

THE ATTORNEYS GENERAL OF NEW YORK, HAWAII, ILLINOIS, MAINE,
MARYLAND, MASSACHUSETTS, MINNESOTA, NEW JERSEY, OREGON,
PENNSYLVANIA, RHODE ISLAND, AND VERMONT, AND THE
CORPORATION COUNSEL OF THE CITY OF NEW YORK

March 22, 2022

Via Electronic Filing

EPA-HQ-OPPT-2021-0415

Dr. Michal Freedhoff
Assistant Administrator, Environmental Protection Agency
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

Re: *Draft Toxic Substances Control Act (“TSCA”) Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0*, 87 Fed. Reg. 3,294 (Jan. 21, 2022)

Dear Dr. Freedhoff,

The Attorneys General of New York, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, and Vermont, and the Corporation Counsel of the City of New York submit these comments regarding the U.S. Environmental Protection Agency’s (“EPA”) Draft Toxic Substances Control Act (“TSCA”) Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0 (“Fenceline Screening Approach”).¹ We appreciate and strongly support EPA’s proposed approach to consider air and water exposure pathways in its assessments, which reverses the agency’s prior policy decision to ignore exposure pathways within the purview of other EPA administered laws. However, we believe the Fenceline Screening Approach still falls short of the agency’s obligations under TSCA to employ best available science² to comprehensively evaluate, and design regulations to manage, the risks posed by the chemicals, including the risks disproportionately posed to low-income communities, people of color, and

¹ EPA, *Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0* (Jan. 2022), <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0415-0012>.

² See 15 U.S.C. § 2625(h).

Indigenous populations who often live, work, or play at or near the fencelines of polluting facilities and sites.

I. INTRODUCTION

Congress recognized as early as 1976, in enacting TSCA, that “we have become literally surrounded by a man-made chemical environment,” and that “certain of these chemicals present lethal health and environmental dangers.” S. Rep. No. 94-698, at 3. There are currently 86,631 chemicals on the TSCA inventory, of which 42,039 are in active use in the U.S.³ While many people assume that the government has reviewed the safety of every chemical before the chemical enters commerce, very few chemicals have been reviewed for safety.⁴

In 2016, Congress enacted the Frank R. Lautenberg Chemical Safety for the 21st Century Act,⁵ to amend TSCA to “provide broad protection of human health and the environment” and “improve availability of information about chemicals,” S. Rep. No. 114-67, at 6 (2015). The Lautenberg Act required EPA, for the first time, to comprehensively evaluate hundreds of toxic chemicals to determine whether the chemical should be banned or restricted to protect against unreasonable risks of injury to health or the environment. The Lautenberg Act also protects certain groups that face greater chemical exposure and susceptibility than the general population. 15 U.S.C. § 2605(b)(4)(A).⁶

EPA published 10 final risk evaluations between 2020 and 2021. 87 Fed. Reg. at 3295. While finalizing many of these first 10 risk evaluations, the agency decided upon a policy of not assessing air and water exposure pathways that fall under the jurisdiction of any other EPA administered laws. 87 Fed. Reg. at 3295. As a result of this policy, “EPA did not evaluate potential exposures and associated potential risks to the general population or certain subsets of the general population.” Fenceline Screening Approach at 9. The Attorneys General and

³ EPA, TSCA Chemical Substance Inventory, <https://www.epa.gov/tsca-inventory/how-access-tsca-inventory>.

⁴ California Dep’t of Toxic Substances Control, <https://dtsc.ca.gov/emerging-chemicals-of-concern/>; Ian Urbina, *Think Those Chemicals Have Been Tested?*, The New York Times (Apr. 13, 2013), <https://www.nytimes.com/2013/04/14/sunday-review/think-those-chemicals-have-been-tested.html?>

⁵ Pub. L. No. 114-182, 130 Stat. 448 (2016) (codified at 15 U.S.C. § 2601 *et seq.*).

⁶ Residents of fenceline communities, for example, face greater chemical exposures due to living near polluting facilities and contaminated sites, and are often low-income communities, people of color, or Indigenous populations with particular susceptibilities, and must be protected under TSCA.

several other groups challenged this and other aspects of EPA’s risk evaluations via comment letters⁷ and in court.⁸

In June 2021, EPA announced a change of its policy not to assess air and water exposure pathways that fall under the jurisdiction of other EPA administered laws. 87 Fed. Reg. at 3295. In January 2022, EPA released its Fenceline Screening Approach for assessing certain ambient air and water exposures to fenceline communities.⁹ 87 Fed. Reg. at 3295. EPA states that it plans to use the Fenceline Screening Approach for seven of 10 of its initial risk evaluations, as well as for future risk evaluations, signaling the significance of this approach. *See* Fenceline Screening Approach at 17.

Our states have a significant interest in ensuring that EPA’s risk evaluations are prepared in accordance with TSCA and the agency’s implementing regulations at 40 C.F.R. Part 702, Subpart B. While our states appreciate EPA changing its policy and providing a draft approach to how it will assess certain ambient air and water exposures to fenceline communities, we believe EPA has not gone far enough. The Fenceline Screening Approach’s focus “on the potential impact of a single release source (air or water release) for a given condition of use”¹⁰ does not provide for the comprehensive evaluation of risk that TSCA requires and will lead to an

⁷ *See, e.g.*, Comments of the Attorneys General on EPA’s Problem Formulations for the Risk Evaluations (Aug. 3, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0732-0090>; Comments of the Attorneys General on EPA’s Methylene Chloride Draft Risk Evaluation and N-Methylpyrrolidone Draft Risk Evaluation (Dec. 30, 2019), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0437-0076>; Comments of the Attorneys General on EPA’s Asbestos Draft Risk Evaluation (June 2, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0501-0077>; Comments of the Attorneys General on EPA’s Draft Scopes for 20 High Priority Substances (June 8, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0131-0046>; Comments of the Attorneys General on EPA’s Perchloroethylene Draft Risk Evaluation (July 7, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0502-0050>; Comments of the Attorneys General on EPA’s Supplemental Analysis to the 1,4-Dioxane Draft Risk Evaluation (Dec. 10, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0238-0085>; Comments of the Attorneys General on EPA’s Draft Scopes for the DIDP and DINP Risk Evaluations (Jan, 11, 2021), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2018-0436-0025>; Comments of the Attorneys General on EPA’s Risk Management Rules for Persistent, Bioaccumulative, and Toxic Chemicals (May 17, 2021), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2021-0202-0087>.

