

May 18, 2021

President Joe Biden
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Administrator Michael Regan
U.S. Environmental Protection Agency

RE: Protect Fenceline Communities, End Free Passes to Pollute and Close All Startup, Shutdown, and Malfunction Loopholes

Dear Mr. President and Administrator Regan:

On behalf of our members, activists and communities, we write to ask that you direct the Environmental Protection Agency (EPA) to take swift action to close all free passes to pollute that allow thousands of industrial facilities to release deadly air pollution spikes during startups, shutdowns, and malfunctions. It is essential for EPA to end these decades old loopholes, once and for all, so that fenceline communities can breathe healthy air freely.

These dangerous loopholes are riddled throughout federal air quality rules and state implementation plans – which means that polluters can avoid complying with clean air protections, even where prevention and preparation could have prevented an equipment malfunction and resulting air pollution spike altogether. The terms EPA has used over the years for this type of industrial plant loophole vary – including “Startup, Shutdown, and Malfunction” (SSM), “force majeure event,” and related regulatory exemptions, along with an affirmative defense against penalties. But the effect is the same. These loopholes allow industrial polluters to release huge amounts of harmful pollution into the air that fenceline communities breathe, without any incentive to prevent the problem and without consequences, even when pollution spikes occur over and over again. Communities surrounding these industrial facilities are too frequently exposed to a laundry list of dangerous air pollutants – including benzene, cyclohexane, dioxins, ethylene oxide, formaldehyde, hydrogen cyanide, hydrofluoric acid, naphthalene, chloroprene, sulfuric acid, lead, particulate matter, and many more. The cumulative impacts of these exposures have left generations of fenceline communities at higher risk for various cancers, birth defects, mutations, respiratory ailments, and other serious health harms.

SSM pollution episodes generally have no limits in their length of time, no limits in their frequency, and no limits to the volume of pollution spewed into the air. Moreover, a great deal of the high pollution volumes released during thousands of SSM events have not been properly monitored to identify and measure the toxic and other chemicals dumped into the air, leaving residents with little information on what noxious substances they were exposed to. Instead, facilities are allowed to self-report estimates of their SSM emissions, with no way for the public to know their accuracy.

The Clean Air Act is clear, the science is solid, and too many people continue to suffer and die from exposure to toxic air pollution – the time for decisive action is now and communities are counting on this administration for help.

This is a serious environmental justice issue and EPA has repeatedly recognized that the most-affected communities are disproportionately communities of color and low-income communities. Because of a long history of political and social disenfranchisement, and racism in planning and zoning, our communities have been exposed to dangerously high levels of toxic pollution because we are more likely to live, work, play, and pray in areas adjacent to power plants, oil refineries, chemical and petrochemical manufacturers, and other industrial facilities. Because of existing loopholes and a lack of compliance and enforcement made even more difficult due to the gaping holes in clean air rules, our communities are left with little recourse to end the repeated pollution spikes we are experiencing, or hold polluting industries accountable for the deadly emissions they spew into our air. Children, the elderly, and those with preexisting heart and breathing ailments are particularly vulnerable to this pollution. Socioeconomic disparities also increase vulnerability to health effects. The COVID-19 pandemic has shone a bright spotlight on the disproportionate health harms faced by communities with unsafe air quality.

Mr. President, when you were running for office you promised to use the full force of your administration to tackle environmental injustice and the cumulative impacts faced by fenceline communities that have been forgotten and historically sacrificed by those in power. Administrator Regan, we appreciate your vital, stated commitment to environmental justice and we call on you to follow through by taking swift, meaningful action to protect fenceline communities' right to breathe clean air.

Removing these loopholes will build on important work the Obama-Biden administration began. After the D.C. Circuit in 2008 and 2014 found these exemptions and loopholes to be illegal, EPA started to remove them, in part, from various air rules. In May 2015, after decades of communities fighting for action, the Obama-Biden administration took a major step in the right direction by directing dozens of states to close SSM loopholes for industrial polluters. But EPA has failed to fully remove these exemptions, and the Trump administration disregarded the law and public health and began to undo this progress through rulemakings and guidance, and through relabeled and reissued problematic exemptions. Your administration can put this issue to rest and help deliver cleaner air and safer neighborhoods for overburdened communities across the country.

The legacies of oppression and racism are long and complex, but there are powerful, well-established tools at your disposal right now to begin restoring justice and delivering on the promises of the Clean Air Act – clean and healthy air in every community and zip code – starting where it is needed most, in communities facing the worst cumulative impacts from air pollution and the greatest environmental injustice. As climate change alters the world around us in real time, we no longer have the luxury of half-measures. Gulf communities in Texas and Louisiana now regularly face extreme weather like hurricanes, flooding, and resulting power outages. Huge releases of unsafe emissions from adjacent industrial facilities during such emergencies require stronger, direct preventative action by EPA. Many of these releases far exceed the facilities' annual limits and can have significant health impacts. As your administration works to rejoin global efforts to tackle greenhouse gas pollution and undo the damaging actions of the last four years, we need you to begin your work equally focused on addressing deadly air pollution and providing relief to fenceline communities facing these cumulative impacts.

