

Overview of the EPA Letter of Concern

The Complaints

The complaints at issue were filed by NGOs and focused on LDEQ's implementation of its air pollution control permit program with respect to the Denka Performance Elastomer LLC (Denka) facility in LaPlace, Louisiana (Complaints Nos. 01R-22-R6, 02R-22-R6), the proposed FG LA, LLC (Formosa) facility in St. James Parish (Complaint No. 04R-22-R6), and the Industrial Corridor. The Industrial Corridor is an 85-mile stretch along the Mississippi River between Baton Rouge and New Orleans comprised of seven parishes: St. John the Baptist, St. James, Ascension, East Baton Rouge, West Baton Rouge, Iberville, and St. Charles.

1. Denka Complaint

The Denka complaint filed by NGOs alleged that LDEQ's failure to take action relative to the Denka facility subjected Black residents to disproportionate levels of air pollution including chloroprene and ethylene oxide. EPA's evaluation found that several policies or practices within LDEQ's administration of its air pollution control program may be causing adverse disparate impacts based on race. EPA's letter made several key conclusions regarding LDEQ:

- ◆ LDEQ erroneously interprets its nondiscrimination obligations under Title VI to not apply to its Title V program.
- ◆ LDEQ should have performed a cumulative impact analysis.
- ◆ Cancer risk from chloroprene emissions fall "substantially disproportionately" on Black residents who live near the Denka facility as compared to non-Black residents. This EPA conclusion relies on controversial IRIS values to estimate cancer risks.
- ◆ Despite a 2017 consent order that substantially reduced chloroprene emissions at the Denka facility, LDEQ's implementation of its air permitting program may have continuously exposed residents and elementary school children near the Denka facility to average annual concentrations of chloroprene in ambient air at levels associated with increased lifetime cancer risk.

With respect to LDH, the Denka complaint alleged that LDH failed to provide the community with necessary information regarding health threats posed by air pollutants emitted from the Denka facility. The complaint further alleged that LDH failed to recommend relocation of the elementary school. EPA found that LDH may have failed to provide residents and elementary school children near the Denka facility with critical information about cancer risks associated with nearby chloroprene levels.

2. Formosa Facility and Industrial Corridor Complaints

In the Formosa complaint, NGOs alleged that Black residents were subjected to ongoing disproportionate and adverse health and environmental impacts because of LDEQ's lack of procedure to identify disproportionate impacts based on race in air permitting decisions.¹ EPA found that:

¹ On September 8, 2022, the 19th Judicial District Court for East Baton Rouge Parish reversed LDEQ's decision issuing 14 air permits to Formosa, vacating the permits, and remanding to LDEQ. The decision was appealed by LDEQ on September 27, 2022.

- ◆ LDEQ's environmental justice (EJ) analysis, in the absence of written policies, is too flawed in design and implementation to rely on for Title VI compliance purposes.
- ◆ LDEQ's administration of its air permitting program may be causing or contributing to the cancer and toxicity risk from air toxics for residents near the proposed Formosa facility, which are borne disproportionately by Black residents.
- ◆ Cancer and toxicity risks from air toxics appear to be borne disproportionately by the Industrial Corridor's minority population.

For purposes of the affected population analysis, EPA treated all individuals living within the Industrial Corridor as the affected group. With respect to Formosa, however, LDEQ concluded there would be no "fenceline" community impacted because EJSCREEN showed no one living within a one-mile radius from the center of the proposed facility. EPA criticized the finding because a school was located 1.02 miles from the fenceline and residential streets across the river were closer than a mile. This suggests that industry should evaluate data on a case-by-case basis from various geographic perspectives.

EPA Recommendations

1. Multiple Cumulative Impact Analyses

EPA recommends that LDEQ and LDH conduct multiple cumulative impact analyses, including for: Denka's permit renewals in St. John the Baptist Parish; the Formosa Title V permits in St. James Parish; and the next significant Clean Air Act permitting action in each of the Industrial Corridor Parishes. In addition to hiring a professional risk communicator to provide residents with accurate cancer risk information, the cumulative impact analyses should:

- ◆ Consider input from stakeholders;
- ◆ Examine cumulative risk burden or impact due to (i) multiple pollutant exposures via any media, and (ii) non-pollutant stressors (e.g, income, race, employment, education, health care access);
- ◆ Consider impacts on lifelong residents from any facility mutagenic carcinogen emissions; and
- ◆ Provide evidence-based recommendations to minimize adverse impacts that are or will be borne disproportionately based on race, color, or national origin, including consideration of measures to reduce emissions below the current baseline.

2. LDEQ Implement EJ Analysis

With respect to EJ concerns, EPA recommends that LDEQ develop and implement a process to identify and address potential adverse health and non-health effects (traffic, odor, noise) of proposed air permitting decisions and the distribution of those effects based on race and national origin.

3. Establish Limits in Industrial Corridor Air Permits

EPA made two recommendations with respect to the Industrial Corridor. First, that LDEQ should establish limits that appropriately take into account risks faced by the affected populations in Industrial Corridor air permits. In addition, LDEQ should establish limits in Industrial Corridor air permits that, in the aggregate, limit air emissions of carcinogens that have a mutagenic mode of action, including chloroprene and ethylene oxide.