⁸ *See, e.g.*, *State of New York, et al. v. EPA, et al.*, No. 20-73276 (9th Cir. 2020); *State of New York, et al. v. EPA, et al.*, No. 21-70684 (9th Cir. 2021).

⁹ EPA narrowly defines “fenceline communities” as those “[m]embers of the general population that are in proximity to air emitting facilities or a receiving waterbody, and who therefore may be disproportionately exposed to a chemical undergoing risk evaluation under TSCA section (6).” Fenceline Screening Approach at 9.

¹⁰ EPA, *EPA Scientific Advisory Committee on Chemicals Charge to the Panel – Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0*, at Question No. 2 (2022), <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0415-0014>.

understatement of risk, especially the risk faced by potentially exposed and susceptible subpopulations, and could result in a failure to adequately protect them from the risks of chemicals.

Among other shortcomings, the Fenceline Screening Approach omits major sources of exposure, like contaminated drinking water and vapor intrusion, hazardous waste sites, and chemical spills. The approach does not aggregate the risks that communities face from multiple pathways of exposure, exposure from multiple neighboring facilities, and exposure from multiple chemicals. And the approach also does not provide consideration to the particular susceptibilities of the affected populations which may increase their overall risk for adverse health effects.

These shortcomings in the Fenceline Screening Approach, unless remedied, would disproportionately impact low-income communities, people of color, and Indigenous populations who often live, work, or play at the fenceline of polluting facilities and sites. In its present form, the Fenceline Screening Approach is not consistent with Executive Order 12,898¹¹ and conflicts with President Biden's recent executive orders formalizing his administration's commitment to environmental justice.¹²

We urge EPA to revise the Fenceline Screening Approach so that its risk evaluations will meet the agency's obligations under TSCA to timely conduct a thorough and comprehensive evaluation of all the risks posed by a given chemical.

II. TSCA MANDATES COMPREHENSIVE RISK EVALUATIONS

Congress enacted TSCA in 1976 to “prevent unreasonable risks of injury to health or the environment associated with the manufacture, processing, distribution in commerce, use, or disposal of chemical substances.” S. Rep. No. 94-698, at 1 (1976); *see Safer Chems. v. EPA*, 943 F.3d 397, 406-07 (9th Cir. 2019) (discussing Congress's purpose in enacting TSCA). In enacting TSCA, Congress concluded that the existing regulatory framework for toxic chemicals “inadequate,” and too “fragmented” to address the health and environmental risks posed by toxic

¹¹ Exec. Order No. 12,898, § 1-101, 59 Fed. Reg. 7629 (Feb. 16, 1994) (mandating that federal agencies incorporate “achieving environmental justice” and to do this, each agency must identify and address the “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations”), <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

¹² *See* Exec. Order No. 14,008, § 219, 86 Fed. Reg. 7619, 7629 (Jan. 27, 2021) (requiring agencies to “make achieving environmental justice part of their missions” by “developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental ... and other cumulative impacts on disadvantaged communities”), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>; Exec. Order No. 13,990 (Jan. 20, 2021), 86 Fed. Reg. 7037 (Jan. 25, 2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis>.

chemicals.¹³ See H.R. Rep. No. 94-1341, at 6 (1976). TSCA was intended to, among other things, give EPA the authority to “protect health and the environment” from “an unreasonable risk . . . presented because of the interrelationship or cumulative impact of a number of different substances or mixtures.” H.R. Rep. No. 94-1679, at 61 (1976) (Conf. Rep.).

The Lautenberg Act strengthened section 6 of TSCA by, among other things, creating a comprehensive risk evaluation process for determining whether a chemical substance presents an unreasonable risk to human health or the environment. See 15 U.S.C. § 2605(b); H.R. Rep. No. 114-176, at 23-25 (2015). During the “risk evaluation” stage, EPA must determine whether a chemical “presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors.” 15 U.S.C. § 2605(b)(4)(A). When evaluating risks, EPA must consider all of “the circumstances . . . under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of,” 15 U.S.C. § 2602(4), including risks that may result from “any combination of such activities.” 15 U.S.C. § 2605(a).

Significantly, EPA’s analysis must consider any “unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by [EPA].” 15 U.S.C. § 2605(b)(4)(A). “[P]otentially exposed or susceptible subpopulation’ means a group of individuals within the general population identified by [EPA] who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.” 15 U.S.C. § 2602(12). “As this term does not specify any particular group, the [EPA] may focus attention on persons whose settings or physical attributes predispose them to adverse health consequences based upon exposure to the chemical substance.” H. Rep. No. 114-176, at 22.

In conducting risk evaluations, EPA must “integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed or susceptible subpopulations.” 15 U.S.C. § 2605(b)(4)(F)(i). EPA must also consider aggregate exposures in conducting its risk evaluations. 15 U.S.C. § 2605(b)(4)(F)(ii). The term “aggregate exposure” is defined as “the combined exposures to an individual from a single chemical substance across multiple routes and across multiple pathways.” 40

¹³ “While virtually all communities suffer from the statutory, regulatory, and programmatic fragmentation inherent within the Nation’s environmental protection regime, its ill effects for people of color, low-income, and tribal communities are especially egregious.” National Environmental Justice Advisory Council, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* at 7 (Dec. 2004), <https://www.epa.gov/sites/default/files/2015-04/documents/ensuringriskreducatationnejac.pdf>.

C.F.R. § 702.33. EPA must further “take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use of the chemical substance.” 15 U.S.C. § 2605(b)(4)(F)(iv).

