



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

March 16, 2022

E. Tendayi Achiume

The Special Rapporteur on contemporary forms of racism,
racial discrimination, xenophobia and related intolerance
Geneva, Switzerland

Dominique Day

The Chair-Rapporteur of the Working Group of Experts on People of African Descent
Geneva, Switzerland

Surya Deva

The Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises
Geneva, Switzerland

David R. Boyd

The Special Rapporteur on the issue of human rights obligations
relating to the enjoyment of a safe, clean, health and sustainable environment
Geneva, Switzerland

Tlaleng Mofokeng

The Special Rapporteur on the right of everyone to the enjoyment
of the highest attainable standard of physical and mental health
Geneva, Switzerland

Marcos A. Orellana

The Special Rapporteur on the implications for human rights of the
environmentally sound management and disposal of hazardous substances and wastes
Geneva, Switzerland

Dear Special Procedures Mandate Holders:

Please find enclosed the U.S. response to your letter dated 16 February 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Daniel A. Kronenfeld'.

Daniel A. Kronenfeld
Deputy Permanent Representative
Human Rights

U.S. Response to UN Joint Communication Regarding Environmental Pollution in Louisiana

Thank you for your letter dated February 16, 2021, with the subject “Joint Communication from Special Procedures” regarding environmental pollution issues and an area in Louisiana known by its residents as “Cancer Alley.” We are grateful for the work you do across the globe to promote respect for human rights, and for the opportunity to provide the below information concerning U.S. law, policy, and practice.

The Biden-Harris Administration has placed a renewed domestic focus on environmental justice to address the disproportionate health and environmental impacts on disadvantaged communities that are marginalized, underserved, and overburdened by pollution in the United States. President Biden signed [Executive Order 14008 \(EO\) on Tackling the Climate Crisis at Home and Abroad](#), which directs domestic Federal agencies to make achieving environmental justice in the United States part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse health, environmental, and climate-related impacts on marginalized, underserved, and overburdened communities in the United States, as well as the associated economic challenges. EO 14008 also created the White House Environmental Justice Interagency Council and the White House Environmental Justice Advisory Council (WHEJAC), among other actions aimed at increasing and integrating a commitment to domestic environmental justice across the Federal government. Community leaders, environmental justice experts, and academic thought leaders who have been working on environmental and health inequities in the South, including along the Louisiana Mississippi River Chemical Corridor and the Gulf Coast Region, serve on the WHEJAC. Notably, in the President’s remarks on the EO, he specifically named “Cancer Alley” in Louisiana as a hard-hit community and recognized the need to support and invest in communities like these.

In November 2021, the Administrator of the Environmental Protection Agency (EPA), Michael Regan, embarked on a “[Journey to Justice](#)” tour, traveling throughout Mississippi, Louisiana, and Texas to spotlight longstanding environmental justice concerns in marginalized communities and hear firsthand from residents dealing with the impacts of pollution. Among numerous stops and discussions, Administrator Regan met with residents in St. John the Baptist Parish and St. James Parish, where he toured neighborhoods dealing with the severe impacts of pollution. As demonstrated by this trip, engaging with affected communities and ensuring their input informs policy actions are components of the Biden-Harris Administration’s commitment to ensure that citizens have access to information and can participate in the policy-making process as part of the effort to promote environmental justice in the United States.

On January 26, 2022, EPA announced a series of actions the agency would take in response to Administrator Regan’s engagement with citizens during his “Journey to Justice” tour. These actions range from policy changes to community-driven efforts and reflect the Administrator’s commitment to delivering environmental justice within the United States. Specific actions relevant to the communities in Louisiana include committing EPA to aggressively using its authority to conduct unannounced inspections of suspected non-compliant facilities, as needed to protect public health. When facilities are found to be non-compliant, EPA will use all available tools to hold them accountable. EPA has also committed to strengthening EPA’s external civil

rights compliance program and ensuring that civil rights compliance is an agency-wide responsibility.

