this as a moment to look at the glass half full. To look of how to exercise the energies to bring all they have to put in this piece, for that May date,

understanding that the work is a marathon and not a process. She stated that this is a very important legacy moment. She encouraged the Council to reach as far and wide and deep as possible to make sure that no one is left behind in this space. And that the space is utilized as that small, shrinking window and that before this window closes, we get everything we need to move the processes we need and make sure we leave no one behind, including previous injustices. She stated that never ever had this opportunity occurred. She appealed to everyone to be very strategic and smart with time and look and utilize energies to be able to put forth what they can do for the people and not what should be done, what hasn't been done, et cetera. She urged them to remain hopeful in this place where everyone can work together.

Mr. Juan Parras started by saying thank you for allowing Council participation. He stated that he had concerns of the lack of presence of union representatives on board, or labor. He stated that living in a city like Houston where all the industries are, and also in Long Beach California, there are a lot of workers that work in these industries. He stated that generally there has been good inroads made with the chemical workers and they know transitions and other issues are being looked at. He stated that they were not present in the executive board and he was trying to figure out how the labor concerns would be addressed with having a battle. He went on to explain that when the chemical security policy was initiated, union members from various sectors were at the table to talk about chemical policies and progress was made. He stated there is a need to figure out how to include labor employees or labor unions in this discussion. He explained that otherwise, people like those in communities that have a lot of union members are going to have a tremendous challenge, not only with the federal government or the state, but also with the local level of union members.

Dr. Cecelia Martinez stated that this was a really good point. She shared that the Interagency Working Group that Jahi spoke about does have extensive labor outreach and stakeholder engagement. She explained that not every interagency workgroup or taskforce can do it all. She posed the question of where are the areas that each one of those working groups and taskforces and FACAs can focus on, and then work together in alignment to push those ideals forward? She noted that in the coal communities and energy communities interagency working group, there is extensive labor outreach. She noted that this was one of

the reasons Jahi attended, to talk to the Council about that engagement moving forward.

Dr. Martinez stated that however, in this particular FACA, the idea was that a FACA was very much needed that focused on environmental Justice, communities, representation, et cetera. She stated that it's not to say that the committee could not then form a working group that begins to talk about labor issues or engages labor issues as intersectional with the environmental justice issues that is needed to come forward; but she reiterated that labor is very much involved with the work that's moving forward from the Administration.

Ms. Catherine Flowers offered comments regarding Dr. Bullard's statements about where the money goes. She shared examples of what should be looked at in terms of equity. She shared that she was called to be in a meeting in the city of Montgomery with someone from the mayor's office because there is a part of Montgomery that never got wastewater treatment. She stated that they had water, but they never got the wastewater treatment beyond septic systems. She stated that the people that ran the water and sewer were saying to black communities that if the developer did not put sewers in when they built the community they were not going to do it. Noting that this probably was not presented to black communities when they were building. She went on to explain how this is limiting in terms of what could be brought to that community. She also shared that one issue that have been seen in the town of White Hall, is sewage lagoon system being installed. She stated that the town doesn't have any say so in the decision making and that basically when the installers put the septic systems in they walk away. She stated that the push is for that when this money is spent, and it goes to this community, part of environmental justice is that the community should have something to say about what goes there. She added that also, these systems should last beyond the cycle of whose in office.

Ms. Flowers went on to say that along with equity lens being looked at, accountability should also be viewed. She stated that there are legislators pushing on a national level for money to put in onsite septic systems. She stated that these should come with warranties and service, and the industry is pushing back saying they do not want to put warranties in. She posed the question of, how do we force accountability and ensure that money is allocated with lasting benefits.

Ms. Viola Waghiyi stated that she was thinking she would be better in the Executive Order Workgroup versus Justice40 and asked for a description of the workgroup.

Dr. Cecilia Martinez explained that the Justice40 workgroup will be developing recommendations on how to begin developing and implementing the 40 percent investment benefits that is part of Justice40. She stated that the President is committed to 40 percent of investment benefits and clean energy, clean transportation, legacy pollution reduction, et cetera. She stated that the question is, how will that get implemented? What are the criteria around defining an investment benefit? She stated that the Executive Order Workgroup would recommend the revisions to Executive Order 12898 that need to be made, because the President will issue a new Executive Order on environment justice. She explained that the President wants to hear from the Council, what should that new Executive Order, updating 12898, include. What should it have in it? She stated that the President also issued Executive Order 14008. She stated that in that EO he directed that the Interagency Council develop recommendations for updating 12898, specifically.

