

November 15, 2021

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail code 1101A
Washington, DC 20460

Dear Administrator Regan:

We write to call on the Environmental Protection Agency, in conjunction with other federal agencies, to act to protect historically marginalized environmental justice communities from the impact of air pollution from Liquefied Natural Gas (LNG) and crude oil export facilities. There are nearly two dozen proposed LNG export projects or expansions and more than a half dozen proposed oil export facilities or expansions, located on and off the Texas and Louisiana Gulf Coast in communities that, for far too long, have been overburdened by industrial pollution, including harmful air pollution.

The climate emergency is worsening each day, and communities of color and low income communities are disproportionately bearing the brunt of toxic fossil fuel pollution, crushing energy burdens, and climate disasters. Hundreds of top scientists say the most drastic effects of global warming can be staved off only by phasing out fossil fuel dependence and halting development of new fossil fuel projects, including fracked oil and gas extraction and export projects. The most recent United Nations' Intergovernmental Panel on Climate Change (IPCC) report concludes that unless there are immediate and rapid reductions in emissions, limiting warming to 1.5°C or even 2°C, and avoiding the associated extreme climate impacts, will be beyond reach. Given the Biden Administration's commitment to taking action that mitigates the impacts of climate change and prioritizes support for impacted environmental justice communities, the expansion of fossil fuel exports moves us in the wrong direction.

Fortunately, there are steps that federal agencies can take to help vulnerable environmental justice communities reduce toxic exposures from fossil fuel export facilities listed below:

We call on the EPA to engage in the public comment process for all proposed fossil fuel export facilities to disclose and analyze the full scope of air toxics and climate change pollution that each of these projects would emit, individually and cumulatively. A cumulative air quality assessment must accurately reflect the scope of devastating direct and indirect impacts these projects would have on frontline communities, Gulf of Mexico ecosystems and the global climate. Based on the air pollution impacts alone, licensing agencies - FERC, MARAD, USCG, and the U.S. Army Corps of Engineers - simply cannot conclude that the buildout of even a single fossil fuel export project is a matter of public necessity or serves the public interest.

We applaud EPA's recent engagement in FERC dockets for pipelines and LNG facilities, in particular EPA's emphasis on the need to take a hard look at environmental justice and climate

impacts. EPA must ensure that frontline communities are meaningfully informed and provided an opportunity to weigh-in on the full scope of impacts that would directly affect their livelihoods. Oil and gas export projects are not a public necessity given their disproportionate impacts on human health, local economies, and the crippling social effects on communities of color and low income neighborhoods. EPA must therefore engage at the highest levels of each individual permitting process--whether at FERC, MARAD, or in state air or wastewater permitting--to ensure these projects do not move forward without fully disclosing and analyzing the toxic and greenhouse gas pollution each of these projects would emit, both individually and cumulatively with all other sources in the area.

We call on the EPA to ensure that public interest licensing determinations by FERC, MARAD, USCG, and the U.S. Army Corps of Engineers consider the urgency of stemming new fossil fuel infrastructure development underscored by the latest climate change publications. Recent reports issued by the IPCC and the International Energy Agency present significant new information about the severity of the climate crisis caused by fossil fuel development and combustion, and the need to halt the proliferation of fossil fuel projects to avoid the most extreme climate impacts. EPA must ensure that the direct and indirect upstream and downstream climate change emissions impacts of all proposed fossil fuel export projects are fully assessed in light of this new information.

We call on the EPA to require re-evaluation of a proposed LNG facility before any extension of a construction permit is granted. For sources seeking any extension of the Prevention of Significant Deterioration (PSD) construction deadline, EPA must require those sources to re-evaluate all PSD permitting requirements. EPA's regulations establish that "approval to construct [a new major stationary source] *shall* become invalid if construction is not commenced within 18 months after receipt of such approval, . . ." 40 C.F.R. § 52.21(r)(2) (emphasis added). Permitting agencies may extend that deadline only upon "a satisfactory showing that an extension is justified." 40 C.F.R. § 52.21(r)(2). Moreover, to obtain a second extension of a PSD construction permit, the source must provide a detailed justification of "why [it] cannot commence construction by the current deadline," and the application must include "a substantive re-analysis and update of PSD requirements," including a re-evaluation of local air quality impacts and the best available control technology for the source. EPA, Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2) 5 (2014) ("EPA Guidance"). EPA must make clear to state permitting agencies that PSD construction permit extensions cannot be simply rubber stamped. Moreover, given current and projected violations of the National Ambient Air Quality Standard for nitrogen dioxide along the Gulf Coast of Louisiana, EPA should make clear that cumulative air quality impact analyses of all sources in the area are required before extending the PSD construction permit for any LNG facility.