In accordance with EO 14008, the Justice40 Initiative was launched to ensure domestic Federal agencies, working with states and local communities, deliver 40 percent of the overall benefits from Federal climate, clean energy, affordable and sustainable housing, clean water, and other investments to communities that are marginalized, underserved, and overburdened by pollution. Many programs in the Bipartisan Infrastructure Law (BIL), as well as other legislative and policy initiatives of the Administration, will be covered by the Justice40 Initiative. In July 2021, the Administration gave formal direction to Federal agencies, through the Justice40 [Interim Implementation Guidance](#), to begin examining eligible climate, clean energy, affordable and sustainable housing, clean water, and other programs to include in the Initiative. To accelerate implementation, the Administration identified a set of 21 existing Federal programs that are serving as pilot programs to act quickly and provide lessons and best practices that can be applied across Federal domestic programs. The Administration's approach to the Justice40 Initiative has been informed by the WHEJAC's [recommendations](#) because robust stakeholder consultation and public participation are priorities across this Initiative. Additionally, the White House Council on Environmental Quality (CEQ) recently released its draft Climate and Economic Justice Screening Tool, a key component in implementing the President's Justice40 Initiative. ([White House Press Release](#) on CEQ Publishing Draft Climate and Economic Justice Screening Tool.)

Critically, the BIL, signed into law in November 2021, helps advance domestic environmental justice and spur economic opportunity. The BIL will strengthen the United States' resilience to extreme weather and climate change, which have already impacted communities in Louisiana and around the country. It will also clean up toxic pollution, expand access to clean drinking water, remediate legacy pollution, deliver electric school buses to support clean air, and more in the United States. ([White House Fact Sheet](#) on how the Bipartisan Infrastructure Law Advances Environmental Justice.)

Funds appropriated by the American Rescue Plan (ARP) are also being directed toward domestic environmental justice—in Louisiana and across the country. For example, in December 2021, the EPA announced \$14.1 million in funding for 133 grants selected through the Environmental Justice Small Grants (EJSG) and Environmental Justice Collaborative Problem-Solving Cooperative Agreement (EJCPS) programs. Relevant to concerns your inquiry raises, one of the EJSGs is directed to the Louisiana Bucket Brigade in St. James, Louisiana. The grant resources will be used to educate community members near refineries and petrochemical facilities, particularly those communities where COVID-19 fatalities have been disproportionately high, about available air quality information, including its connection to COVID-19 morbidity and greenhouse gas emissions. Residents of the St. John, St. James, and Caddo Parishes in Louisiana will be direct beneficiaries of these efforts. Also, in December 2021, EPA announced the availability of \$20 million in ARP funding through competitive grants to enhance ambient air quality monitoring in and near underserved communities across the United States. EPA will also be investing an additional \$5 million in agency mobile monitoring labs or air sensor loan programs and providing \$22.5 million in direct awards to air agencies for continuous PM_{2.5} monitoring and other air pollutant monitoring. EPA will invest \$600,000 of that funding to purchase mobile air pollution monitoring equipment that will be deployed specifically in

Mossville, St. John the Baptist Parish, and St. James Parish, among other communities. EPA will work with local organizations to host trainings for community members to familiarize them with the technology and the process the agency uses for its air monitoring.

On January 21, 2022, EPA released for [public comment](#) and peer review version 1.0 of a [proposed screening level methodology](#) to evaluate potential chemical ambient air and water exposures and associated potential risks to fenceline communities in Toxic Substances Control Act (TSCA) risk evaluations. The proposed screening level methodology uses reasonably available data, information, and models to quantify environmental releases, evaluate exposures to fenceline communities, and characterize risks associated with such releases and exposures.

EPA will also deploy a new program to expand air monitoring capacity through a multi-scale monitoring project called the Pollution Accountability Team (PAT), to provide strong environmental compliance and monitoring starting in spring 2022. The PAT will begin its operations as a pilot through Louisiana communities and will expand air monitoring capacity, utilizing assets such as the [ASPECT airplane](#) and the [GMAP mobile air monitoring vehicle](#), with additional inspectors available on the ground to follow up on pollution detected by the mobile devices. EPA's monitoring efforts will be enhanced through additional investments in community air monitoring to better protect people and public health in vulnerable areas.

In St. John the Baptist Parish, EPA used its authority to require the Denka facility to install fenceline monitors to identify sources of emissions onsite, allowing the EPA and communities to better understand air pollution in a quick, reliable way. Denka complied with EPA's request to install and operate these monitors in January 2022. Administrator Regan also sent a letter to Denka and DuPont CEOs pressing their companies to protect residents of St. John the Baptist Parish, including children that learn and play along their fenceline, after elevated concentrations of chloroprene were periodically measured nearby.