Dr. Rachel Morello-Frosch turned her question to the scorecard, stating it seemed more inward looking about agency performance. She stated that there is the conversation about the Climate and Economic Justice Screening Tool, which seems more about a way to merge sustainable investment and environmental justice goals in terms of regulatory decision making across agencies. She stated that she wanted to make sure she was correct in her thinking. She shared that she was a little nervous about the timeline in terms of assuming there will be some preliminary recommendations made because it does take a while in terms of scoping out, doing the homework, and data availability. She feared that this would be in a perpetual beta version because of continuing to improve it and make it better. She did note that national datasets are often limited and yet there are places across the country that have really good local data that could be considered.

Mr. Angelo Logon mentioned that this is a pretty heavy lift, especially with getting feedback from communities. He posed a question of how will these recommendations be used, and what is the process in which final decisions on the recommendations be made? He

questioned would all of the hard work really be implemented and used in ways that the Council can feel good about? Or is it going to end up like the ways in which we see recommendations end up in the past and not necessarily wholeheartedly taken into consideration. He asked for more clarity on how the recommendations will be used, what the process will be for adopting those recommendations, and whether or not there will be a negotiation of sorts between the advisory Council and the decisionmakers to get the best out of the hard work?

Dr. Cecilia Martinez reminded the Council that this is a new committee. She stated that this is as close to the decisionmakers that the Council has ever gotten. She stated that although that doesn't answer the question, that is part of what this process is about. She stated that she would encourage everybody to think about this as a "we" as opposed to a "you." In other words, what are your recommendations to make sure that implementation happens? What are the processes that you would recommend to make sure that they get integrated into agencies? How do we make this happen? She stated that from what has been in the meetings, and the discussion inside, everybody is eager to hear and to figure out how to innovate and how to implement. She reminded everyone that this is a new initiative, it's a new effort, it's something that is way beyond what has ever been done before. She reiterated encouragement to think about, how do we make this happen? She asked, what kinds of accountability measures do we want to see implemented to ensure that the recommendations that you have get to where they need to go and that the decision making happens?

Richard Moore stated that he is in agreement with the comments that have been made. He stated that the President and the Vice President, even in her comments earlier today, ask that "you" keep "us" accountable. He advised that the committee needs to make sure that "us" is kept accountable. He stated that as we have accountability to our community, at the same time this is the reason they sit on this WHEJAC.

Mr. Lucas Brown, USDS, talked about the technical support. He stated that one thing that was considered for the screening tool work is presenting a committee with what was called an analysis of alternatives for options. For instance, questions about scoring methodologies. He stated that it is a very simple document of, here's the options we're aware of, here's the pros

and cons as we see them. Please tell us are there pros and cons we should consider that we're not? Are there options we haven't considered here that we should? Are we asking the wrong questions in the first place? Are we totally off based? What's your recommendation? He stated that this could help organize some of the information and quickly have a shared language on what being discussed for some of the technical decisions. He stated that if that sounds promising, the group can move forward with it. And if not, other suggestions can be giving on how to facilitate that.

Mr. Thomas Cormons stated that the recommendation on Justice40 refers to both how existing authorities can be used and legislation that may be helpful in furthering Justice40. He stated that given the ambitious legislative agenda that the President has, how do we see the interaction of these recommendations with legislative priorities and how does that impact the timeline? He stated that he recognize that this may be a question that is answered in the process of the Justice40 workgroup discussion but wanted to put it on the record.

Dr. Beverly Wright asked the question of what's the relationship between WHEJAC and NEJAC? She asked if there a relationship on how interactions take place?

Dr. Cecilia Martinez stated that it's her understanding that NEJAC will continue, and that NEJAC is, and always has been, advising the EPA on environmental justice matters. She explained that the Council is going to be advising the whole federal family on environmental justice. She stated that how WHEJAC would want to intersect with NEJAC is going to be an ongoing structural conversation. She noted that it was stated that in internal discussions, there are NEJACs that are required in each of the agencies and the DOE should have an environmental justice advisory committee, DOT should have one, et cetera. She reiterated that all of those questions will be things that the committee will continue to work on through the year to make sure there is alignment with NEJAC as well as any other advisory councils with similar interests.