EPA is required to determine whether the chemical being evaluated presents an unreasonable risk to health or the environment, including to a potentially exposed or susceptible subpopulation. That determination must be based on the “weight of scientific evidence,” using the “best available science” and all “reasonably available information.” 15 U.S.C. § 2625(i), (h), and (k); 40 C.F.R. § 702.33. EPA is not permitted to consider “costs or other nonrisk factors,” 15 U.S.C. 2605(b)(4)(F), meaning EPA must assess the risk to human health and the environment without considering “the costs or benefits of the substance or possible restrictions on the substance” under other statutory schemes. S. Rep. No. 114-67, at 17.¹⁴

If EPA determines that a chemical presents an unreasonable risk to health or the environment, the agency must immediately move to the risk management stage. *See* 15 U.S.C. § 2605(a); 40 C.F.R. § 702.49(c). EPA must take regulatory measures—up to and including a complete prohibition on use and distribution—“to the extent necessary so that the chemical substance . . . no longer presents such risk.” 15 U.S.C. § 2605(a). Under the amendments, EPA is no longer required to use the least burdensome means to address a chemical’s risk to health or the environment. *See id.*; H.R. Rep. No. 114-176, at 23 (2015). “[I]f conditions of use suggest different exposures to one or more groups of individuals or the conditions of use impact individuals who are more susceptible, EPA must take those exposures into account and establish risk management measures necessary and sufficient to protect those populations.” S. Rep. No. 114-67, at 7.

III. EPA’S FENCELINE SCREENING APPROACH FALLS SHORT OF TSCA’S MANDATE TO THOROUGHLY AND COMPREHENSIVELY EVALUATE CHEMICAL RISKS

Our states have repeatedly urged EPA to fully comply with its obligations to conduct thorough and comprehensive evaluation of chemical risks and to eliminate these risks, while also challenging EPA’s failure to do so in court.¹⁵ We hereby incorporate by reference those prior comments and arguments. We set forth below deficiencies specific to the Fenceline Screening Approach.

A. EPA is Failing to Consider Major Sources of Exposure

As Congress made clear when it enacted TSCA, “[i]ntelligent standards for

¹⁴ By precluding EPA from considering “costs or other nonrisk factors,” Congress sought to address shortcomings under the original TSCA scheme, which hindered EPA’s ability to take regulatory action by suggesting “that cost and benefit considerations must be applied to the Agency’s decisions on the health and environmental risks posed by a chemical substance.” S. Rep. No. 114-67, at 4.

¹⁵ *See supra* note 7.

regulating exposures to a chemical in the workplace, the home or elsewhere in the environment cannot be set unless the full extent of human or environmental exposure is considered.”¹⁶ H.R. Rep. No. 94-1341, at 6. Accordingly, Congress designed TSCA to ensure that EPA evaluates all of the health and environmental risks arising from environmental exposure pathways. “This comprehensive approach is aligned with recommendations of the National Academies, which argued that a narrow scope may distort the validity and applicability of a chemical assessment.”¹⁷

The Fenceline Screening Approach is “limited to certain air and water pathways previously not assessed in published risk evaluations” and does not provide for the comprehensive evaluation of risks that TSCA requires. *See* Fenceline Screening Approach at 10 (stating that the Fenceline Screening Approach “does not include proposed methodology for other pathways previously not assessed” in published risk evaluations, including “disposal, land-use, groundwater-derived drinking water sources like wells, [and] fish consumption”). By excluding relevant, known, and significant sources of exposure, EPA underestimates the risks posed by chemicals.¹⁸ At a minimum, the Fenceline Screening Approach should address the major sources of exposure described below.

1. Groundwater, Soil, and Vapor Pollution

Groundwater, soil, and vapor pollution are major sources of exposure that the Fenceline Screening Approach omits. Once in groundwater, chemicals can be persistent and travel long distances as part of a groundwater plume, leading to extensive areas of contaminated drinking water.¹⁹ Contaminated ground water plumes may also cause soil vapor intrusion resulting in additional exposures.²⁰ For example, discovery of soil vapor intrusion led to the installation of vapor mitigation

¹⁶ For example, “[p]eople who work in a factory in which dangerous substances are handled in high concentration may live in an adjacent area in which the same or other substances are dispersed, thus increasing overall exposure.” H.R. Rep. No. 94-1341, at 6-7.

¹⁷ Jennifer McPartland, *et al.*, *Charting a Path Forward: Assessing the Science of Chemical Risk Evaluation under the Toxic Substances Control Act in the Context of Recent National Academies Recommendations*, Environmental Health Perspectives at 2 (Feb. 2022) (citing National Research Council, *Science and Decisions: Advancing Risk Assessment* (2009)), <https://ehp.niehs.nih.gov/doi/full/10.1289/EHP9649>.

¹⁸ *See id.*

¹⁹ *See, e.g.*, Comments of the Attorneys General on EPA’s Perchloroethylene Draft Risk Evaluation (July 7, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0502-0050>; Comments of the Attorneys General on EPA’s Supplemental Analysis to the 1,4-Dioxane Draft Risk Evaluation (Dec. 10, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0238-0085>.

²⁰ *See, e.g.*, Comments of the Attorneys General on EPA’s Perchloroethylene Draft Risk Evaluation at 5 (July 7, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0502-0050>.

systems in over 450 homes and businesses in Endicott, New York and many other communities in New York.²¹

In March 2022, in the Greenpoint/East Williamsburg area of Brooklyn, New York, EPA added a site spanning several city blocks to its Superfund National Priorities List.²² The site is contaminated with chlorinated volatile organic compounds, including tetrachloroethylene (PCE) and trichloroethylene (TCE).²³ These contaminants have migrated from the soil into groundwater and have created a groundwater contaminated plume, an underground area where contaminants disperse, underlying a “multitude of residents and workplaces.”²⁴ The contaminated soil and groundwater underneath the site have caused vapors to seep into basements and the indoor air of residential and commercial structures in the area.²⁵ According to EPA, “[c]ontaminated groundwater in the underlying aquifer flows east-northeast and possibly discharges to Newtown Creek, an arm of the New York-New Jersey Harbor Estuary” and “[h]undreds of residents and workers are exposed to the indoor air contamination that results from vapor intrusion into the structures.”²⁶ For the same reasons, Massachusetts recently published comprehensive guidance for addressing soil vapor intrusion at contaminated sites in that state.²⁷ EPA’s failure to consider these harmful exposures does not comport with TSCA’s clear direction to consider the full extent of exposure.