We call on the EPA to redesignate Calcasieu Parish as being in nonattainment with the National Ambient Air Quality Standard ("NAAQS") for nitrogen dioxide ("NO₂"). Air quality modeling conducted by the Magnolia LNG terminal and approved by the Louisiana Department of Environmental Quality demonstrates that air quality in Calcasieu Parish does not meet the NO₂ NAAQS. In fact, "[the] combination of impacts from Magnolia, the nearby sources, and the background . . ." shows that air quality in the area is more than *four-and-a-half*

times the 1-hour NAAQS for NO₂. Nitrogen dioxide is part of a group of highly reactive gases known as nitrogen oxides, which can cause or worsen respiratory diseases such as asthma, particularly among children and the elderly. Nitrogen oxides are also a precursor for ground-level ozone or smog. Because air quality in Calcasieu Parish is not meeting the NO₂ NAAQS, EPA must designate the area as being in nonattainment with the health-based standard. 42 U.S.C. § 7407(d)(1)(A).

We call on the EPA to require state permitting agencies to properly define LNG sources to include all interrelated and interdependent facilities that are part of the same project. The requirements of the PSD program apply to “any new major stationary source,” and the “permitting authority must take into account the emissions from all parts of a single source when determining the applicable requirements and conditions for operation of that source.” 40 C.F.R. § 52.21(a)(2); *In the Matter of Seneca Energy, II, LLC*, Order on Petition No. II-2012-01, at (June 29, 2015). Federal and state regulations define a “stationary source” as “any building, structure, facility or installation that emits or may emit a regulated ... pollutant.” 40 C.F.R. § 52.21(b)(5), (6). Both sets of regulations further define a “building structure, facility or installation”—and therefore a single “source”—to include “all of the pollutant-emitting activities” that:

(a) belong to the same industrial grouping according to the federal government’s Standard Industrial Classification (SIC) system, (b) are located on one or more contiguous or adjacent properties, and (c) are under the control of the same person (or persons under common control).

Id.

As the D.C. District Court has explained, under “the plain language of the statute, and its obvious intent to regulate pollution attendant to the construction as well as the operation of the finished generating units,” the permit application must include the emission units that comprise of the facility’s structure. *Save the Valley v. Ruckelshaus*, 565 F. Supp. 709, 710 (D.C. Cir. 1983). In other words, if there are numerous emitting units and the permit applicant plans to build the emitting units for the purpose of facilitating the operation of all the units and to “accommodate the needs of full capacity operation,” the overall structure of the facility must be presented in the PSD permit application. *Id.* at 710-711. “[I]f the EPA [or the state agency] did not have the opportunity to consider the cumulative impact of the additional construction resulting” from the other unit(s) that are part of the same LNG project, “then the pollution control aims of the statute have not been protected.” *Id.* at 711. EPA must therefore make clear that all of the interrelated and interdependent emitting activities that make up operations of a proposed LNG project together comprise a single source of air pollution for purposes of the PSD program.

We call on the EPA to require offshore oil loading terminals to install vapor pollution control technology to reduce their massive air pollution. The Clean Air Act’s National Emission Standard for Hazardous Air Pollutants (“NESHAPs”) Subpart Y (40 CFR Part 63) mandates that offshore loading terminals install controls that would reduce their air pollution by at least 95%. But at least three proposed oil export projects are working to convince EPA to exempt them from the NESHAP rule. And during the last administration, EPA issued draft permits to the proposed Bluewater deepwater oil export facility that would allow it to avoid installation of pollution controls altogether. Under the proposed permit Bluewater would emit

approximately 19,000 tons per year of VOCs and 833 tons per year of air toxics, totaling more VOCs than any other single facility in the country emitted in 2017. EPA must enforce the requirement of offshore loading terminals to install vapor pollution control technology to reduce by at least 95% the enormous smog-forming, and lung- and heart-harming volatile organic compounds (VOC) and air toxics, like carcinogenic benzene, emitted by these facilities. Notwithstanding EPA's application of Subpart Y, it still must require installation of the same pollution control technology as the Best Available Control Technology (BACT) to limit VOCs. Each of these terminals is required to install BACT in order to receive a preconstruction air permit, and the data show that these controls are cost-effective. BACT enforcement is critical given that the projects' massive emissions would land onshore in areas of Texas that are already in nonattainment for smog (ozone), such as in the greater Houston region, or in areas that are getting closer to those limits, such as the Corpus Christi region.

