

**SECOND AMENDED PETITION  
AND  
PETITIONERS' OBSERVATIONS ON THE GOVERNMENT'S REPLY  
CONCERNING THE UNITED STATES GOVERNMENT'S FAILURE TO  
PROTECT THE HUMAN RIGHTS OF THE RESIDENTS OF MOSSVILLE,  
LOUISIANA, UNITED STATES OF AMERICA**

**Petition No. P-242-05**

Submitted to:



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**The Inter-American Commission on Human Rights**  
1889 F Street, N.W.  
Washington, D.C. 20006-4400  
U.S.A.

On behalf of Petitioners:

**Mossville Environmental Action Now**  
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**Delma Bennett**  
**Lorraine Cole**  
**Sally Comeaux**  
**Dorothy Felix**  
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## I. INTRODUCTION

Advocates for Environmental Human Rights (“AEHR”)<sup>1</sup> respectfully submits this *Second Amended Petition and Petitioners’ Observations on the Government’s Reply Concerning the United States Government’s Failure to Protect the Human Rights of the Residents of Mossville, Louisiana, United States of America* to the Inter-American Commission on Human Rights of the Organization of American States (the “Inter-American Commission”). This submission is on behalf of Mossville Environmental Action Now (“MEAN”)<sup>2</sup> and residents of Mossville, Louisiana, pursuant to Article 23 of the Rules of Procedure of the Inter-American Commission.

Petitioners do not require that their identities be withheld from the State. This complaint has not been submitted to any other international settlement proceeding.

Founded in the 1790’s by African Americans, Mossville is an historic unincorporated community that is located between the two incorporated municipalities of Sulphur and Westlake in Calcasieu Parish,<sup>3</sup> Louisiana in the southern United States. With a land area of approximately five square miles, which has been decreased by the encroachment of industrial facilities, the Mossville community is currently composed of approximately 375 households whose residents are predominantly African American. People living in Mossville suffer from severe health problems, elevated levels of cancer-causing and hormone-disrupting chemicals, a devastated

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<sup>1</sup>Advocates for Environmental Human Rights (“AEHR”) is a human rights law firm dedicated to transforming legal systems that make communities vulnerable to disasters and displacement.

<sup>2</sup> Mossville Environmental Action Now (“MEAN”) is a nonprofit, volunteer organization whose members are current and former residents of Mossville. The organization works for environmental justice by educating residents about racially disproportionate industrial pollution burdens and related health problems, and advocating for pollution reduction and prevention, medical care for residents with health problems associated with industrial pollution, clean up and environmental remediation of contaminated sites, and relocation of consenting residents to healthier environs.

<sup>3</sup> “Parishes” in Louisiana are the equivalent of “counties” elsewhere in the United States.

environment, and a deteriorated quality of life, all of which arise from governmental approvals of highly toxic industrial development in and around Mossville.

The United States government and its political subdivisions have authorized fourteen industrial facilities to manufacture, process, store, and discharge toxic and hazardous substances in close geographic proximity to Mossville residents.<sup>4</sup> Three of these facilities – an oil refinery, a vinyl manufacturer, and a petrochemical facility – are located within the recognized historic boundaries of Mossville, and eleven other facilities – three vinyl manufacturers, one coal-fired power plant, and eight petrochemical facilities – are located within 0.8 kilometers (one-half mile) of the community. Each of the facilities in the Mossville area has received from governmental agencies the requisite permits to pollute the air, water, and land.<sup>5</sup> In recent years, industries have

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<sup>4</sup> The United States government has authorized the following fourteen industrial facilities to release massive quantities of toxic chemicals within one-half mile of Mossville residents' homes, churches, and community center: (1) Air Liquide, (2) Arch Chemical, (3) BioLab, (4) Certainteed, (5) Conoco Philips (formerly Conoco Lake Charles Refinery), (6) Entergy Roy S. Nelson Power Plant, (7) Excel Paralubes, (8) Georgia Gulf (formerly Condea Vista), (9) Lyondell/Arco Chemical, (10) PHH Monomer, (11) PPG Industries, (12) Sasol (formerly Condea Vista), Tessengerlo Kerley Chemicals (formerly Jupiter Chemicals), and (14) Tetra Chemicals. *See* map at Appendix ("App.") 1. (Note: Appendices to this Second Amended Petition are designated by letters; any references to appendices with numbers are references to the appendices submitted with the original petition.)

<sup>5</sup> *See* U.S. Environmental Protection Agency, Enforcement and Compliance History Online, *available at* <http://www.epa.gov/echo>.

Mossville area facilities that have been issued environmental permits by the U.S. government to release air pollution include: Air Liquide, Arch Chemical, BioLab, Certainteed, Conoco Lake Charles Refinery, Entergy Roy S. Nelson Power Plant, Georgia Gulf, Jupiter Chemicals (now Tessengerlo Kerley Chemicals), Lyondell Chemical, Olin, PPG Industries, Sasol, and Tetra Chemicals.

Mossville area facilities that have been issued environmental permits by the U.S. government to discharge water pollution include: Certainteed, Conoco Lake Charles Refinery, Entergy Roy S. Nelson Power Plant, Jupiter Chemicals (now Tessengerlo Kerley Chemicals), Lyondell Chemical, PPG Industries, Sasol, and Tetra Chemicals.

acknowledged that their facilities surrounding Mossville, on average annually, have polluted the air, water, and land with a combined total of approximately two million kilograms (over four million pounds) of toxic chemicals that are scientifically known to cause cancer and damage the immune, respiratory, cardiovascular, nervous, and reproductive systems.<sup>6</sup> The actual amount of total toxic pollution is unknown, as all industrial facilities are not required to report annually all releases of pollution. Further, it should be noted that these annual reports concerning pollution released by the industrial facilities are not based on actual monitoring but are, instead, derived from calculations that are outdated and inaccurate.<sup>7</sup> In addition, industrial companies have acknowledged that, because of to the very close geographic proximity of their facilities to the Mossville community, a catastrophic release of just one toxic chemical or flammable substance processed and stored at their facilities would cause deaths and serious injuries among Mossville residents.<sup>8</sup>

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Mossville area facilities that have been issued environmental permits by the U.S. government to generate, store, and dispose of hazardous waste include: Arch Chemical, BioLab, Certainteed, Conoco Lake Charles Refinery, Entergy Roy S. Nelson Power Plant, Georgia Gulf, Jupiter Chemicals (now Tessenderlo Kerley Chemicals), Lyondell Chemical, Olin, PPG Industries, Sasol, and Tetra Chemicals.

<sup>6</sup> Data from the Toxic Release Inventory (“TRI”) 1987-2006, App. A. (Note: Appendices to this Second Amended Petition are designated by letters; any references to appendices with numbers are references to the appendices submitted with the original petition.) The TRI is a database of industrial pollution emissions compiled from annual reports that industrial companies are required to submit to the U.S. Environmental Protection Agency pursuant to the Emergency Planning and Community Right-to-Know Act (“EPCRA”), United States Code, title 42, Section 11023.

<sup>7</sup> Environmental Integrity Project, *Who’s Counting?: The Systematic Underreporting of Toxic Air Emissions* (June 2004), available at <http://www.environmentalintegrity.org/pub205.cfm>.

<sup>8</sup> See report by Wilma Subra, *Mossville, Calcasieu Parish, Louisiana: Toxic Chemicals Released by Industrial Facilities*, pp. 22-24 (Feb. 21, 2002), App. 3; see also Toxic Release Inventory for the years 1987-2000, App. 2.

Although the environmental and health agencies of the United States have documented the massive industrial pollution burdens on the Mossville community, as well as residents' exposure to health-damaging levels of toxic chemicals, these agencies have failed to adequately address this environmental health crisis that denies Mossville residents their fundamental human rights to life, health, and privacy. Furthermore, although the United States government has acknowledged the pervasive pattern of discrimination that subjects Mossville, as well as other African American, Latino, Native American, and Asian American communities throughout the nation, to racially disproportionate toxic pollution burdens, the United States government has failed to protect the human right to freedom from racial discrimination.<sup>9</sup>

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<sup>9</sup> Governmental and academic research reveal that toxic industries are routinely granted environmental permits and other governmental approvals to operate near communities that are predominantly populated by African American, Latino, Native American, and Asian American people. The individuals who live in these communities have reported an increase in health problems and a degraded quality of life following the industrialization of their communities.

*See, e.g.,* U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*, GAO/RCED-83-168, B-211461 (June 1, 1983), available at <http://www.gao.gov/docdb/lite/info.php?rptno=RCED-83-168>; United Church of Christ Commission for Racial Justice, *Toxic Waste and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites* (1987); Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (Westview Press 1990); Benjamin A. Goldman, *The Truth About Where You Live: An Atlas for Action on Toxins and Mortality* (Three Rivers Press 1991); Marianne Lavelle and Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, THE NATIONAL LAW JOURNAL (Special Issue) (Sept. 21, 1992); *Race and the Incidence of Environmental Hazards: A Time for Discourse* (Bunyan Bryant & Paul Mohai eds. 1992); Rae Zimmerman, *Social Equity and Environmental Risk*, RISK ANALYSIS: AN INTERNATIONAL JOURNAL, vol. 13, no. 6, p. 649 (1993); *Confronting Environmental Racism: Voices from the Grassroots* (Robert D. Bullard ed., South End Press 1993); *Unequal Protection: Environmental Justice and Communities of Color* (Robert D. Bullard ed., Sierra Club Books 1994); Robert D. Bullard *et al.*, *Toxic Wastes and Race at Twenty, 1987 – 2007: A Report Prepared for the United Church of Christ* (2007).

Both the U.S. Environmental Protection Agency<sup>10</sup> (“EPA”) and the Louisiana Department of Environmental Quality<sup>11</sup> (“LDEQ”) implement environmental laws that establish the flawed legal presumption that human health and the environment are adequately controlled entirely by technologically based standards. However, the reality is quite the contrary. As set forth more fully in subsequent sections of this petition, pollutants released by Mossville area facilities have been detected in the air at levels that exceed health-based standards. Furthermore, it is well-documented that in the area of Mossville, industrial pollution has poisoned fish in local waters and extensively contaminated groundwater and surface waterways.

Scientific evidence demonstrates that the declining health of Mossville residents is related to industrial pollution. For example, in 1998 health researchers at the University of Texas at Galveston Medical Branch reported that the serious health problems suffered by Mossville residents are associated with exposure to toxic industrial pollution.<sup>12</sup> In 1999, the U.S. Agency for Toxic Substances and Disease Registry (“ATSDR”)<sup>13</sup> reported that Mossville

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<sup>10</sup> The U.S. Environmental Protection (“EPA”) is the leading federal governmental agency whose stated mission “is to protect human health and the environment.” EPA Mission Statement, *available at* <http://www.epa.gov/history/org/origins/mission.htm>.

<sup>11</sup> The Louisiana Department of Environmental Quality (“LDEQ”) is a state governmental agency whose stated mission is “to provide service to the people of Louisiana through comprehensive environmental protection in order to promote and protect health, safety and welfare while considering sound policies regarding employment and economic development.” DEQ Mission Statement, *available at* <http://www.deq.louisiana.gov/portal/tabid/2367/Default.aspx>.

<sup>12</sup> Dr. Marvin Legator, University of Texas Medical Branch at Galveston, *Mossville Health Symptom Survey* (1998), App. 4.

<sup>13</sup> The U.S. Agency for Toxic Substances and Disease Registry (“ATSDR”) was created by an act of Congress to provide, among other things, health assessments “in the case of public health emergencies caused or believed to be caused by exposure to toxic substances.” United States Code, title 42, section 9604(i)(1)(D). ATSDR has the discretionary authority to conduct health assessments where individual persons or licensed physicians provide information indicating that individuals have been exposed to a hazardous substance. United States Code, title 42, Section



residents have an average concentration of dioxins in their blood that is three times higher than the background level represented by ATSDR's comparison group of people in different parts of the United States.<sup>14</sup> More importantly, and most recently, a report released in 2007 documented that the types of dioxin compounds found in the blood of Mossville residents are, in fact, the same types of dioxins emitted by local industrial facilities.<sup>15</sup> Nevertheless, these health studies have not deterred the United States government or its political subdivisions from approving and issuing environmental permits that allow major industrial facilities to process materials that generate dioxins and massive amounts of other toxic chemicals within 0.8 kilometer (0.5 mile) of the Mossville community.

Dioxins are persistent, bioaccumulative, chlorinated compounds that are scientifically known to extensively damage human health.<sup>16</sup> In fact, dioxins are the most toxic chemical

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9604(i)(6)(B). ATSDR has indicated that its investigation of dioxin exposure in Mossville falls under its discretionary authority to conduct a health assessment. ATSDR, Division of Health Consultation, *Health Consultation: Exposure Investigation Report: Calcasieu Estuary, Calcasieu Parish, Louisiana*, CERCLIS No. LA0002368173 (Nov. 19, 1999), available at [http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal\\_toc.html](http://www.atsdr.cdc.gov/HAC/PHA/calcas/cal_toc.html).