CLOSING REMARKS AND ADJOURN

Ms. Peggy Shepard, Co-Chair, closed out the discussion thanking everyone for their comments and thoughts. She advised that she is looking forward to advancing the work with the committee.

Dr. Cecilia Martinez echoed the co-chairs sentiments. She stated that it is uplifting to work with everyone to hold the Administration accountable and to move forward and make life better for communities.

Ms. Catherine Flowers, Vice Co-Chair, stated that she was honored to be part of such an esteemed group and looking forward to working with everyone.

Ms. Carletta Tilousi, Vice Co-Chair, stated that it was a very interesting day with a lot of information. She stated that she learned of a lot of similar struggle across the country. She echoed sentiments in looking forward to working with everyone.

Ms. Karen Matin, DFO, closed out the meeting and informed the participants that she would be sending out updates via email to set up calls and meetings over the next week. She thanked everyone for their participation and adjourned the meeting.

[WHEREUPON THE MEETING WAS ADJOURNED]

APPENDIX A- MEETING AGENDA

THE COUNCIL ON ENVIRONMENTAL QUALITY WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL VIRTUAL PUBLIC MEETING

WEDNESDAY MARCH 30, 2021		2:00 PM – 6:00 PM EDT
2:00 p.m. – 2:20 p.m.	WELCOME & OPENING REMARKS <ul style="list-style-type: none"> ○ Cecilia Martinez, PhD, Senior Director for Environmental Justice – Council on Environmental Quality ○ Karen L. Martin, Designated Federal Officer – U.S. Environmental Protection Agency ○ Vice President Kamala Harris, White House ○ Gina McCarthy, National Climate Advisor – White House ○ Michael Regan, Administrator – U.S. Environmental Protection Agency 	
2:20 p.m. – 2:50 p.m.	INTRODUCTION OF WHEJAC MEMBERS & OVERVIEW OF WHEJAC MISSION <ul style="list-style-type: none"> ○ Karen L. Martin, Designated Federal Officer – U.S. Environmental Protection Agency ○ Cecilia Martinez, PhD, Senior Director for Environmental Justice – Council on Environmental Quality 	
2:50 p.m. – 4:00 p.m.	JUSTICE40 INITIATIVE <ul style="list-style-type: none"> ○ 40% Investment Benefits <ul style="list-style-type: none"> • Candace Vahlsing, Associate Director for Climate, Energy, Environment, and Science – Office of Management and Budget • Shalanda Baker, Deputy Director for Energy Justice – U.S. Department of Energy • Christopher Coes, Acting Assistant Secretary for Transportation Policy – U.S. Department of Transportation ○ Energy Communities Interagency Working Group <ul style="list-style-type: none"> • Jahi Wise, Senior Adviser for Climate Policy, and Innovation – White House Climate Office ○ Climate and Economic Justice Screening Tool <ul style="list-style-type: none"> • Lucas Brown, U.S Digital Service Team Lead for Justice40 – U.S. Digital Service ○ Executive Order 12898 <ul style="list-style-type: none"> • Cecilia Martinez, PhD, Senior Director for Environmental Justice – Council on Environmental Quality 	

WEDNESDAY MARCH 30, 2021		2:00 PM – 6:00 PM EDT
4:00 p.m. – 4:10 p.m.	BREAK	
4:10 p.m. – 5:00 p.m.	PUBLIC COMMENT PERIOD <ul style="list-style-type: none"> ○ Karen L. Martin, Designated Federal Officer – U.S. Environmental Protection Agency ○ Members of the public will be given up to 3 minutes to present comments to the WHEJAC. Individuals who have registered will be priority. 	
5:00 p.m. – 5:55 p.m.	WHEJAC BUSINESS MEETING REFLECTION & CONVERSATION <ul style="list-style-type: none"> ○ Karen L. Martin, Designated Federal Officer – U.S. Environmental Protection Agency ○ The WHEJAC will use this time to reflect on the meeting proceedings, public comment period, discuss and deliberate action items and finalize next steps. 	
5:55 p.m. – 6:00 p.m.	CLOSING REMARKS & ADJOURN <ul style="list-style-type: none"> ○ Cecilia Martinez, PhD, Senior Director for Environmental Justice – Council on Environmental Quality ○ Karen L. Martin, Designated Federal Officer – U.S. Environmental Protection Agency 	