We call on the EPA to finally close regulatory loopholes for startup, shutdown, and malfunction (“SSM”) events that frequently allow the largest polluters in the Gulf Coast region, including LNG facilities, to release massive amounts of toxic and harmful air pollution into neighboring communities, in violation of Clean Air Act limits and without liability. These loopholes fall into two categories. First, “exemptions” allow state regulators to summarily excuse violations of Clean Air Act limits during SSM events, effectively precluding citizens from bringing suit to enforce the law. Second, affirmative defenses allow polluters to avoid any legal liability for upset events, even where the violations are egregious and avoidable. These pollution events can have significant impacts on vulnerable, often low-income or minority fence-line communities near large industrial facilities like LNG facilities, refineries, and chemical plants. Many facilities simply disable pollution control technology when coming online, shutting down, or during malfunctions, resulting in massive amounts of excess pollution. In fact, many facilities release more pollution during these periods than during the course of its normal operations for the entire year.

In 2015, in response to two different federal court decisions striking down SSM exemptions in EPA regulations, EPA finalized a rule (the SSM SIP Call) that made clear that such SSM exemptions and affirmative defenses in *state* Clean Air Act regulations are likewise unlawful. The Trump Administration, however, attempted to reverse parts of that rule; and as a result, many states, including Texas and Louisiana still contain provisions that effectively excuse violations of the Clean Air Act during SSM events. Given that most of the nation's LNG infrastructure along the Gulf Coast is in the direct path of increasingly intense hurricanes and flooding exacerbated by climate change, the SSM affirmative defenses in Texas regulations and the exemptions in Louisiana regulations have the potential to wreak havoc on already vulnerable coastal communities. Because Louisiana and Texas have failed to correct their state rules, we call on the EPA to close these loopholes with federal Clean Air Act implementation plans that comply with the law. Removing these exemptions is especially important to protect coastal communities in Texas, Louisiana, and beyond who live near sources like LNG facilities, refineries, and chemical plants that have repeatedly failed to take necessary action to prevent out-of-control flaring, toxic releases, and other types of malfunctions.

Thank you for your leadership and attention to the needs and concerns of Gulf communities long-impacted by the environmental injustices of the fossil fuel industry. The proposed fossil fuel export buildout in the Gulf of Mexico undermines the public interest and provides no benefit to

frontline communities or the climate. We look forward to working with EPA to halt these injustices and take action to stimulate investment in clean, sustainable local economies.

Sincerely,

198 methods
350 Bay Area Action
350 Butte County
350 Eugene
350 Silicon Valley
350Kishwaukee
Animals Are Sentient Beings, Inc.
Berks Gas Truth
Better Path Coalition
Center for Biological Diversity
Chispa TX
Clean Energy Now Texas
Climate Hawks Vote
Delaware Riverkeeper Network
Earth Action, Inc.
Earthjustice
Earthworks
Environmental Integrity Project
Extinction Rebellion San Francisco Bay Area
Friends of the Earth
GreenLatinos
Healthy Gulf
Long Beach Alliance for Clean Energy

Loudoun Climate Project
New Mexico Climate Justice
NJ State Industrial Union Council
North American Climate, Conservation and Environment(NACCE)
Our Climate
Presente.org
Property Rights and Pipeline Center
Save RGV
Sierra Club
SOCIAL ECO EDUCATION-LA (SEE)
Society of Native Nations
SOMA Action
Stop SPOT & Gulflink
Texas Environmental Justice Advocacy Services (T.E.J.A.S.)
Terra Advocati
Texas Campaign for the Environment
The Quantum Institute
Turtle Island Restoration Network
Zero Hour
Texas Unitarian Universalist Justice Ministry