See also Pat Costner, *Dioxin & PCB Contamination in Mossville, Louisiana: A Review of the Exposure Investigation by ATSDR* (Greenpeace Feb. 23, 2000), App. 5.

<sup>14</sup> *Id.* at p. 5.

<sup>15</sup> Mossville Environmental Action Now, *et al.*, *Industrial Sources of Dioxin Poisoning in Mossville, LA: A Report Based on the Government's Own Data*, pp. 6-8 (July 2007), App. B. (Note: Appendices to this Second Amended Petition are designated by letters; any references to appendices with numbers are references to the appendices submitted with the original petition.)

<sup>16</sup> M. Kogevinas, *Human Health Effects of Dioxins: Cancer, Reproductive, and Endocrine System Effects*, HUMAN REPRODUCTION UPDATE, vol. 7, p. 331 (2001); B. Eskenazi *et al.*, *Serum Dioxin Concentrations and Menstrual Cycle Characteristics*, AMERICAN JOURNAL OF EPIDEMIOLOGY, vol. 156, p. 383 (2002); P. Mocarelli *et al.*, *Paternal Concentrations of Dioxin and Sex Ratio of Offspring*, LANCET, vol. 355, p. 1,858 (2000); M. Warner *et al.*, *Serum Dioxin Concentration and Breast Cancer Risk in the Seveso Women's Health Study*, ENVIRONMENTAL HEALTH PERSPECTIVES, vol. 110, p. 625 (2002).

compounds known to science. Dioxins were a component of Agent Orange, a toxic herbicide that was used by the U.S. military to defoliate areas of Vietnam more than thirty years ago, and which continues to plague the health of the Vietnamese people to the present day. The severe health effects of dioxins are recognized in the Stockholm Convention on Persistent Organic Pollutants, an international treaty that establishes measures by which State parties are to reduce or eliminate dioxins and eleven other specified pollutants in the environment.<sup>17</sup> ATSDR health consultants determined that local sources are likely responsible for the significant levels of dioxin exposure among Mossville residents.<sup>18</sup> The ATSDR health consultants also explained that, “it appears likely that the specific chemicals tested in the blood of these individuals are only a component of the overall toxic exposure to the population of these communities.”<sup>19</sup> In addition, a noted health researcher warned that Louisiana’s “heavy concentration of industries such as plastics, paper mills, and chemicals manufacturing increase the potential for higher than normal exposure to dioxin.”<sup>20</sup>

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<sup>17</sup> See Stockholm Convention on Persistent Organic Pollutants, Preamble, UNEP/POPS/CONF/2, Mar. 9, 2001, INTERNATIONAL LEGAL MATERIALS vol. 40, p. 532 (2001), available at [http://www.pops.int/documents/convtext/convtext\\_en.pdf](http://www.pops.int/documents/convtext/convtext_en.pdf) (“The Parties to this Convention . . . [are] aware of the health concerns . . . resulting from local exposures to persistent organic pollutants, in particular impacts upon women, and through them, upon future generations . . . [and] determined to protect human health and the environment from the harmful impacts of persistent organic pollutants.”).

<sup>18</sup> Dr. Peter Orris and Katherine Kirkland, Cook County Hospital, Division of Occupational and Environmental Medicine, *Report on Consulting Activities Related to Mossville, LA* (Nov. 4, 1999); Letter from Dr. Orris to ATSDR (Sept. 29, 1999), App. 6.

<sup>19</sup> *Id.*

<sup>20</sup> *Dioxin Study Called for in Louisiana*, UNITED PRESS INTERNATIONAL (October 21, 1999) paraphrasing Dr. William Toscano, available at <http://www.foodsafetynetwork.ca/en/news-details.php?a=2&c+29&sc=220&id=32467>.

The disproportionate permitting of polluting facilities in the African American community of Mossville reflects a nationwide pattern in the United States known as environmental racism. In Calcasieu Parish, industrial facilities that rank among the worst in the U.S. are located in Mossville.<sup>21</sup> As a result, unhealthy air in Mossville is the norm, unlike the rest of the parish, which is deemed by environmental agencies to have healthy air quality.<sup>22</sup> Given that 73.6% of the population in Calcasieu Parish is white and only 24.6% of the population is African American,<sup>23</sup> it is indisputable that African Americans in Mossville bear a racially disproportionate burden of severe industrial pollution.

For the last sixty years, since the introduction of hazardous industrial development in Mossville, residents have been suffering from the damaging effects of industrial pollution and contamination that interferes with their fundamental human rights to:

- life
- health
- equality and freedom from racial discrimination
- privacy as it relates to the inviolability of the home

As discussed in more detail below, these fundamental human rights have been and continue to be violated by the actions and inactions of the United States government and its political subdivisions. Mossville Environmental Action Now seeks remedies for these human rights violations and respectfully requests that the Commission, pursuant to human rights laws and standards, recommend to the United States that it:

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<sup>21</sup> Conoco Phillips Lake Charles Refinery, PPG Industries, and Sasol, which are located in closest geographic proximity to Mossville, are ranked as the “dirtiest/worst facilities in the United States.” *See supra*.

<sup>22</sup> Environmental Defense Scorecard, Air Quality Index, County [sic] of Calcasieu, App. 16.

<sup>23</sup> US Census Bureau, 2000 Summary Profile for Calcasieu Parish, *available at* [http://factfinder.census.gov/bf/\\_lang=en\\_vt\\_name=DEC\\_2000\\_SF1\\_U\\_DP1\\_geo\\_id=05000US2\\_2019.html](http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_SF1_U_DP1_geo_id=05000US2_2019.html).

1. provide medical services to Mossville residents suffering from diseases and health problems associated with environmental toxic exposures, including health monitoring services;
2. offer appropriate relocation to consenting Mossville residents that allows them to live in healthier environs, away from toxic industrial facilities and contaminated sites;
3. refrain from issuing environmental permits and other approvals that would allow any increase in pollution by existing industrial facilities located in close proximity to the Mossville community, and refrain from issuing any environmental permits and other approvals that would allow the introduction of any new industrial facility in the Mossville area; and
4. reform its existing environmental regulatory system to:
  - a. establish in all regulatory programs pollution limits that protect against the multiple, cumulative, and synergistic health impacts of numerous toxic and hazardous substances released into the air, water, and land by one or more industrial facilities;
  - b. require a safe distance between a residential population and a hazardous industrial facility so that the population is not located within the area where deaths or serious injury would result in the event that a toxic or flammable substance stored, processed, or generated by the facility would be released to the environment through explosion, fire, or spill; and
  - c. remedy past practices and prevent future actions that intentionally or inadvertently impose racially disproportionate pollution burdens.

## **II. DESCRIPTION OF PETITIONERS**

Mossville Environmental Action Now is a nonprofit, volunteer organization whose members are current and former residents of Mossville. The organization works for environmental justice by educating residents about industrial pollution burdens and related health problems, and advocating for pollution reduction and prevention, medical care for health problems associated with industrial pollution, clean up and environmental remediation of contaminated sites, and relocation of consenting residents to healthier environs.

Petitioner David Prince is a resident of Mossville. He and his late wife, Diane Prince, raised a family in Mossville. For several years, the Prince family lived across the street from a

vinyl manufacturing facility that is now owned by Georgia Gulf. Both Mr. and Mrs. Prince volunteered to have their blood tested for dioxins by ATSDR, and both were found to have elevated levels. Mrs. Prince suffered from recurring ovarian cancer and passed away in 2005 from this disease.

Petitioner Sally Comeaux is a life-long resident of Mossville. She and her family live across the street – a few meters (yards) away – from a vinyl manufacturing facility owned by Georgia Gulf, a petrochemical facility owned by Sasol, and an oil refinery owned by Conoco Phillips. The Bel Air neighborhood of Mossville in which Ms. Comeaux resides with her family has been abandoned by most Mossville residents as a result of groundwater contamination from nearby industrial facilities. Ms. Comeaux, as well as some members of her family, volunteered to have their blood tested for dioxin by ATSDR, and they were found to have elevated levels.

Petitioner Lillie Adams lived in the Bel Air section of Mossville for forty-three years. She and her family lived a few meters (yards) away from a vinyl manufacturing facility owned by Georgia Gulf, a petrochemical facility owned by Sasol, and an oil refinery owned by Conoco Phillips. Ms. Adams and her family were relocated from their home as a consequence of significant groundwater contamination caused by the industrial facilities near the home. Ms. Adams volunteered to have her blood tested for dioxin by ATSDR, and she was found to have elevated levels.

Petitioner Ollie Mae Hadnot is a former Mossville resident who resided there for seventy years. The Conoco Oil refinery operated next to her former home in Mossville, where she raised a family. Ms. Hadnot suffers from respiratory problems and other serious health problems. Ms. Hadnot's daughter, Carol Ann James, recently died from a blood disease. Before she died, Ms.

James volunteered to have her blood tested for dioxin by ATSDR, and she was found to have elevated levels.

Petitioner Edgar Mouton, Jr. is a life-long resident of Mossville and President of Mossville Environmental Action Now. For the past thirty-eight years Mr. Mouton has lived approximately 3.2 kilometers (2 miles) from Conoco, PPG and the twelve other local industrial facilities. However, for thirty-four years prior to that time he lived approximately 0.8 kilometer (.05 mile) away from all of the local industrial facilities in Mossville. Mr. Mouton's diabetes, his and his wife's circulatory problems, and the stroke his wife endured are all illnesses associated with the pollution that comes from the local industrial facilities.

Petitioner Dorothy Felix is a Mossville resident and Vice-President of Mossville Environmental Action Now. Ms. Felix lives within 3.2 kilometers (2 miles) of the local industrial facilities. Ms. Felix grew up in Mossville, and she remembers it from her childhood as a very beautiful and pristine environment. Once industrial operations came into the area, everything changed. Now many of her relatives and neighbors are suffering from cancers, endometriosis, and asthma. Ms. Felix's seven year old great-granddaughter, RaJohnna Jackson, has trouble breathing and must sleep with a breathing machine. All of these illnesses are associated with the pollution that comes from the local industrial facilities.

Petitioner Lorraine Cole has lived in Mossville for over sixty years and raised her family there. Ms. Cole remembers Mossville as a thriving, healthy community where the poorest of poor could live and prosper. The land on which Ms. Cole raised her family was given to her by her parents. Her father wanted to ensure that she and future generations of their family would be able to live in a safe environment. His concern for the safety of his family was generated by hostile race relations. At the original time of purchase, Mrs. Cole's family property was a

pristine wooded area that the family worked hard to develop. Now all fourteen industrial facilities are located approximately 3.2 kilometers (2 miles) from her home.

Petitioner Delma Bennett has lived in Mossville for approximately thirty-three years, and raised a family there. He and his family live approximately 3.2 kilometers (2 miles) from all of the local industrial facilities. Beginning in the 1980's, Mr. Bennett noticed that his own children and the children in his extended family began to exhibit health symptoms that are associated with the pollution that comes from the local industrial facilities. Mr. Bennett's now-adult children continue to experience health issues which include reproductive problems and respiratory illnesses, which are associated with exposure to toxic pollution. His wife, Christine Bennett, has been suffering with a depleted white blood cell count that doctors cannot explain.

### **III. COMPETENCY**

Advocates for Environmental Human Rights ("AEHR") has competency to bring this petition, and the Inter-American Commission has the authority to review it. Article 23 of the Inter-American Commission's Rules of Procedure allows "any . . . nongovernmental entity legally recognized in one or more of the Member States of the OAS . . . [to] submit petitions to the Commission . . . on behalf of third persons . . . ." AEHR is a nongovernmental organization legally recognized in the United States. It has submitted this petition on behalf of Mossville Environmental Action Now, which is also legally recognized in the United States, and several individual Mossville residents.

In addition, the Inter-American Commission has the authority to review this petition even though the United States, a member of the OAS, is a signatory, but not a party, to the American

Convention on Human Rights.<sup>24</sup> Article 20(b) of the Statute of the Inter-American Commission on Human Rights (the “Statute”) establishes, among other powers, the following authority:

In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers . . . (b) to examine communications submitted to it and any other available information to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights . . .<sup>25</sup>

David Padilla, former Assistant Executive Secretary of the Commission, adds that:

[Article 20(b) of the Statute] obligates the Commission to act where it finds that a complaint from any source meets the admissibility requirements contained in its rules and determines that a Convention-protected right, or a right set forth in the American Declaration of the Rights and Duties of Man, in the case of non-state parties, has *prima facie* been violated. This is truly a liberal provision compared to those governing other international human rights systems. Private actors become active participants in an international forum. Also, member states *ipso facto* voluntarily commit themselves to participate in the Commission’s quasi-judicial process aimed at clarifying and, when it so determines, remedying violations of internationally recognized human rights.<sup>26</sup>

Moreover, the Inter-American Commission has explained that:

While the majority of the OAS Member States are also Parties to the American Convention on Human Rights, in the case of those States . . . that have yet to ratify that treaty, the OAS Charter and the American Declaration provide the source of legal obligation.<sup>27</sup>

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<sup>24</sup> See Signatures and Current Status of Ratifications, American Convention on Human Rights, Inter-American Commission on Human Rights.

<sup>25</sup> Statute of the Inter-American Commission on Human Rights.