APPENDIX B - OFFICE OF MANAGEMENT AND BUDGET (OMB) SLIDES



Office of Management and Budget – Justice40

March 30, 2021

White House Environmental Justice Advisory Council

Justice40

Examples of Applications

- Existing funding that is not allocated
- American Recovery Plan Act of 2021 funding
- FY22 Budget and beyond



Ongoing Work

- Identifying baseline and existing programs to achieve Justice40.
- Developing interim guidance for agencies on Justice40 implementation.
- Considering options for the Environmental Justice Scorecard, to ensure agency accountability, and government-wide guidance needed to report on Justice40 achievement.
- Working with CEQ, USDS, and EPA on development options for the Climate and Economic Justice Screening Tool to inform application of Justice40.
- Learning from state efforts to track EJ funding and benefits.
- Looking forward to consulting with the White House Environmental Justice Advisory Council.

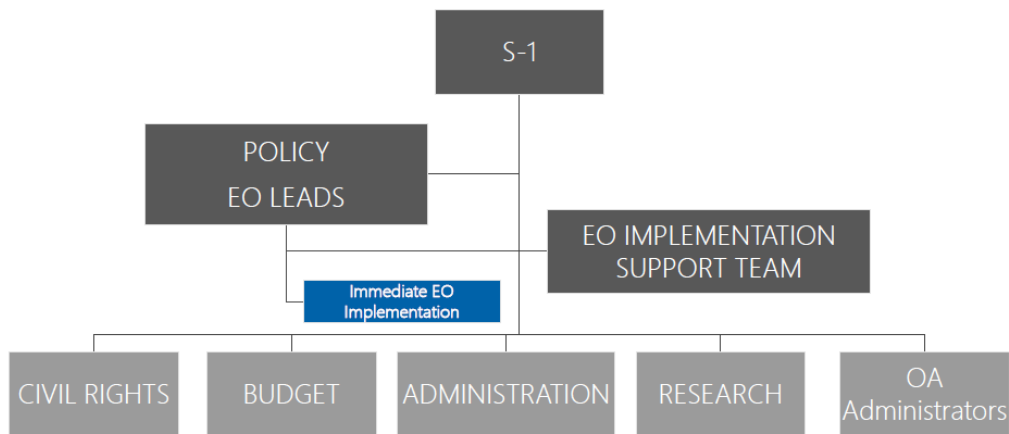


**APPENDIX C - EQUITY EO AND JUSTICE40 - DEPARTMENT OF
TRANSPORTATION (DOT) SLIDES**

EQUITY EO & Justice40
USDOT IMPLEMENTATION PLAN
WHEJAC BRIEFING

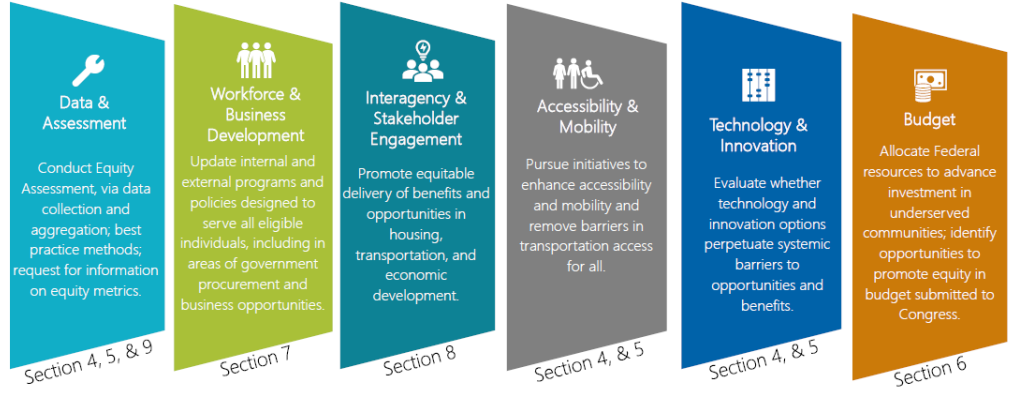
DO NOT DISTRIBUTE—NOT 508 COMPLIANT Last Updated 30 Mar 2020