2. Hazardous Waste Sites

Hazardous waste sites, including listed federal Superfund sites and other sites, are another major source of exposure that the Fenceline Screening Approach omits. People living near hazardous waste sites may be at risk for greater exposure to chemicals.²⁸ For example, in New York, there are 57 environmental remediation

²¹ *Id.*

²² EPA, *National Priorities List (NPL): Meeker Avenue Plume* (Mar. 2022), <https://semspub.epa.gov/work/HQ/402017.pdf>.

²³ *Id.*; EPA, *Current and Upcoming Activities* (Sept. 2021), <https://semspub.epa.gov/work/02/625195.pdf>.

²⁴ EPA, *National Priorities List (NPL): Meeker Avenue Plume* (Mar. 2022), <https://semspub.epa.gov/work/HQ/402017.pdf>; *see also* EPA, *Current and Upcoming Activities* (Sept. 2021), <https://semspub.epa.gov/work/02/625195.pdf>.

²⁵ EPA, *Current and Upcoming Activities* (Sept. 2021), <https://semspub.epa.gov/work/02/625195.pdf>.

²⁶ EPA, *National Priorities List (NPL): Meeker Avenue Plume* (Mar. 2022), <https://semspub.epa.gov/work/HQ/402017.pdf>.

²⁷ *See, e.g.*, Comments of the Attorneys General on EPA’s Perchloroethylene Draft Risk Evaluation (July 7, 2020), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2019-0502-0050>.

²⁸ *See, e.g.*, Agency for Toxic Substances and Disease Registry, *Public Health Statement Methylene Chloride*, CAS#: 75-09-2 (Sept. 2000), <https://www.atsdr.cdc.gov/toxprofiles/tp14-c1-b.pdf> (“Averages of 68 ppb of methylene chloride in surface water and 98 ppb methylene chloride in groundwater have been found at some hazardous waste sites.”); Toxic Use Reduction Institute, *Massachusetts Chemical*

sites where methylene chloride is listed as a chemical of concern.²⁹ Eastman Kodak used toxic chemicals at its 1,100 acre manufacturing and industrial park, known as the Eastman Business Park (“EBP”), in Rochester, New York for over a century.³⁰ Over the years, Kodak released tens of millions of pounds of methylene chloride, a possible carcinogen, into Rochester’s air and water.³¹ There were reportedly 68 rare cancers of the brain and nervous system occurring in children in Monroe County, where EBP is located, between 1976 and 1998.³² After decades of operations and releases at EBP, soil and groundwater became severely contaminated with methylene chloride and other pollutants, which led to New York State adding numerous sites at EBP to the state Superfund program.³³ The comprehensive evaluation required by TSCA must include these significant sources of exposure.

3. Accidents and Spills

Chemical accidents and spills are additional sources of exposure that the Fenceline Screening Approach omits. Accidents and spills are “known” and “reasonably foreseen” consequences of chemical manufacturing, use, and disposal,

Fact Sheet (2014) (“Because methylene chloride is frequently found as a contaminant at hazardous waste sites, people living near these areas may be more at risk for exposure than the general public.”),

<https://www.mass.gov/files/documents/2017/10/19/Methylene%20Chloride%20Factsheet.pdf>; NRDC, *Congress Must Expand Protections Against Widely Used Harmful Chemicals: Methylene Chloride* (2010) (“[Methylene chloride is also frequently found as a contaminant at hazardous waste sites, so people living near these areas may be more highly exposed.”), <https://www.nrdc.org/sites/default/files/methyleneChloride.pdf>.

²⁹ See N.Y. State Dep’t of Env’tl. Conservation, Environmental Remediation Sites, <https://data.ny.gov/Energy-Environment/Environmental-Remediation-Sites/c6ci-rzpg>.

³⁰ EPA, *Hazardous Waste Cleanup: Eastman Business Park in Rochester, New York*, <https://www.epa.gov/hwcorrectiveactionsites/hazardous-waste-cleanup-eastman-business-park-rochester-new-york>; U.S. Att’y’s Office, S. Dist. of N.Y., Manhattan U.S. Attorney and EPA Announce Agreement with Eastman Kodak Company for Clean Up of Rochester, New York, Business Park and the Genesee River (Mar. 12, 2014), <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-and-epa-announce-agreement-eastman-kodak-company-clean-rochester>.

³¹ Lisa W. Foderaro, *Pollution by Kodak Brings Sense of Betrayal*, *The New York Times* (Mar. 8, 1989), <https://www.nytimes.com/1989/03/08/nyregion/pollution-by-kodak-brings-sense-of-betrayal.html?smid=url-share>.

³² *Rochester Parents Fret, and Sue, Over Cancer*, *The New York Times* (Mar. 2, 1998), <https://www.nytimes.com/1998/03/02/nyregion/rochester-parents-fret-and-sue-over-cancer.html>.