<sup>26</sup> David J. Padilla, *The Inter-American Commission on Human Rights of the Organization of American States: A Case Study*, AMERICAN UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY, vol. 9, p. 100 (1993).

<sup>27</sup> See Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, doc. 40 rev., ¶ 30 (2000) (citations omitted).



#### IV. EXHAUSTION OF DOMESTIC REMEDIES

This petition is necessitated by the fact that there are no domestic remedies available for the African American residents of Mossville, Louisiana whose human rights to life, health, freedom from racial discrimination, and privacy as it relates to the inviolability of the home are violated by governmental approval of the operation of fourteen hazardous industrial facilities within the historic boundary of Mossville and in close proximity to the community. As a result of such governmental approval, extensive environmental damage and associated severe health problems are suffered by Mossville residents. The U.S. Constitution and other laws either do not recognize or else provide inadequate and ineffective remedies for the specified human rights violations in the Mossville community.

Article 31(2)(a) of the Inter-American Commission on Human Rights Rules of Procedure establishes that remedies need not be exhausted if “the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated.”<sup>28</sup> Furthermore, the Commission has determined that domestic remedies need not be pursued or exhausted if they are inadequate and/or ineffective.<sup>29</sup>

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<sup>28</sup> Inter-American Commission Rules of Procedure, Article 31(2)(a).

Although the United States is not a party to the American Convention on Human Rights, an advisory opinion regarding the Convention’s procedural rule, which is similar to Article 31(2)(a), provides helpful analysis: the exemption to exhaustion of domestic remedies applies to “situations in which the domestic laws of a State Party do not provide appropriate remedies to protect rights that have been violated.” *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90, Inter-Am. Ct.H.R. (Ser. A) No. 11 at ¶ 17 (Aug. 10, 1990). *See also Velásquez Rodríguez Case*, Preliminary Objections, Inter-Am. Ct.H.R. (Ser. C) No. 1 at ¶ 88 (June 26, 1987) (“... the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.”).

<sup>29</sup> *See Juan Carlos Bayarri v. Argentina*, Case No. 11,280, Inter-Am. C.H.R., Report No. 2/01, OEA/ser.L/V/II.111 doc. 20 rev. at ¶ 27 note 12 (2000) (“If a remedy is not adequate in a specific case, it obviously need not be exhausted.”) (citation omitted); *Gilson Nogueira Carvalho*

Accordingly, as discussed below, there are no domestic remedies available to Mossville residents.

**A. THE UNITED STATES CONSTITUTION DOES NOT PROVIDE A REMEDY FOR THE VIOLATION OF MOSSVILLE RESIDENTS' HUMAN RIGHTS TO LIFE, HEALTH, FREEDOM FROM RACIAL DISCRIMINATION, AND PRIVACY AS IT RELATES TO THE INVOLABILITY OF THE HOME**

Although the U.S. Constitution safeguards the right to life by restricting the government from depriving any person of life or causing serious bodily harm without due process of law, the constitutional safeguards, namely the Fifth and Fourteenth Amendments, provide no remedy to Petitioners from the life-threatening industrial hazards that are approved by the government. The U.S. Supreme Court has interpreted the Fourteenth Amendment to provide no guarantee of a certain minimal level of safety and security.<sup>30</sup> In a case involving allegations of bodily harm resulting from actions taken by the U.S. EPA, a United States appeals court dismissed the Fifth Amendment claim brought by New York residents against the agency for misleading statements that air quality was safe after the destruction of the World Trade Center towers. *Benzman v. Whitman*, 523 F.3d 119 (2d Cir. 2008).<sup>31</sup> Recognizing that the U.S. Supreme Court “has always

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*v. Brazil*, Case No. 12.058, Inter-Am. C.H.R., Report No. 61/00, OEA/Ser.L/V/II.111, doc. 20 rev. at 145 at ¶ 60 (2000) (“[T]he merely theoretical existence of legal remedies is not sufficient for this objection to be invoked: they have to be effective.”).

<sup>30</sup> See *DeShaney v. Winnebago County Dept. of Soc. Serv.*, 489 U.S. 189, 195-96 (1989). That decision persuaded a U.S. state court not to consider a plaintiff’s claim (brought by the plaintiff’s surviving spouse) that a municipal government in the United States had violated the plaintiff’s Constitutional right to life under the 14<sup>th</sup> Amendment when the municipal government failed to act upon arrival at the scene of an accident that resulted in the death of the plaintiff. See also *Culver-Union Township Ambulance Service v. Steindler*, 629 N.E.2d 1231 (Ind. 1994).

<sup>31</sup> The federal appeals court explained that, in an earlier case, *Lombardi v. Whitman*, 485 F.3d 73, 83-85 (2d Cir. 2007), which involved a similar Fifth Amendment constitutional claim by emergency responders against the EPA, “[w]e rejected the claim, primarily on the ground that, absent an allegation of intent to harm, a viable substantive due process violation could be not be asserted against governmental officials . . . .” *Benzman*, 523 F.3d at 127.

been reluctant to expand the concept of substantive due process” under the Fifth Amendment of the U.S. Constitution, the federal appeals court explained that “legal remedies are not always available for every instance of arguably deficient governmental performance . . . .” *Id.* at 134. Moreover, unlike the American Declaration, the right to health is not recognized by the U.S. Constitution.<sup>32</sup>

The violation of Mossville residents’ right to equal protection has no remedy under the *Equal Protection Clause* of the Fourteenth Amendment of the U.S. Constitution, notwithstanding the fact that all of the African American residents of Mossville are burdened with the hazards of the fourteen toxic industrial facilities, unlike the majority of white residents who live in residential areas farther away from these facilities. A remedy for the violation of the right to equal protection requires proof of intent.<sup>33</sup> Evidence of *de facto* unequal protection, which

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<sup>32</sup> See *Tanner v. Armco Steel*, 340 F. Supp 532, 537 (S.D. Tex. 1972) (“[N]o legally enforceable right to a healthful environment . . . is guaranteed by the Fourteenth Amendment or any other provision of the Federal Constitution.”) (citing the U.S. Supreme Court decision, *Lindsey v. Normet*, 405 U.S. 56 (1972)).

See also *Long Beach v. New York*, 445 F. Supp. 1203, 1212 (D.N.J. 1978) (“It generally has been held that there is no constitutional right to [environmental] protection.”) (citing *Ely v. Velde*, 451 F.2d 1130, 1139 (4<sup>th</sup> Cir. 1971)); *Gaspar v. Louisiana Stadium & Exposition Dist.*, 418 F. Supp. 716, 720-22 (E.D. La. 1976); *Upper W. Fork River Watershed Ass’n v. Corps of Engineers*, 414 F. Supp. 908, 931-32 (N.D.W. Va. 1976), *aff’d mem.*, 556 F.2d 576 (4th Cir. 1977); *Pinkney v. Ohio Environmental Protection Agency*, 375 F. Supp. 305, 309-10 (N.D. Ohio 1974); *Hagedorn v. Union Carbide Corp.*, 363 F. Supp. 1061, 1064-65 (N.D.W. Va. 1973); *Virginians for Dulles v. Volpe*, 344 F. Supp. 573, 579 (E.D. Va. 1972); *aff’d in part and rev’d in part*, 541 F.2d 442 (4th Cir. 1976); *Tanner v. Armco Steel Corp.*, 340 F. Supp. 532, 536-37 (S.D. Tex. 1972); *Environmental Defense Fund v. Corps of Engineers*, 325 F. Supp 728, 739 (E.D. Ark. 1971)).

<sup>33</sup> See *McClesky v. Kemp*, 481 U.S. 279, 292 (1987) (“[A party] who alleges an equal protection violation has the burden of proving the existence of purposeful discrimination.”); *Washington v. Davis*, 426 U.S. 229, 239 (1976) (“[O]ur cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional *solely* because it has a racially disproportionate impact.”) (emphasis in original)).

Petitioners present to this Commission, is not a legally cognizable claim of a constitutional violation in U.S. courts.

The right to privacy in the United States is a limitation on governmental action that interferes with recognized personal freedoms. The U.S. Supreme Court has found that the right to privacy exists in the “penumbras” of the Bill of Rights<sup>34</sup> and is a fundamental right to be afforded the highest constitutional protection.<sup>35</sup> However, unlike the American Declaration, the right to privacy under the U.S. Constitution does not extend to the inviolability of the home. Instead, the U.S. Supreme Court has regarded the right to privacy to include only those personal rights implicit in “the concept of ordered liberty,”<sup>36</sup> such that “neither liberty nor justice would exist if [the suggested right] were sacrificed,”<sup>37</sup> or a right that is “deeply rooted in this nation’s history and tradition.”<sup>38</sup> Applying these criteria, the Supreme Court has narrowly limited the constitutional right to privacy to issues of family planning, child-rearing, and abortion.<sup>39</sup> Moreover, the Supreme Court has warned that it will offer “great resistance” to attempts to expand this list of personal privacy rights.<sup>40</sup>

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<sup>34</sup> *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

<sup>35</sup> *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 627 (1969).

<sup>36</sup> *Roe v. Wade*, 410 U.S. 113, 152 (1973).

<sup>37</sup> *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

<sup>38</sup> *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977).

<sup>39</sup> *Paul v. Davis*, 424 U.S. 693, 712-13 (1976).

<sup>40</sup> *Bowers v. Hardwick*, 478 U.S. 186, 195 (1986). *But see Lawrence v. Texas*, 539 U.S. 558 (2003) (extending the right of privacy for intimate relationships to persons of the same sex, but not creating a new privacy right).

Thus, it is clear that because the claims of Mossville residents concern the failure of the U.S. government to guarantee a minimal level of environmental safety by preventing the industrial hazards and toxic exposures that threaten their lives and harm their health, Petitioners cannot invoke the U.S. Constitution for a remedy for the violations of their rights to life, health, freedom from racial discrimination, and privacy as it relates to the inviolability of the home.

**B. OTHER UNITED STATES LAWS DO NOT PROVIDE A REMEDY FOR THE VIOLATION OF MOSSVILLE RESIDENTS' HUMAN RIGHTS TO LIFE, HEALTH, FREEDOM FROM RACIAL DISCRIMINATION, AND PRIVACY AS IT RELATES TO THE INVOLABILITY OF THE HOME**

The nonexistence of remedies under the U.S. Constitution for the specified human rights violations suffered by Mossville residents is not rectified by other U.S. laws. These laws are inadequate and ineffective to redress the violations of human rights in Mossville.

**1. Environmental Law**

Although the U.S. Congress has passed considerable legislation governing the protection of public health and the preservation of environmental quality, these laws do not redress the severe toxic pollution burdens in the Mossville community.

The severe environmental degradation and resulting human rights violations suffered by Mossville residents are a consequence of the deeply flawed legislation that establishes the U.S. system of environmental protection.<sup>41</sup> As illustrated below, four of the obvious flaws in the U.S. environmental regulatory system are that it:

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<sup>41</sup> See, e.g., Office of Environmental Justice, U.S. EPA, *Environmental Justice in the Permitting Process: A Report from the National Environmental Justice Advisory Council's Public Meeting on Environmental Permitting*, EPA/300-R-00-0004, pp. 23-25 (2000), available at <http://epa.gov/compliance/environmentaljustice/nejac/ej-permit-process-recom-report.html> (recommending that EPA consider the following factors for denying permits applied for by toxic industries: (1) negative health risks; (2) racially disproportionate burdens; (3) cumulative and synergistic adverse impacts on human health and the environment; (4) high aggregation of risk from multiple sources; (5) community vulnerability based on the number of children, elderly, or

- (1) presumes that human health and the environment are protected by requiring polluting companies to employ specific devices and equipment that are already in use by other polluting companies in the same industrial sector;
  - (2) establishes air quality standards based on large geographic regions that obscure the harmful air pollution occurring in smaller areas where industrial facilities are concentrated;
  - (3) sets emission controls for only a fraction of toxic chemicals released by permitted industrial facilities; and
  - (4) relies on industrial facilities to monitor their impacts on the environment.
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**1. The US environmental legal system establishes that permits issued to polluting facilities are presumptively protective of human health and the environment via technological controls already employed by similar polluting companies.**

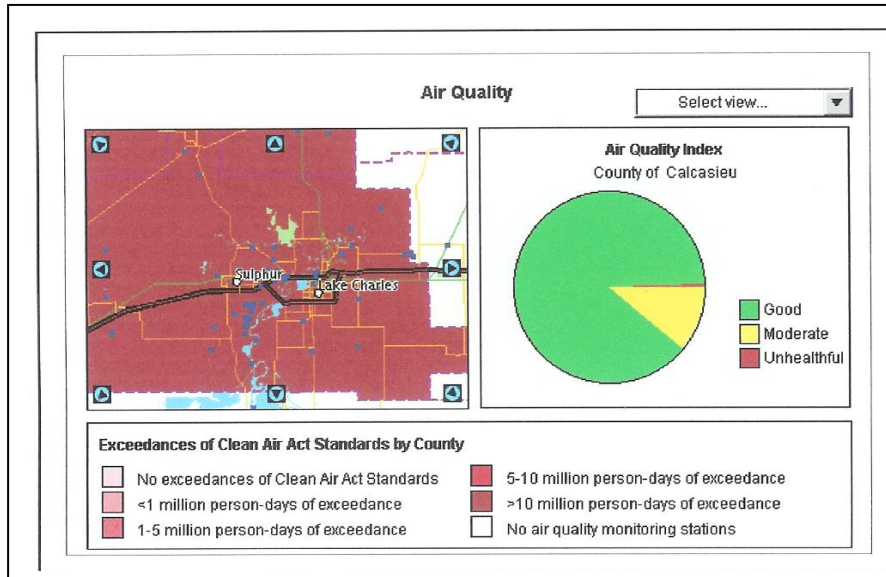
- *Clean Air Act: To build or expand a polluting facility, must install pollution controls in use by other companies in the same industrial sector (United States Code title 42, section 7412).*
- *Clean Water Act: To operate a polluting facility, must install effluent controls in use by other companies in the same industrial sector (United States Code title 33, section 1311).*



Photo: The Conoco Phillips oil refinery in the African American community of Mossville, Louisiana. The refinery operates with all the legally required pollution controls.

