

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
APPROPRIATIONS
BUDGET
ENVIRONMENT AND
PUBLIC WORKS
FOREIGN RELATIONS
RULES AND
ADMINISTRATION

April 5, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

I strongly support your efforts to combat climate chaos and urge you to do everything in your power to increase climate ambition while advancing justice and equity. As EPA Administrator you have been a strong advocate for furthering environmental justice and I applaud your leadership. I am concerned, however, by a recent report from ProPublica and the Guardian that the EPA's program under the Toxic Substances Control Act to streamline approval of new chemicals to make bio-based transportation fuel substitutes is being used for fuels derived from plastic waste and is resulting in significant increased toxic chemical exposure to frontline communities.

In February 2022, the EPA's New Chemicals Division began streamlining approval of new chemicals for substitutes to petroleum-based fuels that use bio-based or waste-derived sources to produce fuels in an effort to speed up displacement of current, high greenhouse gas emitting transportation fuels. As part of this program, it has been reported that the EPA approved a new chemical that has a 1 in 4 chance of causing cancer from lifetime exposure of smokestack emissions.

I find reports that under the EPA's program companies can and have received approval to create fuel from plastic waste especially troubling. So-called "chemical recycling" has been touted by companies like Chevron as a way to reduce plastic waste through repurposing it but turning plastic waste into fuel increases greenhouse gas emissions, subsidizes the petrochemical industry, and harms frontline communities located near these facilities. While it is urgent that our country takes actions to address climate chaos we need to ensure that the steps we take actually reduce greenhouse gas emissions and do not do so by sacrificing historically marginalized communities and those who are already overburdened by toxic pollution.

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I ask that you answer the following questions prior to April 30th:

- 1) Is it true that the EPA streamlined the review of a premanufacture notice for production of a chemical for use as a fuel in Pascagoula that could emit air pollution so toxic that 1 in 4 people exposed to it over a lifetime could get cancer? If so, how did the EPA justify streamlining that approval? How many times has the EPA ever approved exposure levels with this level of toxicity?
- 2) The consent order covering the new chemicals at the Chevron facility noted other elevated cancer risks as well as non-cancer risks. The consent order also says that there was insufficient information to quantify remaining risks. Why has the EPA approved new chemicals without a more thorough understanding of the risks associated with these chemicals?
- 3) The Chevron facility in Pascagoula has undergone three enforcement actions - two formal and one informal - by the EPA since 2016. One of those actions resolved claims that Chevron violated provisions of the Clean Air Act aimed at preventing accidental releases of hazardous chemicals that can have serious consequences for public health and the environment. Why did the EPA streamline approval of a new chemical at a facility with this troubling enforcement history? Has the EPA imposed any historical compliance requirements or other restrictions on which facilities or companies can qualify for the streamlined review process?
- 4) Please provide us with a list of the new chemical waste-based fuels that were approved as part of this program. Please include those submitted as premanufacture notices as well as significant new use notices. I request you share all consent orders that the EPA has issued for chemicals to be used as fuels under this program.
- 5) Why did the EPA decide to approve new chemicals resulting from pyrolysis of plastics under this bio-based fuels program?
- 6) How many of the fuels approved under the bio-based fuel program are made fully, or partially, from plastic waste? How many are made from byproducts of petrochemical manufacture and refining processes?
- 7) The Occupational Safety and Health Administration says that their regulations for worker protections from chemicals are outdated and should not be relied on. Why does the EPA believe that the OSHA standards provide adequate protection from these chemicals? This seems in direct conflict with the EPA's March 29, 2021 announcement

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that it “will no longer assume workers are adequately protected under OSHA’s worker protection standards.”

8) ProPublica and the Guardian’s reporting implied that federal laws and regulations would not apply to most of the air pollution, besides benzene, approved by this new program. Is this correct? If not, what federal rules and regulations do apply to the resultant air emissions? How will the offices within the EPA overseeing compliance with those regulations work together to ensure full compliance, including monitoring, at facilities that are producing these new chemicals?

9) The consent order lists federal regulations potentially applicable to the bio-based fuels approved under this program. To what extent will these and other existing regulations mitigate the risks identified in the consent order?

10) How does the EPA plan to monitor production of these new chemicals over time to ensure environmental safety and public health? How often will the EPA reassess the new chemicals’ effects on the environment and public health, including on any surrounding communities?

11) Why did the EPA reference the Renewable Fuels Standard (RFS) in its January 2022 press release announcing this program? Will credits be issued for these fuels under the RFS? What is the relationship between the RFS program and the fuels that are approved under this process? Do the fuels approved under this program qualify for RINS under the RFS program?

12) The EPA’s January 2022 press release on this program also states that this effort supports EPA’s 2021 Climate Adaptation Action Plan. The Action Plan states that one of its goals is to promote environmental justice. How does the EPA balance or reconcile that goal with the increased environmental and public health hazards imposed by these new chemicals?

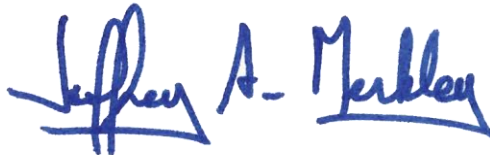
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13) What, if any, steps are the EPA taking to reduce the risk from air pollution for frontline communities in communities that will be affected by new chemicals approved under the program, including those in Pascagoula? To what extent has the EPA considered potentially exposed or susceptible subpopulations in its assessments under the bio-based fuels program?

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey A. Merkley". The signature is fluid and cursive, with the first and last names being more prominent.

Jeffrey A. Merkley
Chairman, Environment and Public Works Subcommittee on
Chemical Safety, Waste Management, Environmental Justice, and
Regulatory Oversight