

## **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

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

### **Introduction**

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

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

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

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

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

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

### **There is no such thing as acceptable risk**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>12</sup> Alaska Community Action on Toxics. (2009). Persistent Organic Pollutants in the Arctic—Report to the United Nations. [https://www.akaction.org/wp-content/uploads/POPs\\_in\\_the\\_Arctic\\_ACAT\\_May\\_2009-2.pdf](https://www.akaction.org/wp-content/uploads/POPs_in_the_Arctic_ACAT_May_2009-2.pdf)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

<sup>18</sup> See 42 U.S.C. § 7412 (f)(2) (A).

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

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

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

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

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

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

### **EPA must continue to rely on the best science available**

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

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<sup>20</sup> 88 Fed. Reg. at 25,158.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Community right to know**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **EPA needs to improve and ensure consistency in public engagement**

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

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

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



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

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

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

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

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

## **Conclusion**

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

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

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

Respectfully submitted,

**Alaska Community Action on Toxics**

**Black Women for Wellness** | Los Angeles, CA

**Breast Cancer Prevention Partners**

**Center for Environmental Health** | Oakland, CA

**CleanAirNow\_EJ** | Kansas City, MO & Kansas City, KS

**Clean Power Lake County** | Waukegan, IL

**Coming Clean**

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

**Delaware Concerned Residents for Environmental Justice**

**Dr. Yolanda Whyte Pediatrics** | Atlanta, GA

**Ecology Center** | Ann Arbor, Michigan

**Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)**

**Harambee House Inc** | Savannah, Georgia

**Learning Disabilities Association of America**

**Los Jardines Institute** | Albuquerque, NM

**Moms for a Nontoxic New York**

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

**Rubbertown Emergency ACTION (REACT)** | Louisville, KY

**Texas Environmental Justice Advocacy Services** | Houston, TX

**Union of Concerned Scientists**