**2. The US environmental legal system sets air quality standards for large geographic areas that obscure unhealthy air in smaller areas.**

- Pursuant to the Clean Air Act, the United States is divided into 264 “air quality control regions” for attaining air quality (United States Code title 5, section 7407).



The approximately 5 square mile area of Mossville is located in the air quality control region of Calcasieu Parish, which is an area of 1,072 square miles. The air quality control region of Calcasieu Parish is deemed to have overall “good” air quality (see predominantly green pie chart) which overrides the high concentration of criteria pollutants that contribute to the “unhealthy air” in Mossville (see brown sliver in pie chart).

**3. The US environmental legal system sets pollution controls on a fraction of chemicals released by polluting facilities. These controls do not address the multiple, cumulative, and synergistic health and environmental impacts of toxic chemicals.**

**Toxic Chemicals Detected in the Air  
by the Louisiana Department of Environmental Quality  
Air Monitoring Station located near Mossville, LA**

Acetonitrile	Cis 1,2-Dichloroethylene	Perchloroethylene
Acrylonitrile	1,1-Dichloroethane	Phosgene
Ammonia	1,2-Dichloroethane	Propane
Benzene	Ethane	Propylene
1,3-Butadiene	Ethylbenzene	Propylene Oxide
Butane	Ethyl Chloride	Styrene
2-Butanone	Ethylene	Sulfur Dioxide
Carbon Disulfide	Ethylene Dichloride	Tetrachloroethylene
Carbon Tetrachloride	Ethylene Oxide	Titanium Tetrachloride
Carbon Sulfide	Hydrogen Chloride	Toluene
Chlorine	Hydrogen	Sulfide
Chloroethane	Methacrylonitrile	Trichloroethylene
Chloroform	MTBE	Vinyl Acetate
Chloromethane	Nitrogen Oxide	Vinyl Chloride
		Xylene

Although some air toxins are monitored by environmental agencies, these agencies are not required to consider the aggregate and long-term effects of toxic chemicals on human health and the environment. The listed chemicals include known carcinogens, as well as reproductive, developmental, genetic, and respiratory toxins.

*Source: Louisiana Department of Environmental Quality*

4. The US environmental legal system authorizes polluting companies to self-monitor their facilities for compliance with environmental regulations.

- o Clean Air Act: The EPA Administrator may require any person who owns or operates any emissions source to monitor its operations (United States Code title 42, section 7414(a)(1)).

**PERFECT SCORE?**  
A refinery with no leaks would seem to be impossible, yet that's what Motiva claimed in a 1998 report that showed an unbroken series of zeroes that went on for page after page. Regulators now question whether the company monitored leaks as well as it claimed.  
See graphic, A-16.

**SEMIOFFICIAL LEAK REPORT SUMMARY**  
NPS REPORT 000  
FUGITIVE EMISSIONS MONITORING PROGRAM  
DEPARTMENT: *011*  
UNIT AREA: *011*  
SEMIOFFICIAL PERIOD COVERED: *1-1-98*

MONTH # IN SEMIOFFICIAL REPORTING PERIOD	VALVE LEAKS DETECTED	VALVE LEAKS NOT REPAIRED IN 15 CAL DAYS	PUMP LEAKS DETECTED	PUMP LEAKS NOT REPAIRED IN 15 CAL DAYS	DATE
<i>Jan</i> MONTH 1	0	0	0	0	0
<i>Feb</i> MONTH 2	0	0	0	0	0
<i>March</i> MONTH 3	0	0	0	0	0
<i>April</i> MONTH 4	0	0	0	0	0
<i>May</i> MONTH 5	0	0	0	0	0
<i>June</i> MONTH 6	0	0	0	0	0
TOTAL	0	0	0	0	0

**SEMIOFFICIAL LEAK REPORT SUMMARY**  
NPS REPORT 000  
FUGITIVE EMISSIONS MONITORING PROGRAM  
DEPARTMENT: *011*  
UNIT AREA: *011*  
SEMIOFFICIAL PERIOD COVERED: *1-1-98*

MONTH # IN SEMIOFFICIAL REPORTING PERIOD	VALVE LEAKS DETECTED	VALVE LEAKS NOT REPAIRED IN 15 CAL DAYS	PUMP LEAKS DETECTED	PUMP LEAKS NOT REPAIRED IN 15 CAL DAYS	COMPRESSION LEAKS DETECTED	COMPRESSION LEAKS NOT REPAIRED IN 15 CAL DAYS	IF LEAKS NOT REPAIRED LIST REASON FOR DEFICIT
<i>Jan</i> MONTH 1	0	0	0	0	0	0	
<i>Feb</i> MONTH 2	0	0	0	0	0	0	
<i>March</i> MONTH 3	0	0	0	0	0	0	
<i>April</i> MONTH 4	0	0	0	0	0	0	
<i>May</i> MONTH 5	0	0	0	0	0	0	
<i>June</i> MONTH 6	0	0	0	0	0	0	
TOTAL	0	0	0	0	0	0	

Excerpts from environmental reports prepared by the Shell/Motiva oil refinery in Norco, Louisiana show rows of zeroes as the measure of toxic emissions leaked from the refinery. Such reports exemplify how companies can falsely report their toxic emission data, which often goes unnoticed by regulatory agencies.

Source: *The Times-Picayune (New Orleans, LA)*

U.S. environmental laws do not establish safeguards or precautions for the multiple, cumulative, and synergistic health and environmental effects of toxic chemicals. Instead, the laws permit industrial facilities to pollute the environment with inadequate pollution control requirements that maintain, not improve, the *status quo* of polluting industrial operations.<sup>42</sup>

<sup>42</sup> The Clean Air Act authorizes the issuance of an air pollution permit to build or expand a polluting facility when the permit applicant meets requirements regarding the installation of specified devices and equipment that are already in use by other companies in the same industrial sector. (United States Code title 42, section 7412). Similarly, the Clean Water Act authorizes the issuance of a water discharge permit to operate a polluting facility when the permit applicant meets requirements regarding the installation of specified devices and equipment that are already in use by other companies in the same industrial sector. (United States Code title 33, section 1311).



These laws erroneously presume that human health and the environment are protected by such inadequate requirements. The pollution controls are required for a mere fraction of the universe of chemicals released by industrial facilities – 188 out of several thousand.<sup>43</sup> Furthermore, even for this limited universe of regulated chemicals, pollution control standards have only been established for some, but not all of the 188 chemicals.<sup>44</sup> Under this regime, the industrial facilities operating in and near Mossville continue to receive environmental permits for increasing levels of pollution, notwithstanding the fact that residents are currently suffering serious health problems and extensive environmental degradation.

Moreover, United States environmental laws and regulations have established purported health-based standards for ambient air quality based on large geographic regions, known as “air quality control regions.” In a country as vast in land mass as the United States, there are only 264 regional areas. The air quality standards are supposed to achieve a healthy outdoor air quality by setting limits on the concentration of six air pollutants (known as “criteria pollutants”) in order to protect public health and welfare.<sup>45</sup> The standard mistakenly presumes that criteria pollutants are uniformly distributed throughout each air quality control area, and that health problems only result when criteria pollutants exceed the health-based standards for the entire

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<sup>43</sup> The only toxic chemicals regulated under the Clean Air Act are the 188 hazardous air pollutants listed in § 112(b) of the Act. United States Code title 42, section 7412(b).

<sup>44</sup> The Environmental Protection Agency has established pollution controls for some, but not all, of the 188 chemicals known as “hazardous air pollutants.” Code of Federal Regulations volume 40, part 63.

Similarly, the Environmental Protection Agency has established minimum pollution controls for criteria pollutants emitted by some, but not all, industrial sources. Code of Federal Regulations volume 40, part 60.

<sup>45</sup> Clean Air Act, United States Code title 42, section 7408; Code of Federal Regulations volume title 40, part 50.

regional area. Entirely ignored is the fact that small areas within each region, where industrial polluting facilities are concentrated, can have dangerous levels of a criteria pollutant even when that region as a whole is in compliance with the health-based standard.

The health and environment of Mossville residents are clearly jeopardized by the multitude of toxic chemicals, each with its own harmful effects, released by surrounding industrial facilities. It is indisputable that existing environmental laws and regulations do not recognize, much less remedy, the significant pollution burdens of numerous toxic chemicals released by the fourteen different industrial facilities in Mossville.

The flaws in the U.S. environmental legal framework have been exposed by the growing social movement of people in the United States who denounce the phenomenon of polluting industries operating in or near communities that are populated predominantly by African Americans, Latinos, Native Americans, Asian Americans, and poor people. The demand of this social movement for environmental justice led to the issuance of a presidential executive order that directed all federal agencies, including EPA, to address the problem of disproportionate pollution burdens on racial minorities and the poor.<sup>46</sup> Pursuant to this executive order, EPA created the Office of Environmental Justice and convened the National Environmental Justice Advisory Committee to engage in, among other things, policy recommendations to the agency concerning its legal authority to address environmental justice issues.<sup>47</sup> Unfortunately, these efforts to date have merely identified a few environmental laws in the United States that simply

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<sup>46</sup> Executive Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Federal Register, vol. 59, p. 7,629 (Feb. 16, 1994).

<sup>47</sup> See, e.g., Office of Environmental Justice, U.S. EPA, *Environmental Justice in the Permitting Process: A Report from the National Environmental Justice Advisory Council's Public Meeting on Environmental Permitting*, EPA/300-R-00-0004, (2000), available at <http://epa.gov/compliance/environmentaljustice/nejac/ej-permit-process-recom-report.html>.

require opportunities for public participation in matters involving: (1) the issuance of permits to polluting facilities; (2) the monitoring of facilities; (3) the promulgation of pollution standards; and (4) the environmental compliance of facilities.<sup>48</sup>

Although public participation is important, these laws do not prohibit, or otherwise establish a remedy for, the underlying problem: the environmental legal framework that requires the issuance of permits to numerous polluting facilities that release tons of toxic chemicals in close proximity to residential communities. Notwithstanding the fact that communities such as Mossville habitually present objections to the injustice of the pollution burdens they suffer, the EPA has no legal obligation to deny permits in order to prevent, or even to ameliorate harmful

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<sup>48</sup> The following environmental statutes pertain to public participation in facility permits, facility monitoring, promulgation of pollution standards, and environmental compliance:

Concerning the issuance of permits to polluting facilities, *see* Clean Air Act, United States Code title 42, section 7475(a)(2); Federal Water Pollution Control Act (Clean Water Act), United States Code title 33, sections 1314(m), 1317(a)(2), (a)(3), 1342(a)(1), 1344(a); National Environmental Policy Act regulations, Code of Federal Regulations volume 40, sections 1506.6(a), 1506.10; Resource Conservation and Recovery Act regulations, Code of Federal Regulations volume 40, part 270.

Concerning the monitoring of facilities, *see* Clean Air Act, United States Code title 42, sections 7414(a), 7475(a)(7), 7475(e)(1); Federal Water Pollution Control Act (Clean Water Act), United States Code title 33, section 1318(a); Resource Conservation and Recovery Act, United States Code title 42, sections 6922(a), 6924(a), 6927(a), 6927(b).

Concerning the promulgation of pollution standards, which require public notice and comment, *see* Clean Air Act, United States Code title 42, sections 7410, 7411(b), 7412(b)(2), 7412(r)(7), 7521(l), 7545; Comprehensive Environmental Response, Compensation, and Liability Act, United States Code title 42, sections 9602(a), 9605(a), 9606(c), 9611(g); Federal Water Pollution Control Act (Clean Water Act), United States Code title 33, sections 1313, 1314(l), 1317; Resource Conservation and Recovery Act, United States Code title 42, sections 6922(a), 6924(a), 6924(n), 6924(o)(7).