³³ Richard Maxwell and Toby Miller, *The Environmental Ruin of Eastman Kodak*, *Psychology Today* (Apr. 12, 2018), <https://www.psychologytoday.com/us/blog/greening-the-media/201804/the-environmental-ruin-eastman-kodak>. The Google Quad Campus, in Santa Clara, California, sits atop a hazardous waste site. For several months in 2012 and 2013, EPA found employees were inhaling unsafe levels of TCE in the form of toxic vapor rising up from the ground beneath their offices. See Adrienne Matei, *Rates of Parkinson’s Disease are Exploding. A Common Chemical May be to Blame*, *The Guardian* (Apr. 7, 2021), <https://www.theguardian.com/commentisfree/2021/apr/07/rates-of-parkinsons-disease-are-exploding-a-common-chemical-may-be-to-blame>.

and therefore they must be considered under TSCA.³⁴ Communities living near active and legacy industrial sites may also be increasingly subject to harmful unintentional chemical releases, including because of extreme weather events associated with climate change.³⁵ Over 12,500 facilities in the U.S. use or store such large quantities of extremely dangerous chemicals that they must submit a Risk Management Program (RMP) plan to EPA for responding to chemical disasters.³⁶ People living at the fenceline of these chemical facilities face the greatest dangers. Nearly 23 million residents – 7.5 percent of the total U.S. population – live within one mile of an RMP facility.³⁷ As of June 2021, New York is home to 182 facilities regulated under the RMP. There are approximately 601,000 people that live within one mile of an RMP facility in New York.³⁸ Between 2015 and 2019, there were eight reported accidents in New York, releasing 786 pounds of chemicals into the surrounding communities. These accidents resulted in seven injuries, one hospitalization, and property damage totaling \$9.6 million. There is no reasonable basis for EPA to fail to consider these exposures in its Fenceline Screening Approach.

B. EPA Must Consider Aggregate and Cumulative Exposures and Susceptibilities

People are exposed to chemicals from various sources, including through the air they breathe, the water they drink, the soil they live, play, and grow food in, and the fish they eat.³⁹ The total risk that a chemical poses involves aggregating risks from multiple exposures, cumulative exposures, and background exposures.⁴⁰ Although these risks may be deemed acceptable when viewed piecemeal, the risks

³⁴ 15 U.S.C. § 2602(4).

³⁵ Jill Johnston & Lara Cushing, *Chemical Exposures, Health and Environmental Justice in Communities Living on the Fenceline of Industry*, Curr Environ Health Rep. at 2-3 (Mar. 2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7035204/>; U.S. Government Accountability Office, *Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change* at 11-12 (Feb. 28, 2022), <https://www.gao.gov/products/gao-22-104494>.

³⁶ Center for Effective Government, *Living in the Shadow of Danger; Poverty, Race, and Unequal Chemical Facility Hazards* at 4 (Jan. 2016), <https://www.foreffectivegov.org/shadow-of-danger>.

³⁷ *Id.*

³⁸ This number was obtained using EPA EJSCREEN 2020 (ACS 2014-2018), Census Block Group, <https://gaftp.epa.gov/EJSCREEN/2020/>.

³⁹ Robert R. Kuehn, *The Environmental Justice Implications of Quantitative Risk Assessment*, 1996 U. Ill. L. Rev. 103, 117 (1996); Damien Gayle, *Millions Suffering in Deadly Pollution ‘Sacrifice Zones,’ Warns UN Expert*, The Guardian (Mar. 10, 2022), <https://www.theguardian.com/environment/2022/mar/10/millions-suffering-in-deadly-pollution-sacrifice-zones-warns-un-expert>.

⁴⁰ Kuehn, 1996 U. Ill. L. Rev. at 117.

may be unacceptable when viewed together.⁴¹ If an individual already has a significant level of background exposure or risk, then the addition of even a small exposure or risk may have a greater effect on that person as compared to another person without similar background exposure or risk.⁴²

Historically, risk assessments focused on the risks posed by one chemical or one source, and a regulatory decision of what is an “acceptable” risk focused on the risk posed by that single chemical or source.⁴³ Risk assessments generally took multiple, complex environmental risks that people face and reduced those risks to a series of independent, discrete, isolated risks.⁴⁴ But the whole of environmental risks is greater than the many parts yielded by such a siloed approach.⁴⁵ Since the 1980s, EPA has conducted or sponsored research toward investigating a different type of risk assessment methodology “that focused on identifying the persons

⁴¹ *Id.*

⁴² *Id.* The National Environmental Justice Advisory Council profiled the Harlem neighborhoods of New York City in its 2004 report. National Environmental Justice Advisory Council, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* at 9 (2004), <https://www.epa.gov/sites/production/files/2015-04/documents/ensuringriskreduactionnejac.pdf>. The council cited research conducted by WE ACT for Environmental Justice and Columbia University’s School of Public Health, which found that children in these neighborhoods are “impacted by a cascade of environmental and other stressors that negatively affect their health, welfare and quality of life.” *Id.* Living in deteriorating housing with pest infestation, for example, results in wide exposure to pesticides that can cause developmental disorders, frequent respiratory symptoms, and other health deficits in children.⁴² Because of these cumulative impacts, even a small additional exposure to environmental toxins can significantly harm this subpopulation. *Id.*

⁴³ See EPA, *Framework for Cumulative Risk Assessment* at 21 (2003) (“The focus of the EPA strategy to control pollution (and the risk assessment methodology being used to partially support decisions) gradually leaned toward assessing and controlling the individual chemicals.”), https://www.epa.gov/sites/default/files/2014-11/documents/frmwrk_cum_risk_assmnt.pdf; National Environmental Justice Advisory Council, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* at 11 (2004) (“Taken in historical context, past risk assessment approaches, and environmental protection principles generally, were geared to controlling sources of pollution through technology-based regulation or an individual chemical-by-chemical approach.”), <https://www.epa.gov/sites/production/files/2015-04/documents/ensuringriskreduactionnejac.pdf>; See also Kuehn, 1996 U. Ill. L. Rev. at 117; Clifford Rechtschaffen, *Advancing Environmental Justice Norms*, 27 *Environ. & Pol’y J.* 95, 106 (2003) (“[M]ost risk assessments evaluate the risks of a single proposed activity (or exposure to a single chemical), without considering the total risks that persons face from cumulative exposures, or the synergistic risks from the interaction of multiple pollutant exposures.”).

⁴⁴ Kuehn, 1996 U. Ill. L. Rev. at 117.