Equity Leadership Team (EQLT)



DO NOT DISTRIBUTE—NOT 508 COMPLIANT

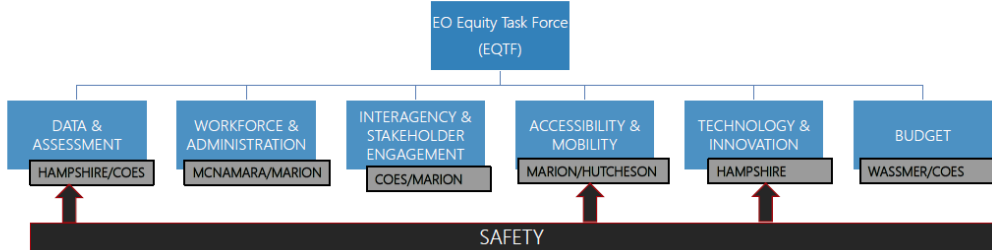
EO Workstreams



DO NOT DISTRIBUTE—NOT 508 COMPLIANT

Equity Task Force (EQTF)

Workstream areas are noted below and will be supported by staff from Secretarial Offices and Operating Administrations. Task Force comprises approximately 90 DOT-wide staff.



DO NOT DISTRIBUTE—NOT 508 COMPLIANT

. Incorporating Justice40 Principles in Discretionary Grants .

- In February 2021, DOT's took immediate steps to build equity into its Notice of Funding Availability (NOFA) announcements including its \$889 million INFRA NOFA, which will include racial equity and environmental justice as a selection criterion to meet the Justice40 principles. NOTE: OGC flagged inclusion of Justiced40 criteria due to statutory constraints.

INFRA Grants FAQs:

How will Climate Change and Environmental Justice criterion be evaluated?

The Department encourages applicants to (1) consider climate change and environmental justice in project planning efforts, and (2) to incorporate project components dedicated to mitigating or reducing impacts of climate change. Applicants should reference specific qualifying activities and project components for this criterion, which are listed in Section E.1.a of the NOFO.

How will Racial Equity and Barriers to Opportunity criterion be evaluated?


The Department encourages applicants to address potential inequities and barriers to equal opportunity in: (1) planning and policies; and (2) project investments. Applicants should reference specific qualifying activities and project components for this criterion, which are listed in Section E.1.a of the NOFO.

How is a project determined to be within a federally designated community development zone?

Applicants should self-report whether the project is located in an Opportunity Zone, an Empowerment Zone, a Promise Zone, or a choice Neighborhood.

DO NOT DISTRIBUTE—NOT 508 COMPLIANT

ASSESSING TRANSPORTATION EQUITY

Category	Criteria	
UNDERSERVED	 Accessibility	•To places and services •Universal design for persons with disabilities •Modal choice
	Funding	•Service quality •Commuter time •Infrastructure completeness •Land use mix
	Engagement	•Outreach to places •Regulations of places
	Safety	•Sidewalks •Right-of-way •Fatalities and injuries
	Employment/Jobs	•Jobs that are transportation related for categories of people •Wages for transportation related jobs for categories of people •Contracts that are transportation related for types of business owners •Transportation related business revenues/profits for types of business owners
	Economics/Costs	•Transportation affordability for categories of people
	Health	•Active transportation options for categories of people
	Mobility	•Number of trips by category of people •Trip length of categories of people •Commuter time
	Engagement	•Type of trip for categories of people •Access to automobile for categories of people
	Engagement	•Outreach to categories of people •Regulations for categories of people
OVER BURDENED	Infrastructure	•Condition •Provides no direct local benefit •Parking •Traffic volumes by home
	Environment	•Air pollution from transportation •Noise pollution from transportation
	Safety	•Water pollution from transportation
	Safety	•Fatalities and injuries on transportation system •HAZMAT transport •Actual vs posted speed
	Enforcement/Procedures	•Traffic enforcement/regulations compliance •Regulations for categories of places
	Economics/Costs	•Transportation costs for categories of people •Insurance rates for categories of people
	Economics/Costs	•Transportation fares/fees for categories of people
	Environment	•Air pollution exposure to categories of people •Noise pollution exposure to categories of people
	Environment	•Water pollution exposure to categories of people
	Safety	•Fatalities and injuries of categories of people
Enforcement/Procedures	•Rules enforcement for categories of people •Fares/fees •Regulations for categories of people	