Concerning environmental compliance *see* Clean Air Act, United States Code title 42, section 7604; Comprehensive Environmental Response, Compensation, and Liability Act, United States Code title 42, section 9659; Federal Water Pollution Control Act (Clean Water Act), United States Code title 33, section 1365; Resource Conservation and Recovery Act, United States Code title 42, section 6972(a).

pollution burdens. In fact, a report supported by the Office of Environmental Justice of the EPA, which was established to facilitate the agency's efforts to address disproportionate pollution burdens on people of color and the poor, explicitly acknowledges that "the law may not be the best way to address a problem."<sup>49</sup> EPA officials openly admit that denying a permit based on environmental justice grounds, such as preventing increased disproportionate pollution burdens, is beyond the scope of their legal authority.<sup>50</sup>

For this reason, policy recommendations for ensuring environmental justice have repeatedly urged EPA to exercise its *discretionary* authority under environmental laws to fashion remedies for alleviating the impacts of disproportionate pollution burdens.<sup>51</sup> The EPA has rejected such recommendations. And although the potential of the agency's discretionary authority to provide new and creative approaches to remedying disproportionate pollution burdens should not be ignored, it must be acknowledged that as a matter of law in the United States, there is no legally enforceable right to compel the EPA to exercise such authority.

Thus, U.S. environmental laws do not provide a remedy for the human rights violations suffered by Mossville residents. In fact, it is these laws that contribute to and maintain the violations.

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<sup>49</sup> Environmental Law Institute, *A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice*, p. 7 (2002).

<sup>50</sup> See Office of Environmental Justice, U.S. EPA, *Environmental Justice in the Permitting Process: A Report from the National Environmental Justice Advisory Council's Public Meeting on Environmental Permitting*, EPA/300-R-00-0004, p. 9 (2000), available at <http://epa.gov/compliance/environmentaljustice/nejac/ej-permit-process-recom-report.html>.

<sup>51</sup> Memorandum from Office of the General Counsel, *Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting* (Dec. 1, 2000), available at [http://www.epa.gov/air/ej/conference2007/Alan\\_Walts\\_EPA\\_Authorities.pdf](http://www.epa.gov/air/ej/conference2007/Alan_Walts_EPA_Authorities.pdf).

## 2. Civil Rights Law

The U.S. Supreme Court has ruled that Title VI of Civil Rights Act of 1964, as amended, United States Code title 42, section 2000d *et seq.*, only prohibits an act of intentional discrimination based on race, color, or national origin, and not an act that results in a discriminatory effect. *Alexander v. Sandoval*, 532 U.S. 275 (2001). In *Sandoval*, the U.S. Supreme Court expressly rejected the view that Title VI prohibits discriminatory effects that arise from acts that appear to be race neutral. Specifically, the U.S. Supreme Court rejected Plaintiffs' claim that the State of Alabama's discontinuation of a bilingual driver's license examination had a discriminatory effect on Spanish-speaking people in violation of Title VI, holding that such claims are not cognizable under Title VI, which only prohibits an act of intentional discrimination.

Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations [that prohibit discriminatory effects]. We therefore hold that no such right of action exists.

*Id.* at 293.

In the human rights situation in Mossville, where discrimination on the basis of race arises out of the governmental issuance of permits to polluting industrial facilities, it is virtually impossible to prove intentional discrimination, notwithstanding the fact that such facilities are disproportionately located in communities that are predominantly African American, Latino, Native American, or Asian American.<sup>52</sup> Governmental agencies that issue environmental

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<sup>52</sup> See, e.g., U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*, GAO/RCED-83-168, B-211461 (June 1, 1983), available at <http://www.gao.gov/docdb/lite/info.php?rptno=RCED-83-168>; United Church of Christ Commission for Racial Justice, *Toxic Waste and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites* (1987); Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (Westview Press 1990); Benjamin A. Goldman, *The Truth*

permits to polluting industries are deemed to have a legitimate claim that their permitting decisions are not purposefully discriminatory, but rather, are based on race-neutral regulatory criteria, so that any polluting facility meeting these requirements is entitled to receive a permit regardless of the resulting racially disproportionate burden of its toxic pollution.<sup>53</sup>

In a case with some factual similarities to the Mossville situation, a federal court dismissed a Title VI civil rights lawsuit brought by African American residents against a state environmental agency for issuing an air pollution permit that would increase existing levels of industrial pollution in their community, claiming that this constituted a discriminatory effect. Dismissing the lawsuit, the court ruled that “Title VI proscribes only intentional discrimination, [and thus] plaintiffs do not have a[n] . . . enforceable [right].” *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*, 274 F. 3d 771 (3<sup>rd</sup> Cir. 2001).

As an alternative to federal court litigation, some communities of color suffering racially discriminatory impacts of pollution have brought their civil rights complaints to the Office of Civil

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*About Where You Live: An Atlas for Action on Toxins and Mortality* (Three Rivers Press 1991); Marianne Lavelle and Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, THE NATIONAL LAW JOURNAL (Special Issue) (Sept. 21, 1992); *Race and the Incidence of Environmental Hazards: A Time for Discourse* (Bunyan Bryant & Paul Mohai eds. 1992); Rae Zimmerman, *Social Equity and Environmental Risk*, RISK ANALYSIS: AN INTERNATIONAL JOURNAL, vol. 13, no. 6, p. 649 (1993); *Confronting Environmental Racism: Voices from the Grassroots* (Robert D. Bullard ed., South End Press 1993); *Unequal Protection: Environmental Justice and Communities of Color* (Robert D. Bullard ed., Sierra Club Books 1994); Robert D. Bullard *et al.*, *Toxic Wastes and Race at Twenty, 1987 – 2007: A Report Prepared for the United Church of Christ* (2007).

<sup>53</sup> See, e.g., Office of Environmental Justice, U.S. EPA, *Environmental Justice in the Permitting Process: A Report from the National Environmental Justice Advisory Council’s Public Meeting on Environmental Permitting*, EPA/300-R-00-0004, pp. 6-9 (2000), available at <http://epa.gov/compliance/environmentaljustice/nejac/ej-permit-process-recom-report.html> (reporting that government stakeholders frequently cite their lack of any legal mandate to reject projects on grounds of racially disproportionate pollution burdens, and quoting an EPA official: “If the objective of the community is to stop the permit altogether . . . it is hard for EPA to share that goal. Our goal is to make sure these sources have permits . . .”).

Rights of the U.S. EPA, which, arguably, has the authority to investigate and to remedy not only intentional discrimination but discriminatory effects as well.<sup>54</sup> The EPA's authority is limited, however, to only those civil rights complaints of discrimination lodged against state agencies or other entities receiving federal funds from that agency.<sup>55</sup>

Lodging a civil rights complaint with the EPA is not a viable option for Mossville residents because their complaint is not against state agencies or other entities receiving federal

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<sup>54</sup> Code of Federal Regulations volume 40, section 7.35(b). *But see Alexander v. Sandoval*, 532 U.S. 275, 291 (2001) (noting that federal regulations implementing title VI of the Civil Rights Act of 1964 which prohibit discriminatory effects may be impermissible: “[I]t is most certainly incorrect to say that language in a regulation can conjure up a private cause of action that has not been authorized by Congress. Agencies may play the sorcerer's apprentice but not the sorcerer himself.”).

<sup>55</sup> United States Code title 42, section 2000d-1 (2003). Notwithstanding this authority, the willingness of the Environmental Protection Agency to provide civil rights remedies for *any* community is belied by the fact that the agency has failed to timely and adequately respond to nearly all of the long-pending civil rights complaints against state and local government agencies. In addition, EPA has not promulgated regulations regarding the most fundamental procedures and standards for investigating claims and rendering a decision on the merits. For example, the elements of a cognizable civil rights complaint have not been established, nor have evidentiary requirements or due process protections.

Since June 2003, of the 136 administrative civil rights complaints filed, the Environmental Protection Agency has only “informally resolved” one of these complaints. The rest have been rejected, dismissed, referred to another agency, or are currently under indefinite review by the Environmental Protection Agency. Office of Civil Rights, Environmental Protection Agency, *External Complaints and Compliance Program Ensuring Compliance with Non-Discrimination Requirement*, available at [www.epa.gov/civilrights/extcom.htm](http://www.epa.gov/civilrights/extcom.htm). Many of the complaints went undecided for more than five years, despite the fact that federal regulations require the Environmental Protection Agency to determine acceptance of a complaint within 20 days of filing, Code of Federal Regulation volume 40, section 7.120(d)(1), and to make a decision on the merits within 180 days, Code of Federal Regulation volume 40, section 7.115(c).

The Environmental Protection Agency's long-term practice of ignoring civil rights complaints is “. . . a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others. In such cases, resort to those remedies becomes a senseless formality” and thus need not be exhausted. *See Velasquez Rodriquez Case*, Merits, Inter-Am. Ct. H.R. (Ser. C) No. 4 at ¶ 68 (July 29, 1988).

funds; rather, their complaint is against the United States government for establishing an environmental regulatory system that requires the EPA and state environmental agencies to issue permits to polluting industries that can have the effect of discriminating against African Americans, Latinos, Native Americans, and Asian Americans by subjecting them to disproportionate pollution burdens.

Thus, there are no remedies available under federal civil rights law for violations based on actions that may unintentionally result in unequal treatment under the law based on race. Because there are no adequate or effective remedies for the racial discrimination resulting from the disproportionate pollution burdens suffered by Mossville residents, exhaustion of domestic remedies for violations of the human rights to equal protection and nondiscrimination is not required.

### **3. Administrative Law**

In addition to the shortcomings of the United States' environmental and civil rights laws with respect to remedying the human rights violations in Mossville, the United States' administrative laws are similarly ineffective. Under United States administrative laws, it is possible for citizens to seek judicial review of the actions of an agency, such as EPA.<sup>56</sup> However, this review is restricted to a finding of whether the agency's acts or omissions comply with the affirmative mandates of the law.<sup>57</sup> As set forth above, in issuing permits for increased pollution in Mossville, EPA has complied with its mandatory duties under the law. But, it is those laws themselves that completely fail to remedy the environmental degradation and associated health threats suffered by Mossville residents. Thus, a judicial determination of

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<sup>56</sup> See United States Code title 5, section 701, *et seq.*

<sup>57</sup> United States Code title 5, section 706.



whether EPA has complied with its mandatory duties under the law is completely irrelevant to Mossville residents' claim that United States laws do not protect them from the severe environmental degradation they suffer.

In addition to the affirmative legal mandates that EPA must follow, the agency also may exercise its discretion to take action that is not legally mandated. For example, EPA has the discretion under United States law to invoke measures that might afford a remedy to Mossville residents, but EPA is not legally required to exercise that discretion. In fact, Mossville residents on numerous occasions have requested that EPA take certain actions that are not legally mandated but which are within the discretion of EPA, such as a moratorium on permits that would increase pollution, a reduction of existing industrial pollution levels, relocation of Mossville residents, and medical monitoring and health services for Mossville residents.<sup>58</sup> However, EPA has refused to do so.<sup>59</sup> And Mossville residents have no right under United States administrative law to compel EPA to exercise its discretionary authority in any particular manner.<sup>60</sup>

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<sup>58</sup> Letter from Edgar Mouton, Jr., President, Mossville Environmental Action Now, to Carl Edlund, EPA, *et al.* (July 6, 1999), Mossville Environmental Action Now, *Chronology of Events Related to the Environmental & Health Crisis in Mossville, LA, August 1997 – May 2000*, App. 8, attachment 10.

<sup>59</sup> Joint letter from EPA, ATSDR, LDEQ, and the Louisiana Department of Health and Hospitals to Edgar Mouton, Jr., President, Mossville Environmental Action Now (Sept. 10, 1999), *id.* at attachment 14.

<sup>60</sup> *See, e.g.*, Office of Environmental Justice, U.S. EPA, *Environmental Justice in the Permitting Process: A Report from the National Environmental Justice Advisory Council's Public Meeting on Environmental Permitting*, EPA/300-R-00-0004, pp. 6-9 (2000), available at <http://epa.gov/compliance/environmentaljustice/nejac/ej-permit-process-recom-report.html> (reporting that government stakeholders frequently cite their lack of any legal mandate to reject projects on grounds of racially disproportionate pollution burdens, and quoting an EPA official: "If the objective of the community is to stop the permit altogether . . . it is hard for EPA to share that goal. Our goal is to make sure these sources have permits . . .").

#### 4. Tort Law

Notwithstanding the egregious environmental conditions suffered by Mossville residents, United States tort laws also do not afford Mossville residents a remedy. While the United States government has subjected Mossville residents to extensive environmental degradation resulting in serious threats to their lives and health, Mossville residents have no recourse against the government under United States tort laws. The sovereign immunity doctrine generally precludes lawsuits against the federal government unless it has consented to be sued.<sup>61</sup> Any exceptions to this doctrine are provided by legislation, such as the Federal Tort Claims Act, a statute that waives the federal government's sovereign immunity from certain tort lawsuits.<sup>62</sup> However, this Act precludes tort claims against the government for committing acts that are allowed under United States laws.<sup>63</sup> Thus, under United States tort law, the United States government would have sovereign immunity from a lawsuit by Mossville residents based on its system of permitting industrial facilities in close proximity to a residential area like Mossville without regard for the severe impacts on residents, because, sadly, such permitting is allowed under United States laws.