In Mossville, EPA will assess compliance at facilities that present potentially elevated risks to the community based on recent EPA helicopter flyovers and mobile air monitoring of the areas. EPA also provided \$38,886 to Louisiana Department of Environmental Quality (LDEQ) to purchase a National Ambient Air Quality Standards (NAAQS) quality PM 2.5 continuous monitor to be placed across the road from Sasol's Lake Charles Complex. EPA will monitor and review the data and conduct an independent assessment to determine if NAAQS standards are exceeded in the Lake Charles area. EPA will also conduct Technical Systems Audits on a rotating basis of the state's monitoring system operations as well as reviewing LDEQ's annual data certifications and LDEQ's annual monitoring network plan.

EPA has also recently issued several enforcement orders for large facilities in Louisiana. EPA issued a Notice of Violation and Opportunity to Confer (NOVOC) to Nucor Steel Louisiana LLC in St. James Parish, which requires the facility to address unauthorized emissions of hydrogen sulfide and sulfuric acid mist and exceedances of permitted limits for sulfur dioxide emissions. EPA also issued a Notice of Potential Violation and Opportunity to Confer (NOPVOC) letter to Sasol Chemicals USA, LLC, following a compliance evaluation and requires Sasol to address potential Risk Management Plan violations found during inspection.

In addition to the information above, we are pleased to provide the following information regarding some of the themes and questions in the letter you sent:

A. Information on the potential developments and measures adopted at a Federal, state, and local level, including possible land use decisions.

1. Under the U.S. cooperative federalism system, governmental authority resides with the Federal government, state and local governments, and Tribal governments. Given that many of issues raised in your letter fall within the purview of state and local governments, we are sharing your letter, and our response letter, with state and local government officials, as well as community-based leaders. Also, as noted above, we are working domestically to advance the principles of environmental justice, which includes meaningful involvement and fair treatment of overburdened and underserved communities, at all levels of government decision-making.
2. The reviews, permitting, and legal action that affect the potential developments named in your letter remain ongoing. The U.S. Army Corps of Engineers (Corps) granted a permit for parts of the Formosa Plastics' planned petrochemical complex in September 2019 within the Corps' jurisdiction under the Clean Water Act and the Rivers and Harbors Act of 1899. The Corps suspended that permit in November 2020 to re-evaluate the alternatives analysis under the Clean Water Act, and other aspects of the permit if appropriate. In August 2021, the Department of the Army directed the Corps to further review the Formosa Plastics' proposed action by conducting an in-depth Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) as part of its re-evaluation. As outlined under NEPA, the public will be invited to provide input in the EIS process to help identify impacts from the proposed action to the quality of the human and natural environment, to consider issues of environmental justice, and to compare alternatives to the proposed action, including a no-action alternative. More information about NEPA is available on the U.S. Council on Environmental Quality website, accessible at ceq.doe.gov.
3. Additionally, we wish to note that several environmental and citizen groups have filed suit in state court (19th District Louisiana) challenging the validity of permits (1 Prevention of Significant Deterioration and 14 Title V) issued in January 2020 for the Formosa Sunshine Project by LDEQ. The challenge to the state permits is still in process in the state courts, with a hearing scheduled for early March 2022.

B. Anticipated timeline for the proposed Environmental Justice for All Act:

1. This legislation is pending before Congress and the timeline of legislative branch action is uncertain. The legislation was first introduced in the House of Representatives in February 2020 and was reintroduced in 2021 under the 117th Congress as H.R.2021 and S.872. Notably, the Biden-Harris Administration has taken executive action to advance some of the goals of the legislation, including creating the White House Environmental Justice Interagency Council.

C. Information on any additional Federal policies or regulations to advance domestic environmental justice, monitor and limit concerning impacts on communities and the climate, and respect and promote human rights.