APPENDIX D - INTERAGENCY WORKING GROUP ON COAL AND POWERPLANT COMMUNITIES SLIDE

Interagency Working Group on Coal and Power Plant Communities

Mandate

- Formed to coordinate the identification and delivery of federal resources to revitalize the economies of coal, oil and gas, and power plant communities

Focus

- Coal, oil and gas and power plant communities AND environmental justice communities who experience the impacts of energy infrastructure

Ongoing Work

- Finalized Initial Report to the President – planning a public rollout
- Convened initial stakeholder listening sessions in March – planning deeper engagement
- Collaborating with Justice40 to identify programs/guidance to achieve mandate



**APPENDIX E - CLIMATE AND ECONOMIC JUSTICE SCREENING TOOL, U.S.
DIGITAL SERVICE (USDS) SLIDES**



Climate and Economic Justice Screening Tool

LUCAS MERRILL BROWN // MARCH 2021

What is USDS?

US DIGITAL SERVICE

Who we are

- [USDS](#) is a White House office that uses design and technology to deliver better federal services to millions of people
- We're currently working on:
 - COVID-19 response
 - Strengthening the social safety net
 - Easing immigration burdens
 - Increasing refugee admissions
 - Providing higher quality federal healthcare through Medicare, Medicaid, and the Veteran's Affairs health system
 - (and more)



US DIGITAL SERVICE

How we work

- USDS deploys small, responsive groups of designers, engineers, product managers, and bureaucracy specialists to work with and empower civil servants
- USDS core value: "Design with users, not for them"
- Our Justice40 team deeply believes in the [Jemez principles](#) of democratic organizing
- Release publicly, early, and often



USDS, EPA, and Justice40

USDS, EPA, AND JUSTICE40

Climate and Economic Justice Screening Tool

- USDS and EPA have been asked by Dr. Martinez to work with CEQ on designing and building the new Justice40 screening tool
- Start with community needs, goals, and pain points and work backwards from there
- Collaborate and iterate with community stakeholders (such as yourselves!) on developing the data, scoring methodologies, and user experience of the tool



USDS, EPA, AND JUSTICE40

Climate and Economic Justice Screening Tool

- The [Justice40 Executive Order](#) asks for the tool to be launched by July 27th
- We hope to release something small but effective, more as the beginning of a collaborative journey building this tool than the end of one
- Most importantly, we hope to work with you to collaboratively design, implement, tweak, and build a rhythm with an engagement process for meaningful community oversight of this tool (and program)



USDS, EPA, AND JUSTICE40

Environmental Justice Agency Scorecard

- The [Justice40 Executive Order](#) asks USDS to help implement a new public annual scorecard detailing agency environmental justice performance measures by the end of 2021
- Collaborate and iterate with community stakeholders such as yourselves on what gets measured and how



What we've been doing

WHAT WE'VE BEEN DOING

Assembling a team

- USDS application is a resume and optional 500-character field
- usds.gov/apply
- Please recommend candidates with experience in the following fields:
 - Product management
 - Project management
 - User research
 - Design
 - Software engineering
 - Data science



WHAT WE'VE BEEN DOING

Gathering input

- USDS and EPA have conducted 29 stakeholder interviews so far
- Listening and documenting needs and pain points
- Learning from what has gone well and what could've gone better with similar programs and tools in California and New York
- Developing a plan to build the tool and the processes around it



WHAT WE'VE BEEN DOING

Listening with purpose and accountability





I, Richard Moore, Co-Chair of the White House Environmental Justice Advisory Council, certify that this is the final meeting summary for the public meeting held on March 30, 2021, and it accurately reflects the discussions and decisions of the meeting.

June 29, 2021

Richard Moore

Date

I, Peggy Shepard, Co-Chair of the White House Environmental Justice Advisory Council, certify that this is the final meeting summary for the public meeting held on March 30, 2021, and it accurately reflects the discussions and decisions of the meeting.

June 29, 2021

Peggy Shepard

Date