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March 14, 2012

Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Administrator Jackson:

During the October 2011 meeting of the National Environmental Justice Advisory Council (NEJAC) in Albuquerque, New Mexico, several advocates came from across the country to speak with us during the public comment session. They asked us to reach out to you about a critical matter. They presented us with a letter signed by many from across the country about the urgent need for EPA to act to prevent chemical disasters.

Their specific appeal to the NEJAC was that we support a request to you and to Assistant Administrator McCarthy that EPA would utilize its authority under the "General Duty Clause" of the 1990 Clean Air Act section 112(r) (also known as the Bhopal clause) to require covered chemical facilities to prevent, where feasible, catastrophic chemical releases. After hearing their sound arguments and reviewing the data they presented to us, the NEJAC concurred with their request and agreed to send this letter to you

Implementing the Clean Air Act's prevention authority will not only eliminate accidental hazards but also will address fatal flaws in the current chemical security law administered by the U.S. Department of Homeland Security (DHS). Presently, DHS is prohibited from requiring the use of safer chemical processes at facilities. These gaps are particularly threatening to low-income and tribal communities and communities of color because they frequently reside near waste water treatment plants, refineries, and port facilities which are exempted under a 2006 Congressional statute that allows thousands of potentially high-risk facilities such as these from being required to use safer chemicals.

We have already witnessed in countless environmental justice communities what can, and has happened as chemical releases, explosions, fires, train derailments, and refinery releases have wreaked havoc upon local communities, releasing life-threatening and dangerous chemicals upon the nearby populations. We have seen what has happened in Institute, West Virginia; Graniteville, South Carolina; Rubber town, Kentucky; Houston, Texas; Albuquerque, New Mexico; and Baton Rouge, Louisiana, to name but a few examples.

We know that in 2002, EPA made a proposal to implement the General Duty Clause for the first time to make chemical plants safer. According to the Agency's proposal, chemical plants would be made *"inherently safer by reducing quantities of hazardous chemicals handled or stored, substituting less hazardous chemical for extremely hazardous ones, or otherwise modifying the design of processes to reduce or eliminate chemical hazards."* Unfortunately, the Agency's efforts were scuttled and environmental justice communities, and indeed all communities, remain vulnerable to the dire threat of hazardous chemical releases, explosions, and spills.

In 2003, the Government Accountability Office (GAO) concluded that EPA could "*interpret the Clean Air Act's general duty clause to address chemical facility security… According to EPA, it would not have to make any regulatory changes as it currently implements the general duty clause through guidance…"* to address the specific threat of disastrous risks to vulnerable communities.

Recommendation: Therefore, we respectfully recommend that EPA use its authority under the 1990 Clean Air Act, Section 112 (r), to reduce or eliminate these catastrophic risks, where feasible, by issuing new rules and guidance to fully implement the General Duty Clause. This action would reduce the danger and imminent threat that chemical plants, chemical manufacturing, and the transport and storage of hazardous chemicals pose to environmental justice and all communities.

Once again, thank you for this opportunity to provide recommendations for enhancing environmental justice in EPA's programs.

Sincerely,

Elizabeth C.Yeampierre
Chair

cc: NEJAC Members
Robert Perciasepe, Deputy Administrator
Gina McCarthy, Assistant Administrator for Air and Radiation (OAR)
Mathy Stanislaus, Assistant Administrator for Solid Waste and Emergency Response
Cynthia Giles, EPA Assistant Administrator for Enforcement and Compliance Assurance
Lisa Garcia, EPA Associate Assistant Administrator for Environmental Justice
Janet McCabe, Deputy Assistant Administrator, OAR
Victoria Robinson, NEJAC DFO, OEJ