Ending these loopholes with direct, decisive agency actions across all Clean Air Act programs will protect public health and strengthen compliance and enforcement by making clear that polluters cannot take advantage of exemptions or other free passes to release preventable air pollution. Communities need clean air every day – and EPA must make clear that, finally, clean air protection will begin to apply *at all*

times and *in all communities* in our country. It is critical that the administration end the cycle of new versions of the exemptions by removing the new generation of “force majeure event” loopholes for malfunction emissions and refusing to insert similar exemptions in new rules.

Communities should not have to continue engaging in cat-and-mouse, whack-a-mole strategies and advocacy to achieve the clean, healthy air promised by law, and basic accountability from the facilities polluting their neighborhoods. We need you to build back better, and our children deserve better. Please demonstrate your commitment to public health and environmental justice by taking swift and clear action to end the startup, shutdown, and malfunction loopholes once and for all. When you stand strong against efforts to put corporate profits ahead of people’s public health and well-being, especially the most vulnerable among us, we will stand strong behind you and your administration.

Thank you for considering our views.

Sincerely,

350 New Orleans
A Community Voice
Achieving Community Tasks Successfully
Action for a Livable Tomorrow
Africatown - C.H.E.S.S
Air Alliance Houston
Alaska Community Action on Toxics
Alliance for Affordable Energy
Benicians for a Safe and Healthy Community
Beyond Plastics
Blue Ridge Environmental Defense League
California Communities Against Toxics
California Safe Schools
Cease Fire Campaign
Center for Biological Diversity
Center for Sustainable Engagement & Development (CSED)
Cherokee Concerned Citizens
Citizen Air Monitoring Network
Citizens 4 Clean Air, NFP
Citizens Coal Council
Citizens for Environmental Justice
Citizens for Safe Water Around Badger (CSWAB.org)
Citizens' Environmental Coalition
Clean Air Action Network of Glens Falls (NY)
Clean Air Coalition of Greater Ravena Coeymans
Clean Air Muscatine
Clean Economy Coalition
Clean Power Lake County
CleanAirNow
Climate Law & Policy Project
Climate Reality Project: New Orleans Chapter
Coalition Against Death Alley

Coalition for a Safe Environment
COCO-Coalition of Community Organizations
Comite Pro Uno
Community Dreams
Community In-Power and Development Association (CIDA)
Concerned Citizens of St. John
Concerned Paramount Residents Fight Pollution
Connecticut Coalition for Environmental Justice
CORALations, Inc.
Crawford Stewardship Project
Deep South Center for Environmental Justice
Downwinders at Risk
Earth Action, Inc.
Earthjustice
Earthworks
East Yard Communities for Environmental Justice
ECO: Environmental Community Organization
Ecology Center
Education, Economics, Environmental, Climate and Health Organization (EEECHO)
Elyria-Swansea Neighborhood Association
EMERGE
Environment America
Environmental Integrity Project
Environmental Justice Health Alliance for Chemical Policy Reform
Environmental Law & Policy Center
Environmentalists Against War
Extinction Rebellion New Orleans
Familias Unidas
Fight For Zero
Fresh Air Vallejo
GAIA
GASP
Good Neighbor Steering Committee, Benicia CA
Greater New Orleans Interfaith Climate Coalition
Green Army
Greenaction for Health and Environmental Justice
GreenLatinos
Healthy Gulf
Hoosier Environmental Council
Hudson River Sloop Clearwater, Inc.
Iowa Environmental Council
League of Conservation Voters
Livelihoods Knowledge Exchange Network
Louisiana Bucket Brigade
Louisiana Environmental Action Network
Louisiana League of Conscious Voters
Madres del Este Los Angeles
Mennonite Central Committee, U.S. Washington Office

Midlothian Breathe
Missouri Coalition for the Environment
National Association for the Advancement of Colored People (NAACP)
National Parks Conservation Association
Natural Resources Defense Council
NY/NJ Environmental Watch
Organization Name
OVEC-Ohio Valley Environmental Coalition
Partnership for Policy Integrity
PennFuture
Public Citizen
Rise St. James
Saratoga Sites Against Norlite Emissions
Seneca Lake Guardian
Sierra Club
Sierra Club Miami Group of Ohio
St. Croix Environmental Association
Stop Sterigenics
Sunflower Alliance
Tewa Women United
Texas Campaign for the Environment
texas environmental justice advocacy services (t.e.j.a.s.)
Tri-Valley CAREs (Communities Against a Radioactive Environment)
Union of Concerned Scientists
Utah Physicians for a Healthy Environment
Vidas Viequenses Valen
West Berkeley Alliance for Clean Air and Safe Jobs
Wisconsin Health Professionals for Climate Action