#### **C. THE UNITED STATES GOVERNMENT HAS FAILED TO MEET ITS BURDEN OF PROVING THAT DOMESTIC REMEDIES EXIST AND ARE EFFECTIVE FOR MOSSVILLE RESIDENTS**

In the *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Mossville Environmental Action Now*, the United

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<sup>61</sup> *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907) (“A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.”).

<sup>62</sup> Federal Tort Claims Act, United States Code title 28, sections 2671-2680.

<sup>63</sup> United States Code title 28, sections 1346(b) and 2674. In addition, federal courts have held that environmental laws pre-empt tort claims challenging activities authorized by such environmental laws, *see e.g., Milwaukee v. Illinois*, 451 U.S. 304 (1981).

States Government argues that, based on previous litigation by Mossville residents, domestic remedies are available for the ongoing human rights violations they suffer.<sup>64</sup> This argument is without merit.

The previous litigation cited by the United States Government achieved: (1) compelling the EPA to establish a pollution control standard for the vinyl manufacturing industry, which the agency had neglected to do for years;<sup>65</sup> and (2) settling a lawsuit against two companies operating facilities in Mossville based on a pipeline leak that had been neglected for years and caused extensive groundwater contamination in violation of their environmental permits.<sup>66</sup> Given the fact that when EPA sets a pollution control standard it will be based on the flawed legal presumption that underlies all pollution control standards, it will not alleviate the toxic pollution burdens suffered by Mossville residents.<sup>67</sup> In addition, the pollution control standard would apply only to vinyl production facilities, which constitute a fraction of the fourteen facilities surrounding the Mossville community.

Furthermore, because industrial companies are not liable under U.S. law for the pollution they release in accordance with environmental permits, which is the source of the human rights violations in Mossville, there is no legal remedy available for Petitioners.<sup>68</sup> The effect of the

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<sup>64</sup> *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Mossville Environmental Action Now, Petition No. 242-05, Precautionary Measure No. 25-05* at p. 6.

<sup>65</sup> The U.S. Government cites the case of *Mossville Environmental Action Now v. EPA*, 370 F.3d 1232 (D.C. Cir. 2004).

<sup>66</sup> The U.S. Government cites the Georgia Gulf Corporation Form 10K Filing with the United States Securities and Exchange Commission for the Fiscal Year Ending December 13, 1999 at pages 6-7.

<sup>67</sup> *See generally* discussion herein at section B. 1 “Environmental Law.”

<sup>68</sup> *Milwaukee v. Illinois*, 451 U.S. 304 (1981).

previous litigation brought by Mossville residents does not change the equation for them – they remain without adequate legal redress for their human rights violations in U.S. courts. Thus, the U.S. government has failed to prove that domestic remedies exist and are effective.<sup>69</sup>

## **V. BACKGROUND FACTS**

Mossville was founded by African Americans in the 1790's, and expanded as more African Americans emancipated from slavery settled in this rural community. Located near the Calcasieu Estuary, where over sixty-five kilometers (forty miles) of waterways produce a rich, biologically diverse environment, Mossville residents were historically able to sustain themselves by fishing, farming, and hunting, and they developed cultural and religious traditions that were based on preserving environmental conditions. In the past, Mossville children were baptized in the waterways surrounding the community; outdoor community gatherings for cultural events and social engagements were routine. “Because nature provided us with everything that we needed, we didn’t know we were poor,” explained Edgar Mouton, Jr., a life-long resident of Mossville and President of Mossville Environmental Action Now.<sup>70</sup>

The same qualities that supported the lives of Mossville residents – abundant natural resources, extensive waterways and wetlands – also attracted industrial companies seeking raw materials to manufacture petroleum and petrochemical products. Beginning in the 1930's and continuing today, the U.S. government and its political subdivisions have encouraged and facilitated the construction and operation of industrial factories in and near Mossville through the creation of industrial tax exemption laws, the designation of areas in and near Mossville as zones

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<sup>69</sup> See *Velásquez Rodríguez Case*, Preliminary Objections, Inter-Am. Ct.H.R. (Ser. C) No. 1 (1987) at ¶ 88 (“[T]he State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.”)

<sup>70</sup> Statement of Petitioner Edgar Mouton, Jr. (Audio recording of statement on file with Advocates for Environmental Human Rights).

for hazardous and heavy industrial facilities, and the enactment of environmental and public health laws that fail to require safe distances between hazardous industrial development and residential areas, and also fail to establish health protections from the multiple, cumulative, and synergistic impacts of large quantities of toxic chemicals generated by industrial facilities in the area.

**A. GOVERNMENTAL APPROVAL OF INDUSTRIAL OPERATIONS IN MOSSVILLE,  
LOUISIANA: A BRIEF HISTORY**

The catastrophic consequence of the economic incentives, land use approvals, and issuance of environmental permits approved by the U.S. government and its political subdivisions is that there are now fourteen industrial facilities clustered in and around Mossville (*see* “Map of Mossville Area Facilities” and “Table 1: Industrial Facilities Located in Close Proximity to the Mossville Community and Their Reported Amounts of Pollution Released During 1987-2006,” below).

# Map of Mossville Area Industrial Facilities



- Key**
1. Air Liquide (oxygen, nitrogen, and hydrogen gas)
  2. Arch Chemical (hydrazine and specialty chemicals)
  3. Bio-lab (water treatment biocides and specialty chemicals)
  4. CertainTeed Corp (polyvinyl chloride polymer)
  5. Georgia Gulf (vinyl chloride monomer)
  6. Sasol North America Inc. (specialty chemicals)
  7. Conoco Phillips (petroleum products)
  8. Entergy - Roy S. Nelson Power Plant (electricity from coal and natural gas)
  9. Lyondell Chemical Worldwide Incorporated (toluene diisocyanate ("TDI") and nitric acid)
  10. Excel Paralubes ("Group II base oil," which is the primary base stock in motor oil)
  11. PPG Industries, Inc. (chlorine, vinyl chloride, and other chemicals)
  12. PHH Monomers (polyvinyl chloride polymer)
  13. Tessenderlo Chemical (sodium hydrosulfide)
  14. Tetra Chemical (calcium chloride)

**Table 1: Industrial Facilities Located in Close Proximity to the Mossville Community and Their Reported Amounts of Pollution Released During 1987-2006<sup>71</sup>**

Facility	Reported Facility Pollution Released in the Mossville Area (1987-2006)	Manufactured Product(s)	Initial Year of Operation
<b>Air Liquide</b>	7,571 kg/16,692 lbs	Oxygen, nitrogen, hydrogen	1957
<b>Arch Chemical</b>	42,488 kg/93,669 lbs	Hydrazine and specialty chemicals	1934, then Olin
<b>BioLab</b>	135,439 kg/298,590 lbs	Water treatment biocides and specialty chemicals	1994
<b>Certainteed</b>	102,766 kg/226,558 lbs	Polyvinyl chloride polymer	1975
<b>Conoco Phillips Lake Charles Refinery</b>	7,110,901 kg/ 15,676,691 lbs	Gasoline and oil products	1961
<b>Entergy-Roy S. Nelson *</b>	900,866 kg/ 1,986,049 lbs	Electricity from coal & gas	1959
<b>Excel Paralube</b>	N/A	Oil products	1994
<b>Georgia Gulf</b> (acquired Condea Vista vinyl facility) **	137,129 kg/302,315 lbs	Vinyl chloride monomer	1961, then Conoco Chem.
<b>Lyondell</b> (formerly Olin/Arco/Arcadian)	10,194,616 kg/ 22,475,052 lbs	Toluene diisocyanate (TDI) and nitric acid	1934, then Mathieson AlkaliWork
<b>PHH Monomers</b>	N/A	Polyvinyl chloride	1997
<b>PPG Industries</b>	13,087,233 kg/ 28,852,115 lbs	Chlorine, vinyl chloride, and other chemicals	1947
<b>Sasol</b> (acquired Condea Vista chemicals facility)	6,632,593.91 kg/ 14,622,218 lbs	Specialty chemicals	1961, then Conoco Chem.
<b>Tessenderlo</b> (formerly Jupiter Chemicals)	7,763 kg/17,115 lbs	Sodium hydrosulfide	Mid-1970s
<b>Tetra Chemicals</b>	24,488 kg/53,987 lbs	Calcium chloride	1975
<b>TOTAL POLLUTION: 38,383,854 kg/84,621,051 lbs</b>			

\* Data from 1998 to 2006

\*\* Data from 1999 to 2006

<sup>71</sup> Pollution data compiled from the Toxic Release Inventory for the years 1987-2006, App. A. (Note: Appendices to this Second Amended Petition are designated by letters; any references to appendices with numbers are references to the appendices submitted with the original petition). Excel Paralube and PHH Monomer are not required to submit TRI reports. Information regarding manufactured products and historic data compiled from the Lake Area Industrial Alliance – Member Companies, *available at* <http://www.laia.com/members.asp>.

Because Mossville is an unincorporated community, unlike neighboring municipalities, Mossville has no governmental authority either to promulgate or to enforce tax programs, zoning/land use plans, or environmental standards. Instead, it is the United States government and its political subdivisions that have approved the location and operation of the industrial facilities in Mossville. As a result, Mossville residents are trapped in an environmental and health crisis that they did not create.

### **1. Industrial Tax Incentives and Zoning**

Beginning in 1936, the State of Louisiana enacted legislation to lure industrial development to Mossville and other areas by exempting manufacturing facilities from property taxes for ten year periods which can be extended indefinitely by expanding the facility.<sup>72</sup> Industries operating in Calcasieu Parish have taken full advantage of this generous tax break; the parish ranks second among the sixty-four Louisiana parishes for the highest number of industries receiving the 10 year industrial tax exemption.<sup>73</sup> The tax break has been heavily criticized for establishing an incentive for increasing industrial pollution and rewarding companies that have

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<sup>72</sup> See Louisiana Department of Economic Development, *Louisiana Industrial Property Tax Exemption: The Facts*, available at [http://www.lded.state.la.us/uploads/docs/ITEP\\_Facts.doc](http://www.lded.state.la.us/uploads/docs/ITEP_Facts.doc). (“The Industrial Property Tax Exemption abates, up to 10 years, local property taxes . . . on manufacturer’s new investment and annual capitalized additions. This exemption applies to all improvements to land, buildings, machinery, equipment, and any other property that is part of the manufacturing process.”)

See also Dominique Duval-Diop, State of Louisiana Legislative House Fiscal Division, *The Louisiana 10-Year Industrial Property Tax Exemption: A Summary of Descriptive Statistics*, available at <http://house.louisiana.gov/housefiscal/Publications/SCOFA/indtax-exempt.pdf> (providing a historical analysis of the justification for the law and its economic impact).

<sup>73</sup> *Id.* at p. 5.



poor environmental records, which in turn has contributed to the rephrasing of the Louisiana state motto from “fisherman’s paradise” to “polluter’s paradise.”<sup>74</sup>

Governmental decisions pertaining to land use have also shown favor to hazardous industrial expansion without regard for the proximity of such development to residential populations. As shown on the Calcasieu Parish Zoning Map,<sup>75</sup> there are several areas within and surrounding the Mossville community that have been designated for hazardous and heavy industrial development by the Calcasieu Parish government.

## **2. Environmental Permitting**

Ironically, it is pursuant to environmental laws that industrial facilities are allowed to release massive quantities of toxic chemicals and other harmful substances into the air, water, and land. Such permits allow the release of several hundred thousand kilograms (millions of pounds) of numerous industrial pollutants in the Mossville area every year.

The severe environmental degradation and resulting human rights violations suffered by Mossville residents are a consequence of the lack of appropriate legal mandates. The absence of such mandates gives rise to significant flaws in the U.S. system of environmental protection.<sup>76</sup>

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<sup>74</sup> See, e.g., Oliver A. Houck, *This Side of Heresy: Conditioning Louisiana’s Ten-Year Industrial Tax Exemption Upon Compliance with Environmental Laws*, TULANE LAW REVIEW, vol. 61, p. 289 (1986); Donald Bartlett & James Steele, *Paying a Price for Polluters*, TIME, p.72 (Nov. 23, 1998).

<sup>75</sup> See Calcasieu Parish Zoning Map, App. 1.

<sup>76</sup> See, e.g., Office of Environmental Justice, U.S. EPA, *Environmental Justice in the Permitting Process: A Report from the National Environmental Justice Advisory Council’s Public Meeting on Environmental Permitting*, EPA/300-R-00-0004, pp. 23-25 (2000), available at <http://epa.gov/compliance/environmentaljustice/nejac/ej-permit-process-recom-report.html> (recommending that EPA consider the following factors for denying permits applied for by toxic industries: (1) negative health risks; (2) racially disproportionate burdens; (3) cumulative and synergistic adverse impacts on human health and the environment; (4) high aggregation of risk from multiple sources; (5) community vulnerability based on the number of children, elderly, or asthmatics; (6) cultural practices including Tribal and Indigenous cultures and cultural reliance

Six of the more obvious flaws in the U.S. environmental regulatory system are that it: (1) requires emission limits and technological controls on only a fraction of pollutants; (2) fails to remedy past practices and prevent future actions that intentionally or inadvertently impose racially disproportionate pollution burdens; (3) does not prevent the location of individual toxic and hazardous facilities or the clustering of such facilities in close proximity to residential areas; (4) entirely fails to protect against the multiple, cumulative, and synergistic health impacts of pollutants; (5) relies on air quality standards that are set on an overbroad geographic scale, which completely ignores excessive air pollution occurring in smaller areas, and (6) presumes that human health and the environment are protected via technological controls employed by polluting industries.<sup>77</sup> Each of these six flaws demonstrates that the U.S. government provides woefully inadequate environmental protection, which has contributed to the severe environmental health crisis in Mossville.