1. White House January 2022 Fact Sheet on “[A Year of Advancing Environmental Justice](#).”
2. Under the leadership of Administrator Regan, EPA has committed to making equity, environmental justice, and external civil rights enforcement a centerpiece of the agency’s mission. EPA’s strategic plan for 2022-2026—still in draft form and set to be finalized in February 2022—includes “Take Decisive Action to Advance Environmental Justice and Civil Rights” as Strategic Goal 2 and outlines the following key objectives:
 - Objective 2.1: Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels
 - Objective 2.2: Embed Environmental Justice and Civil Rights into EPA’s Programs, Policies, and Activities
 - Objective 2.3: Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns.
3. Executive Order (EO) 13985, [Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), directs the EPA and other Federal agencies to assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to EPA’s policies and programs. EO 13985 then directs agencies to develop equity action plans to overcome these barriers. EPA’s equity action plan will align with its 2022-2026 strategic plan and will support accountable and transparent implementation of Strategic Goal 2.
4. EPA’s nondiscrimination regulation prohibits recipients of EPA financial assistance from taking actions in their programs or activities that are intentionally discriminatory and/or have a discriminatory effect. Robust enforcement of civil rights law provides the strongest tool to address disparities on the basis of race, color, national origin (including limited English proficiency), disability, age, and sex. The classifications protected by Federal civil rights laws encompass many of the underserved and overburdened communities that have been exposed to a disproportionate level of harmful environmental, quality of life, and health impacts from pollution sources. An effective civil rights compliance program creates accountability to ensure that the actions, policies, and practices of recipients of Federal funds advance equity rather than further exacerbating these disparities.
5. As directed in Executive Order 13990, [Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#), the EPA is considering rulemaking proposals to address some of our nation’s largest sources

of both climate- and health-harming pollution, such as the transportation, oil and natural gas, and power sectors.

6. The Clean Air Act (CAA) regulates air pollutant emissions from stationary and mobile sources. Among other things, the CAA authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare, and to issue National Emission Standards for Hazardous Air Pollutants (NESHAP) to regulate emissions of hazardous air pollutants. Currently, EPA is reviewing the NESHAP for three chemical source categories which apply to several facilities located in “Cancer Alley.” These include the standards for neoprene production, synthetic organic chemical manufacturing, and polyether polyols production. The reviews are intended to ensure that the standards continue to provide an ample margin of safety to protect public health. EPA is in the process of collecting data necessary to inform these reviews and anticipates taking final action in 2024.
7. The Toxic Substances Control Act (TSCA) provides EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including food, drugs, cosmetics, and pesticides. The 2016 amendments to TSCA create a new framework under TSCA section 6 to evaluate and regulate chemical substances through a multi-staged process of prioritization, risk evaluation, and risk management. Throughout each stage, EPA is instructed to use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science, and make decisions based on the weight of the scientific evidence. For example, per TSCA section 6(b), EPA has finalized the designation of 20 chemicals as “high-priority substances” and is currently in the process of evaluating the risks of these 20 chemical substances, which include formaldehyde, o-dichlorobenzene (o-DCB), 1,3-butadiene, 1,1-dichloroethane (1,1-DCE), 1,2-dichloroethane, 1,2-dichloropropane (1,2-DCEP), and ethylene dibromide (EDB). This evaluation involves a general population exposure assessment, which will specifically include fenceline populations (i.e., those that are most likely to be exposed due to proximity to facilities emitting or discharging the High-Priority Substance). Exposures to subsets of the general population, such as children and pregnant women, will also be considered as appropriate in EPA’s fit-for-purpose risk evaluations. [See [Summary of Public Comments Received](#) on the Draft Scopes of the Risk Evaluations for Twenty Chemical Substances Under the Toxic Substances Control Act (TSCA), 1-134, 13 (Aug. 2020)]. If EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use, then EPA initiates the risk management process resulting in a rulemaking to reduce or eliminate these risks.

8. The Federal government takes seriously its human and civil rights obligations.

D. Information on measures to recognize and address the harm caused by environmental pollution, potentially including compensation for damages.

1. The Biden-Harris Administration is focused on significantly increasing investment in communities that have historically been underserved and have faced disproportionate impacts and other domestic environmental justice concerns, including pollution. These investments will help advance environmental justice in the United States and create opportunity going forward.
2. The Federal government is committed to addressing discriminatory environmental and health impacts in the United States through robust enforcement of Federal civil rights laws, including the Civil Rights Act of 1964 and the Fair Housing Act.

Affected individuals and communities may have other potential remedies for alleged environmental, economic, or other harm under Federal or state law.