⁴⁵ *Id.*

exposed, investigating the chemicals or stressors to which they were exposed, and determining consequent risks.”⁴⁶

The Lautenberg Act addressed some of the shortcomings of historical risk assessments by requiring a comprehensive risk evaluation.⁴⁷ Following those amendments, TSCA requires EPA to “integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed or susceptible subpopulations.” 15 U.S.C. § 2605(b)(4)(F)(i). EPA must also consider aggregate exposures in conducting its risk evaluations. 15 U.S.C. § 2605(b)(4)(F)(ii). The term “aggregate exposure” is defined as “the combined exposures to an individual from a single chemical substance across multiple routes and across multiple pathways.” 40 C.F.R. § 702.33. EPA must further “take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use of the chemical substance.” 15 U.S.C. § 2605(b)(4)(F)(iv).

However, EPA’s Fenceline Screening Approach does not include a methodology for conducting screening level analyses for aggregate, cumulative, and existing exposures. Fenceline Screening Approach at 11. Instead, EPA “focused on the potential impact of a single release source (air or water release) for a given condition of use.”⁴⁸ EPA’s failure to consider exposure through multiple routes and pathways violates TSCA and leads to a severe understatement of a chemical’s human health impacts. No other environmental law enables EPA to evaluate exposure across all environmental media, and EPA’s TSCA risk evaluations must address the aggregate and cross-media risks of those chemicals.

⁴⁶ See EPA, *Framework for Cumulative Risk Assessment* at 2 (2003),

https://www.epa.gov/sites/default/files/2014-11/documents/frmwrk_cum_risk_assmnt.pdf.

⁴⁷ See Robert Hunt Sprinkle & Devon C. Payne-Surges, *Mixture Toxicity, Cumulative Risk, and Environmental Justice in United States Federal Policy, 1980-2016: Why, With Much Known, Was Little Done?*, *Environmental Health* at 16 (2021) (stating that “the Lautenberg Act did open a path to environmental justice, at least along a chemical-stressor cumulative-risk dimension” and that “[a]n EPA administrator determined to advance environmental justice could now more easily find a statutory way forward”), <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-021-00764-5>; Kristi Pullen Fedinick *et al.*, *A Cumulative Framework for Identifying Overburdened Populations under the Toxic Substances Control Act: Formaldehyde Case Study*, *International Journal of Environmental Research and Public Health* at 2 (2021) (“Though cumulative risk approaches have had limited regulatory applications since USEPA released the Framework for Cumulative Risk Assessment in 2003, the 2016 amendments to the Toxic Substances Control Act (TSCA) present a window of opportunity to integrate these methods into risk assessment processes for industrial, chemical, and consumer product chemicals.”), <https://www.mdpi.com/1660-4601/18/11/6002>.

⁴⁸ EPA, *EPA Scientific Advisory Committee on Chemicals Charge to the Panel – Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0*, at Question No. 2 (2022), <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0415-0014>.

ProPublica recently reported on how cancer risks add up when polluters are clustered in a neighborhood.⁴⁹ EPA states that it “strives to protect the greatest number of people possible” from an excess cancer risk worse than 1 in a million.⁵⁰ But EPA generally collects data on each individual facility and does not consider the excess cancer risk from all of the facilities’ combined emissions.⁵¹ ProPublica shared the story of Brittany Madison, a 31 year old woman who shares an apartment with her 7-year old son, 39-year old sister, and nieces and nephew, in Baytown, Texas.⁵² Her apartment is within 30 miles of more than 170 facilities that produce toxic chemical emissions.⁵³ ProPublica determined that three facilities account for most of the estimated industrial cancer risk on Madison’s block.⁵⁴ An ExxonMobil refinery less than three miles from Madison’s apartment emits the heavy metals nickel, cobalt and zinc.⁵⁵ The refinery individually increases the estimated lifetime cancer risk to 1 in 730,000.⁵⁶ Across the bay in Pasadena, Texas, is the Celanese Clear Lake facility, which emits ethylene oxide.⁵⁷ The plant independently increases the estimated lifetime cancer risk in Madison’s neighborhood to 1 in 217,000.⁵⁸ Nearby, the Equistar Chemicals plant, owned by LyondellBasell, also emits ethylene oxide, contributing an additional increase in estimated lifetime cancer risk of 1 in 134,000.⁵⁹ When the emissions from all three of those facilities, plus the other facilities in the area, are added together, ProPublica calculated that the estimated lifetime cancer risk on Madison’s block

⁴⁹ Lylla Younes, *et al.*, *Poison in the Air*, ProPublica (Nov. 2, 2021), <https://www.propublica.org/article/toxmap-poison-in-the-air>; see also Kristina Marusic, *The “Twin Crises” of High Cancer Rates and Exposures to Toxics in Pittsburgh*, Environmental Health News (July 15, 2021), <https://www.ehn.org/pittsburgh-pollution-cancer-2653769895/exposures> (discussing that residents of southwestern Pennsylvania are “exposed unnecessarily to environmental carcinogens,” and “that while exposure to any one pollutant may only pose a small increased risk of cancer for an individual, widespread exposures can result in a significant rise of cancer cases in the region”).

⁵⁰ EPA, Office of Inspector General, *EPA Should Conduct New Residual Risk and Technology Reviews for Chloroprene and Ethylene Oxide Emitting Source Categories to Protect Human Health*, Report No. 21-P-0129 at 3 (May 6, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/epa_oig_20210506-21-p-0129.pdf.

⁵¹ Lylla Younes, *et al.*, *Poison in the Air*, ProPublica (Nov. 2, 2021), <https://www.propublica.org/article/toxmap-poison-in-the-air>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

jumps to a staggering 1 in 46,000, far short of EPA's goal of protecting people from an excess cancer risk worse than 1 in a million.⁶⁰

Relatedly, as TSCA recognizes, persons who are at higher risk from a chemical or pollutant not only include those who experience the highest exposures, but also those who are more susceptible to the health effects of the chemical or pollutant.⁶¹ See 15 U.S.C. § 2605(b)(4)(A); H. Rep. No. 114-176, at 22. There is a high degree of variability in the response of humans to different levels of pollution.⁶² Scientists have recognized that numerous factors, both intrinsic and extrinsic, contribute to susceptibility.⁶³ Intrinsic factors include, for example, "life stage, genetics, underlying disease status, [and] nutrition."⁶⁴ Extrinsic factors include, for example, "social and life circumstances such as poverty and life [i.e., psychosocial] stress."⁶⁵

The National Academy of Sciences warned that failing to account for both intrinsic and extrinsic susceptibility factors could lead to a vast underestimation of risk from chemical exposures in the human population.⁶⁶ However, the Fenceline Screening Approach fails to take these susceptibilities into account. EPA should look to recommendations from the National Academies and other credible sources on how to advance cumulative risk assessment, which considers risks to individuals and the population from coexposures to chemical and nonchemical stressors.⁶⁷ It is vital for EPA to look at these exposures holistically; anything less does not capture the true exposure risks that TSCA directs EPA to assess and manage.