Mossville Environmental Action Now has brought to the attention of governmental officials the fact that the requirements for obtaining an environmental permit to pollute fail to take into account the multiple, cumulative, and synergistic exposures for the community. In addition, the organization has called for a “buffer zone” or safe distance between the community and the industrial pollution. However, because of the serious flaws in the U.S. environmental regulatory system, government officials assert that they are powerless to adequately protect the Mossville environment, as explained by EPA:

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on land and water that may become pathways of toxic exposure; and (7) proximity to residential areas and adequacy of buffer zones.” EPA has failed to consider these factors.

<sup>77</sup> Clean Air Act: To build or expand a hazardous facility, must install pollution controls in use by other companies in the same industrial sector (United States Code title 42, section 7412). Clean Water Act: To operate a hazardous facility, must install effluent controls in use by other companies in the same industrial sector (United States Code title 33, section 1311).

By law, regulatory agencies must issue permits and allow construction of new facilities that meet all of the applicable requirements . . . . The [Clean Air Act] does not provide for permit moratoriums based on cumulative risk from multiple sources [of pollution] . . . . There is no specific requirement in the [law] for a ‘buffer zone.’<sup>78</sup>

### **3. Public Participation**

The racially disproportionate pollution burden in Mossville follows a pattern in Louisiana, where historic and unincorporated communities settled by African Americans have become surrounded by hazardous industrial facilities. As an unincorporated community, Mossville does not have any governmental authority, and, therefore, cannot regulate matters involving industrial development or land use. Such decisions are rendered by the Calcasieu Parish government, which has repeatedly approved hazardous industrial development in and surrounding the Mossville community.

The lack of political authority by Mossville is a manifestation of discrimination that has disadvantaged African Americans throughout U.S. history. From the time before Mossville’s founding through the introduction of industrial development there, African Americans in Louisiana were denied the right to participate in governmental matters. Pervasive racial discrimination was legal and socially acceptable under a system of racial segregation which reigned in the southern United States from the 1880s to the 1960s, during which Mossville residents and other African Americans in the southern United States were denied the right to vote.<sup>79</sup> Thus, neither as individual citizens nor as a community did Mossville residents have the right to participate in political decisions affecting their lives. Although racist governmental policies and disenfranchisement of

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<sup>78</sup> U.S. Environmental Protection Agency Region VI, *Quarterly Meeting in Calcasieu Parish, Calcasieu Plan Action Items*, pp. 32-33 (June 25, 1999).

<sup>79</sup> Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford University Press, 2004).

African Americans has since been abolished, the consequences of such historic injustices persist today. As explained by sociologist Dr. Robert Bullard, the absence of African Americans on local governmental commissions in communities in the southern United States remains a modern day problem:

In spite of the progress that has been made since the civil rights movement of the 1960s and 1970s, blacks remain underrepresented in policy-making boards and commissions, including industrial and environmental regulatory bodies. The interests of all-white industrial boards, zoning commissions, and governmental regulatory bodies may run counter to those of the black community.<sup>80</sup>

As a result of this lack of power, Mossville residents are trapped in an environmental and health crisis that they did not create. Notwithstanding the fact that Mossville residents now have the right to participate in governmental decision-making, such participation is stymied at every turn. For example, the responses by ATSDR and other governmental agencies to the urgent requests by Mossville Environmental Action Now for medical services, studies of the sources of dioxin emissions, and moratoriums on environmental permitting have essentially obstructed any progress.<sup>81</sup> As noted by Mossville resident LaSalle Williams:

If the people at ATSDR and EPA had to live in Mossville, they would have handled things differently. But because it is an African American community, they don't have to take action to protect us from the contamination that is affecting us.<sup>82</sup>

Mossville is a sad testament to the fact that, to this day, African Americans are provided inferior and unequal environmental protection from EPA and other regulatory agencies.<sup>83</sup> Furthermore,

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<sup>80</sup> Robert D. Bullard, *Dumping in Dixie: Race, Class, and the Politics of Place*, *supra* note 9, at p. 31.

<sup>81</sup> See Mossville Environmental Action Now, *Chronology of Events Related to the Environmental & Health Crisis in Mossville, LA, August 1997 – May 2000*, App. 8.

<sup>82</sup> Statement of Petitioner and Mossville resident, LaSalle Williams. (Audiotape recording on file with Advocates for Environmental Human Rights.)

<sup>83</sup> Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, *supra* note 9.

it is ironic that, twenty years after the initial report<sup>84</sup> documenting the inferior environmental protection afforded to racial minorities in the U.S., little has changed:

[C]ommunities [of color] not only face the same problems they did back then, but now face new ones because of government cutbacks in enforcement, weakening health protection, and dismantling the environmental justice regulatory apparatus.<sup>85</sup>

## **B. GOVERNMENTAL APPROVAL OF INDUSTRIAL OPERATIONS THREATENS THE LIVES AND HEALTH OF MOSSVILLE RESIDENTS**

The lives and health of Mossville residents are threatened on a daily basis by the fourteen hazardous industrial operations surrounding their community.

### **1. Mossville Residents Live in the “Kill Zones” of Several Hazardous Industrial Facilities**

The people in Mossville live in what industry representatives and government officials have termed a “vulnerable zone” but which Mossville residents know is a “kill zone” – an area where people will die or be seriously injured in a catastrophic event involving a significant release of the most dangerous substance stored or processed at the facility.<sup>86</sup> Seven of the fourteen industrial facilities surrounding Mossville have published “worst case scenario” reports which show that Mossville is located within the worst case scenario vulnerable zones of the

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<sup>84</sup> United Church of Christ Commission for Racial Justice, *Toxic Wastes and Race in the United States*, *supra* note 9.

<sup>85</sup> Robert D. Bullard *et al.*, *Toxic Wastes and Race at Twenty: 1987 – 2007*, *supra* note 9.

<sup>86</sup> See Code of Federal Regulations volume 40, section 1400.2(s) (“Vulnerable zone means the geographic area that could be affected by a worst-case scenario or alternative scenario release from a stationary source, as indicated by the off-site consequence analysis reported by the stationary source in its risk management plan pursuant to the applicable requirements of 40 CFR Part 68. It is defined as a circle, the center of which is the stationary source and the radius of which is the ‘distance-to-endpoint,’ or the distance a toxic or flammable cloud, overpressure, or radiant heat would travel after being released and before dissipating to the point that it no longer threatens serious short-term harm to people or the environment.”).

facilities.<sup>87</sup> Thus, all Mossville residents will die or suffer severe physical injuries in the event of a catastrophic release of a toxic chemical or explosion of a flammable substance at any one of the following facilities: Air Liquide, Biolab, Condea Vista (now Georgia Gulf and Sasol), Conoco Refinery, Lyondell, Olin, and PPG Industries.<sup>88</sup> Some of these facilities have indicated that although they could substantially reduce the size of the vulnerability zone using available safety precautions and emergency response techniques, because of their proximity to Mossville there are no precautions available that would shrink the zones enough to safeguard all residents.<sup>89</sup>

**Table 2: Vulnerable Zones of Mossville Industrial Facilities<sup>90</sup>**

<b>Facility</b>	<b>Most Dangerous Toxic Chemical or Flammable Substance Processed or Stored</b>	<b>Worst Case Scenario Vulnerable Zone</b>
<b>Air Liquide</b>	Ammonia	5.8 km (3.6 miles)
<b>Biolab</b>	Bromine	9.2 km (5.7 miles)
	Chlorine	> 40.2 km (> 25 miles)
<b>Condea Vista (now Georgia Gulf and Sasol)</b>	Vinyl Chloride Monomer	1.8 km (1.1 miles)
	Anhydrous Hydrogen Chloride	> 40.2 km (> 25 miles)
<b>Conoco Refinery</b>	Butane	1.9 km (1.16 miles)
<b>Lyondell</b>	Phosgene	> 40.2 km (> 25 miles)
<b>Olin (now Arch Chemical)</b>	Chlorine	> 40.2 km (> 25 miles)
<b>PPG Industries</b>	Chlorine	> 40.2 km (> 25 miles)
	Vinyl Chloride	2.3 km (1.4 miles)

<sup>87</sup> Report by Wilma Subra, *supra* note 8, at pp. 21-24, App. 3 (presenting an analysis of the risk management information reports prepared and publicly distributed by seven industrial facilities located in the Mossville area.)

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at pp. 23-24.

<sup>90</sup> Information excerpted from report by Wilma Subra, *id.* at p. 24.

The very real potential for a catastrophic event to occur is evidenced by the record of frequent accidental fires, spills, and leaks of chlorine, vinyl chloride, butane, and other worst case scenario substances at these facilities. For example, according to 2000 and 2001 reports, four Mossville facilities collectively had either a fire, spill, or leak once every three to four days, resulting in the unauthorized release of more than 181,400 kg (400,000 lbs.) of toxic and hazardous substances during that period.<sup>91</sup> These substances include chemicals that can cause cancer and other debilitating diseases affecting human reproduction, development, and hormone functioning.<sup>92</sup> Most importantly, the 2000 and 2001 reports indicate that approximately 87% of these incidents were not preventable.<sup>93</sup> (In the event of an accident resulting in the unauthorized release of a regulated pollutant, individual facilities are required to file reports which are supposed to indicate, among other things, whether the release was “preventable” or “not preventable.”)

Facility accidents and unauthorized releases continue to be a serious problem. According to 2006 and 2007 reports, unauthorized releases were more than double the 2000 and 2001 amounts, totaling over 25,401,172.72 kg (56,000,000 lbs.) of toxic and hazardous substances.<sup>94</sup> Alarming, in 2006 alone accidents occurring at the Conoco Phillips refinery caused over

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<sup>91</sup> *Id.* at pp. 18-20 (data compiled from “Notification of Excess Emissions” and “Unauthorized Releases” reports submitted for the years 2000 and 2001 by Condea Vista, Conoco Lake Charles Refinery (now Conoco Phillips), Georgia Gulf (formerly Condea Vista’s vinyl production units), PPG Industries, and Sasol (formerly Condea Vista specialty chemicals units).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See report by Wilma Subra, *Unauthorized Releases by Major Industrial Facilities Near Mossville, Louisiana, 2000, 2001, 2006, 2007*, p. 5, table 6 (June 2008), App. C. See also Toxic Release Inventory (“TRI”) Data, 1987 to 2006, App. A. (Note: Appendices to this Second Amended Petition are designated by letters; any references to appendices with numbers are references to the appendices submitted with the original petition.)

24,947,580.35 kg (55,000,000 lbs.) of sulfur dioxide, a respiratory toxin, to be released into the environment.<sup>95</sup>

According to Lillie Adams, who lived in Mossville for forty-three years before moving in February 2003 because of groundwater contamination caused by a neglected pipeline leak, spills and fires occur frequently at nearby facilities:

I lived two blocks from Condea Vista [now Georgia Gulf and Sasol] in Mossville with my husband and children. The spills and flaring would happen all the time. We would have to do what they call a shelter-in-place, which means shutting yourself in your home and turning off the air conditioner, whenever there was an accident at the plant. But, most times you wouldn't know about the accidents until after it was over. They just wouldn't tell anybody about it. We were right there next to the plant, and weren't told anything about the accidents. It was horrible because no one cared about our health.<sup>96</sup>

Mossville resident Sally Comeaux still lives across the street from Sasol, Conoco Phillips Oil Refinery, and Georgia Gulf. According to Ms. Comeaux, noxious odors and flaring smokestacks continue to be regular occurrences.

## **2. Toxic Exposures Threaten the Lives and Health of Mossville Residents**

Exposure to toxic chemicals released by industrial facilities into the air, water, and land in Mossville is threatening the lives and health of Mossville residents.