⁶⁰ *Id.*

⁶¹ Kuehn, 1996 U. Ill. L. Rev. at 121.

⁶² *Id.*

⁶³ Patricia D. Koman, *et al.*, *Population Susceptibility: A Vital Consideration in Chemical Risk Evaluation Under the Lautenberg Toxic Substances Control Act*, PLOS Biology at 2-4 (2019), <https://doi.org/10.1371/journal.pbio.3000372>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ National Research Council, *Science and Decisions: Advancing Risk Assessment*, at 213 (2009), <https://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>.

⁶⁷ Jennifer McPartland, *et al.*, *Charting a Path Forward: Assessing the Science of Chemical Risk Evaluation under the Toxic Substances Control Act in the Context of Recent National Academies Recommendations*, Environmental Health Perspectives at 9 (Feb. 2022), <https://ehp.niehs.nih.gov/doi/full/10.1289/EHP9649>; Kristi Pullen Fedinick *et al.*, *A Cumulative Framework for Identifying Overburdened Populations under the Toxic Substances Control Act: Formaldehyde Case Study*, International Journal of Environmental Research and Public Health (2021) (demonstrating a process built with publicly available data and simple geospatial technology that could be used by EPA to incorporate cumulative approaches to risk assessments under TSCA), <https://www.mdpi.com/1660-4601/18/11/6002>.

C. EPA Must Use Best Available Science

EPA must conduct its TSCA risk evaluations based on the “weight of scientific evidence,” using the “best available science” and all “reasonably available information.” 15 U.S.C. § 2625(i), (h), and (k); 40 C.F.R. § 702.33. However, EPA relies primarily on facilities’ 2019 reporting to the Toxic Release Inventory (“TRI”). EPA acknowledges that its TRI reporting data is not complete and does not cover all facilities that release a chemical or all releases from covered facilities. Fenceline Screening Approach at 54-55. Beyond acknowledging these deficiencies, EPA must improve its underlying data and data collection processes, particularly local data on air emissions. By actively omitting certain exposures and susceptibilities from its Fenceline Screening Approach, failing to consider aggregate and cumulative exposures, and relying on low quality data, EPA is not employing the best scientific practices for assessing chemical exposures.⁶⁸ EPA should more closely adhere to the guidance from the National Academies and other credible sources.⁶⁹

IV. EPA’S FENCELINE SCREENING APPROACH DISPROPORTIONATELY IMPACTS LOW-INCOME COMMUNITIES, PEOPLE OF COLOR, AND INDIGENOUS POPULATIONS

Fenceline areas tend to be disproportionately occupied by low-income communities, people of color, and Indigenous populations. Any flaws in the Fenceline Screening Approach will therefore have a disproportionate impact on these communities in contravention of Executive Order 12,898 and President Biden’s environmental justice policies, as these populations may face greater exposure to chemicals and may also be especially susceptible.⁷⁰ “A community surrounded by multiple sources of air pollution, ringed by waste treatment facilities and landfills, and whose residences contain lead-based paint clearly faces higher

⁶⁸ Jennifer McPartland, *et al.*, *Charting a Path Forward: Assessing the Science of Chemical Risk Evaluation under the Toxic Substances Control Act in the Context of Recent National Academies Recommendations*, Environmental Health Perspectives at 9 (Feb. 2022), <https://ehp.niehs.nih.gov/doi/full/10.1289/EHP9649>.

⁶⁹ *Id.*

⁷⁰ Kuehn, 1996 U. Ill. L. Rev. at 117 (“Because minorities and low-income communities face greater exposures to environmental contaminants, it is reasonable to conclude that the failure of risk assessment to account for multiple and cumulative exposures impacts these subpopulations more adversely than other population groups. . . .”); *see also* National Environmental Justice Advisory Council, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*, at 7 (2004) (“While virtually all communities suffer from the statutory, regulatory, and programmatic fragmentation inherent in the Nation’s environmental protection regime, its ill effects for people of color, low-income, and tribal communities are especially egregious.”), <https://www.epa.gov/sites/production/files/2015-02/documents/nejac-cum-risk-rpt-122104.pdf>.

than average potential environmental risks.”⁷¹ Repeated studies have shown that people of color and low-income groups live disproportionately closer to sources of pollution and waste and have disproportionately greater exposure to toxic substances.⁷² For example, in 1992, EPA’s Environmental Equity Working Group found that “in the context of a risk-based approach to environmental management, the relative risk borne by low-income and racial minority communities is a special concern.”⁷³ Low-income, people of color, and Indigenous populations “experience higher than average exposures to selected air pollutants, hazardous waste facilities, contaminated fish, and agricultural pesticides in the workplace.”⁷⁴ These disparities are rooted in practices like redlining and the designation of low-income neighborhoods and communities of color as mixed residential-industrial zones.⁷⁵

In addition, the failure to adequately address human susceptibility may be particularly harmful for certain racial and ethnic groups, as differences among population groups can increase the groups’ susceptibility to the adverse effects of an environmental exposure.⁷⁶ The National Environmental Justice Advisory Council recommended actions to “incorporate social, economic, cultural, and community health factors, particularly those involving vulnerability,” in EPA decision-making and to reduce cumulative risks in overburdened communities through community-

⁷¹ Environmental Equity Working Group, *Environmental Equity: Reducing Risk for All Communities*, Workgroup Report to the EPA Administrator Vol. 1 at 1 (1992), https://www.epa.gov/sites/default/files/2015-02/documents/reducing_risk_com_vol1.pdf.

⁷² Kuehn, 1996 U. Ill. L. Rev. at 117.

⁷³ Environmental Equity Working Group, *Environmental Equity: Reducing Risk for All Communities*, Workgroup Report to the EPA Administrator Vol. 2 at 1, 3 (1992), https://www.epa.gov/sites/default/files/2015-02/documents/reducing_risk_com_vol2.pdf.

⁷⁴ *Id.*

⁷⁵ See, e.g., Julia Mizutani, *In the Backyard of Segregated Neighborhoods: An Environmental Justice Case Study of Louisiana*, 31 *Georgetown Env'tl. L. Rev.* 363, 364-72 (2019); Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid, Zoning and the American Dream* 101 (Charles M. Harr & Jerold S. Kayden eds., 1989); Raymond Zhong & Nadja Popovich, *How Air Pollution Across America Reflects Racist Policy from the 1930s*, *The New York Times* (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/climate/redlining-racism-air-pollution.html>; Lylla Younes, et al., *Poison in the Air*, *ProPublica* (Nov. 2, 2021), <https://www.propublica.org/article/toxmap-poison-in-the-air>; Hiroko Tabuchi & Nadja Popovich, *People of Color Breathe More Hazardous Air. The Sources are Everywhere*, *The New York Times* (Apr. 28, 2021), <https://www.nytimes.com/2021/04/28/climate/air-pollution-minorities.html>.

⁷⁶ Patricia D. Koman, et al., *Population Susceptibility: A Vital Consideration in Chemical Risk Evaluation Under the Lautenberg Toxic Substances Control Act*, *PLOS Biology* at 2-4 (2019), <https://doi.org/10.1371/journal.pbio.3000372>; National Environmental Justice Advisory Council, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* at 23 (2004) (discussing the environmental justice implications of susceptibility), <https://www.epa.gov/sites/production/files/2015-04/documents/ensuringriskreduccionnejac.pdf>; Kuehn, 1996 U. Ill. L. Rev. at 123;

based and collaborative approaches.⁷⁷ EPA should follow the recommendations of the National Environmental Justice Advisory Council and other credible sources.⁷⁸

One stark example: originally called Plantation Country where enslaved Africans were forced to work on sugarcane plantations, “Cancer Alley” refers to the dense concentration of oil refineries and petrochemical plants along the lower Mississippi River between New Orleans and Baton Rouge, encompassing thirteen parishes, or counties, in Louisiana.⁷⁹ Following the first plastics boom in the 1960s, over 150 petrochemical facilities now operate in Cancer Alley, exposing residents to high concentrations of toxic chemicals.⁸⁰ Since the 1980s, seven of the 10 census tracts within Cancer Alley have the highest rates of cancer in the U.S., not to mention other health problems.⁸¹ In 2014, despite the already high concentration of industry in St. James Parish, the Parish Council changed the land use plan for the Fifth District, whose residents are 86.3% black, from “residential” to “residential/future industrial.”⁸² Notwithstanding the existing environmental pollution and adverse health effects to local residents, construction of additional petrochemical complexes is underway in the Fifth District.⁸³ Cancer Alley

⁷⁷ National Environmental Justice Advisory Council, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* at 15-18, 54 (2004), <https://www.epa.gov/sites/production/files/2015-04/documents/ensuringriskreducationnejac.pdf>.

⁷⁸ See also National Research Council, *Science and Decisions: Advancing Risk Assessment*, at 213 (2009), <https://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>.

⁷⁹ United Nations, *Environmental Racism in Louisiana’s ‘Cancer Alley’, Must End, Say UN Human Rights Experts* (Mar. 2, 2021), <https://news.un.org/en/story/2021/03/1086172>; Communication AL USA 33/2020 at 1 (Feb. 16, 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25814>; James Pasley, *Inside Louisiana’s Horrifying ‘Cancer Alley,’ an 85-mile Stretch of Pollution and Environmental Racism That’s Now Dealing with Some of the Highest Coronavirus Death Rates in the Country*, Insider (Apr. 9, 2020), <https://www.businessinsider.com/louisiana-cancer-alley-photos-oil-refineries-chemicals-pollution-2019-11>.

⁸⁰ United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* at 10 (Jan. 12, 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/004/48/PDF/G2200448.pdf?OpenElement>; Lylla Younes, et al., *In a Notoriously Polluted Area of the County, Massive New Chemical Plants Are Still Moving In*, ProPublica (Oct. 30, 2019), <https://projects.propublica.org/louisiana-toxic-air/>.

⁸¹ United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment* at 11 (Jan. 12, 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/004/48/PDF/G2200448.pdf?OpenElement>.

⁸² Communication AL USA 33/2020 at 1 (Feb. 16, 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25814>;

⁸³ Sharon Lerner, *New Chemical Complex Would Displace Suspected Slave Burial Ground in Louisiana’s ‘Cancer Alley,’* The Intercept (Dec. 18, 2019), <https://theintercept.com/2019/12/18/formosa-plastics-louisiana-slave-burial-ground/>.

underscores the need for EPA to appropriately address the full extent of chemical exposures and susceptibilities under TSCA.

V. CONCLUSION

The Fenceline Screening Approach falls short of TSCA's requirement for thorough and comprehensive evaluation of all risks posed by exposure to regulated chemicals. Unless strengthened, the Fenceline Screening Approach would contribute to disproportionate impacts on low-income communities, people of color, and Indigenous populations in derogation of Executive Order 12,898 and would conflict with President Biden's environmental justice orders. We urge EPA to expeditiously revise the Fenceline Screening Approach to comply with EPA's specific obligations under TSCA that are necessary requirements to protect human health and the environment consistent with the statute. Many of these improvements can be done immediately by using existing information and resources and without delaying the agency's risk management actions.

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