### ***Toxic Dioxin Exposures***

Dioxin exposures threaten the lives and health of Mossville residents. Dioxin is a class of extremely toxic, persistent, and bioaccumulative chemicals that can build up in the human body,

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<sup>95</sup> *Id.* See also, Advocates for Environmental Human Rights *et al.*, *Conoco Phillips: What It Passes on to the People of Mossville, Louisiana* (May 2008), available at [www.ehumanrights.org](http://www.ehumanrights.org)

<sup>96</sup> Statement of Petitioner and former Mossville resident Lillie Adams. (Audiotape recording of the statement on file with Advocates for Environmental Human Rights).



where they are stored in fatty tissues and fluids, such as breast milk, and can be passed on to fetuses and infants during pregnancy and lactation. The health effects of dioxins in humans include cancer, damage to the reproductive system, impairment of the immune system, and extensive disruption of normal hormone functions, including neurobehavioral development.<sup>97</sup> As bioaccumulative toxins, the harmful health effects are amplified by their ability to persist in the environment for years, with higher concentrations occurring higher up in the food chain. Common sources of dioxins include waste and fuel combustion, oil refining processes, and chemical manufacturing.<sup>98</sup> Several of these common sources are included among the fourteen industrial facilities located in extremely close proximity to the homes, playgrounds, and churches of Mossville. Because of the significant toxicity of dioxins, facilities whose processes create dioxins must report the amount of their annual release of dioxins, not in pounds as is the case for all other reportable chemicals, but in significantly smaller quantities of 0.1 gram or greater.<sup>99</sup>

In 1998, the U.S. Agency for Toxic Substances and Disease Registry (“ATSDR”) conducted a dioxin exposure investigation and reported that Mossville residents have an average

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<sup>97</sup> M. Kogevinas, *Human Health Effects of Dioxins*, *supra* note 16.; B. Eskenazi *et al.*, *Serum Dioxin Concentrations and Menstrual Cycle Characteristics*, *supra* note 16; P. Mocarelli *et al.*, *Paternal Concentrations of Dioxin and Sex Ratio of Offspring*, *supra* note 16; M. Warner *et al.*, *Serum Dioxin Concentration and Breast Cancer Risk in the Seveso Women’s Health Study*, *supra* note 16.

<sup>98</sup> EPA, *Inventory of Sources of Dioxins in the United States*, External Review Draft, 2-1, EPA/600/P-98/002Aa (1998), available at <http://www.epa.gov/ncea/pdfs/dioxin/dioxin.pdf>.

<sup>99</sup> See Code of Federal Regulations volume 40, section 372.28 (“Lower thresholds for chemicals of special concern”).

level of dioxin that is three times higher than the levels of dioxin detected in ATSDR's comparison group of people in different parts of the United States.<sup>100</sup> ATSDR also found that:

[b]lood dioxin levels were elevated in residents of Mossville who participated in the [exposure investigation]. The median and mean concentrations of dioxin . . . in the [exposure investigation] participants were greater than 95<sup>th</sup> percentile concentration of a comparison population.<sup>101</sup>

In 2001, ATSDR decided to conduct a "Follow-up Exposure Investigation" in Mossville. However, that investigation once again involved only more sampling of the environment and blood of Mossville residents. Although ATSDR stated that one purpose of its 2001 study was "to evaluate potential current environmental sources of dioxin exposure," the agency's report shows no action whatsoever to determine the sources of the dioxin exposure in order to begin eliminating such sources.<sup>102</sup>

As part of the follow-up exposure investigation, ATSDR again collected blood samples from Mossville residents who participated in the 1998 dioxin exposure investigation, and analyzed those blood samples for dioxins. ATSDR also collected samples of fruits, vegetables, nuts, yard soil, indoor dust, and attic dust from the homes of the Mossville participants. In addition, ATSDR conducted dioxin testing of fish species from local waters that are typically eaten by Mossville residents.

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<sup>100</sup> ATSDR, Division of Health Assessment and Consultation, *Exposure Investigation Report, Calcasieu Estuary, Lake Charles, Calcasieu Parish, Louisiana*, *supra* note 13; *see also* Pat Costner, *supra* note 13, App. 5.

<sup>101</sup> ATSDR, Division of Health Assessment and Consultation, *Exposure Investigation Report, Calcasieu Estuary, Lake Charles, Calcasieu Parish, Louisiana*, *supra* note 13; *see also* Pat Costner, *supra* note 13 at p. 7.

<sup>102</sup> ATSDR, *Health Consultation: Follow-Up Exposure Investigation, Calcasieu Estuary (a/k/a Mossville), Lake Charles, Calcasieu Parish, Louisiana*, EPA Facility ID: LA0002368173, p. 1 (March 13, 2006), *available at* <http://www.atsdr.cdc.gov/HAC/pha/CalcasieuEstuary/CalcasieuEstuaryHC031306.pdf>.

ATSDR's 2001 report acknowledged that fish collected from local waters were unsafe to eat because they are contaminated with high levels of dioxins and PCBs.<sup>103</sup> Specifically, ATSDR dioxin test results revealed average dioxin levels in fish samples was 20.55 ppt, which far exceeds the national range of dioxin concentrations in fish: 1.43 – 2.20 ppt.<sup>104</sup> Samples of yard soil, as well as attic and indoor dust collected from the homes of Mossville residents who participated in the follow-up dioxin study, contained dioxins that exceed the clean up goal for dioxin-contaminated soil established by EPA.<sup>105</sup> In addition, the dioxins detected in the yard soil samples exceeded the regulatory clean up standards established by the state of Florida for dioxin-contaminate soil.<sup>106</sup> (The state of Louisiana has not established any clean up standard for dioxins in soil.) Furthermore, each sample group of vegetables, fruits, and nuts grown in the yards of Mossville residents contained dioxins.<sup>107</sup>

ATSDR did not finalize the reporting of its 2001 follow-up dioxin investigation until March 2006, without any explanation for the long period of delay. In the final report, ATSDR acknowledges that Mossville residents have elevated levels of dioxin in their blood, with an average concentration that remained three times higher than ATSDR's national comparison group.<sup>108</sup> Notwithstanding the severe health effects of dioxins and the elevated dioxin levels

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<sup>103</sup> *Id.* at pp. 13, 38.

<sup>104</sup> Mossville Environmental Action Now, *et al.*, *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana*, *supra* note 15, at pp. 11-13, App. B.

<sup>105</sup> *Id.* at pp. 8-11.

<sup>106</sup> *Id.* at p. 9.

<sup>107</sup> *Id.* at pp. 13-14.

<sup>108</sup> See ATSDR, *Health Consultation: Follow-Up Exposure Investigation, Calcasieu Estuary (a/k/a Mossville), Lake Charles, Calcasieu Parish, Louisiana*, *supra* note 102, at pp. 11, 37 (first, noting on p. 11 that the mean dioxin concentration in the blood samples of all Mossville

among Mossville residents, ATSDR outrageously concluded in its report that “the health significance of the blood dioxin concentrations measured in this investigation is unclear.”<sup>109</sup>

In 2002, ATSDR conducted a first-time dioxin testing of people living in the broader area of Calcasieu and Lafayette Parishes, which the agency refers to as the “2002 Louisiana Dioxin Study.”<sup>110</sup> With respect to Calcasieu Parish, which encompasses the Mossville community, the study included residents living in areas of the Parish *other than Mossville* – a total area of 1,0721.2 square miles which is largely nonindustrial, and extends far beyond Mossville and its surrounding industrial facilities which produce dioxin emissions. In this study, ATSDR concluded that “[m]ost of the people tested [in Calcasieu and Lafayette Parishes] have dioxin blood levels similar to ATSDR’s [national] comparison group.”<sup>111</sup> However, “most of the people [in Calcasieu Parish]” does not include the residents of Mossville whose average blood dioxin level is three times higher than ATSDR’s national comparison group.

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residents collected in 2001 (calculated in total toxic equivalents or “TEQs”) is 61.0 parts per trillion or ppt, and stating that the mean dioxin concentration in the blood samples of all Mossville residents collected in 1998 was 68.5 ppt; and secondly, acknowledging on p. 37 that “mean dioxin concentrations . . . were elevated when compared to different reference populations.”)

*See also* Pat Costner, *Dioxin & PCB Contamination in Mossville, Louisiana: A Review of the Exposure Investigation by ATSDR*, *supra* note 13, at p. 1, App. 5.

<sup>109</sup> ATSDR, *Health Consultation: Follow-Up Exposure Investigation, Calcasieu Estuary (a/k/a Mossville), Lake Charles, Calcasieu Parish, Louisiana*, *supra* note 102, at p. 35.

<sup>110</sup> Media Announcement, ATSDR, *ATSDR to Release Preliminary Results of 2002 Louisiana Dioxin Study and 2001 Follow-Up Study Investigation at Public Meetings in Westlake and Lafayette, LA* (April 29, 2003), *available at* <http://www.atsdr.cdc.gov/NEWS/calcasieula042903.html>.

<sup>111</sup> *Id.*

ATSDR health consultants determined that local sources are likely responsible for the significant levels of dioxin exposure among Mossville residents.<sup>112</sup> Subsequent to this determination, EPA required specific industrial facilities to begin reporting their annual releases of dioxins.<sup>113</sup> A total of six facilities (Conoco Phillips oil refinery, Entergy Roy S. Nelson coal-fired power plant, Georgia Gulf vinyl manufacturing facility, Lyondell chemical manufacturing facility, PPG Industries vinyl manufacturing facility, and Sasol chemical manufacturing facility) release dioxins into the Mossville area. Prior to the requirement that industries annually report their dioxin releases, EPA generally recognized that facilities like those in Mossville are sources of dioxins.<sup>114</sup>

Throughout the seven years of ATSDR's dioxin testing, Mossville residents have urged ATSDR, EPA, the Louisiana Department of Environmental Quality, and the Louisiana Department of Health and Hospitals to protect their health by thoroughly investigating whether industrial facilities are contributing to the dioxin exposures suffered by Mossville residents. In response, these agencies have presented misleading information about the significance of the dioxin exposure in Mossville, while failing to disclose data that show the direct links between local industrial dioxin emissions and the dioxins detected in the blood and environment of Mossville residents.

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<sup>112</sup> Report by Drs. Peter Orris & Katherine Kirkland; Letter from Dr. Orris to ATSDR, *supra* note 18, App. 6.

<sup>113</sup> A regulatory amendment to the Toxic Release Inventory ("TRI") required specific industrial facilities to report their releases of dioxin. Federal Register, Volume 64, No. 2 (Oct. 2, 1999). Accordingly, beginning in the year 2000, the following facilities have acknowledged in their TRI reports that their processing and/or wastes contain dioxin: Conoco Phillips Lake Charles Refinery, Entergy Roy S. Nelson Power Plant, Georgia Gulf, Lyondell Chemical, PPG Industries, and Sasol.

<sup>114</sup> EPA, National Center for Environmental Assessment, *Inventory Sources and Releases of Dioxin-like Compounds in the United States* (1999).

In addition to ATSDR's seven years of dioxin testing in Mossville, for five years EPA has collected data from the reports of industrial facilities, known as the Toxic Release Inventory or "TRI" reports, that include identification and measurement of the dioxins and dioxin-like compounds that industrial facilities annually release into the environment. However, these agencies apparently have never bothered to analyze the TRI data in terms of any connection to the dioxin exposure of Mossville residents because they have never disclosed any information regarding any links between local industrial emissions of dioxins and the dioxin exposure in Mossville.

As summarized below, and as fully documented in the appended 2007 report, *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana: A Report Based on the Government's Own Data*, there are significant and direct linkages between local industrial dioxin emissions and the dioxins in the blood of Mossville residents.<sup>115</sup> ATSDR's blood dioxin data shows that the following five dioxin compounds comprise 77% of the dioxins detected in the blood of Mossville residents: 1,2,3,7,8-Pentachlorodibenzo-p-dioxin, 2,3,7,8-Tetrachlorodibenzo-p-dioxin, and three Hexachlorodibenzo-p-dioxin compounds.<sup>116</sup> However, ATSDR failed to examine TRI reports compiled by EPA which reveal that 77% of the dioxin compounds emitted by Georgia Gulf, a vinyl production facility located across a tiny road from Mossville are the same dioxin compounds that comprise 77% of the dioxins detected in the blood of Mossville residents.<sup>117</sup>

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<sup>115</sup> Mossville Environmental Action Now, *et al.*, *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana*, *supra* note 15.

<sup>116</sup> ATSDR, Data Sheet: "Congener Concentrations for Exposure Investigation Participants, 2001 Sampling & 1997-1998 Sampling Results" (August 2, 2006).

<sup>117</sup> EPA, Toxic Release Inventory (2001).

These five dioxin compounds are deemed by scientists to be the most toxic of all dioxin compounds.

As shown in the table below, there is a direct link between the dioxin compounds in the blood of Mossville residents and the dioxin compounds released into the environment by the Georgia Gulf facility. The table also shows that the percentage of these dioxin compounds in Georgia Gulf's emissions increased to 80.04% in 2004.<sup>118</sup> ATSDR and EPA have never disclosed this information to Mossville residents or the public.

<b>Table. 3 LINKS BETWEEN THE DIOXINS IN MOSSVILLE RESIDENTS' BLOOD AND THE DIOXINS EMITTED BY GEORGIA GULF</b>			
<b>Highest Contributors to the Total Dioxin TEQ Detected in Mossville Residents' Blood (2001 ATSDR)</b>	<b>% of Total Dioxin TEQ in Mossville Residents' Blood (2001 ATSDR)</b>	<b>% of Total Dioxin Emissions by Georgia Gulf (2001 TRI)</b>	<b>% of Total Dioxin Emissions by Georgia Gulf (2004 TRI)</b>
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	42.70%	35.27%	38.88%
2,3,7,8-Tetrachlorodibenzo-p-dioxin	11.40%	34.75%	36.46%
Hexachlorodibenzo-p-dioxins	23.10%	7.75%	4.70%
<b>TOTAL</b>	<b>77.20%</b>	<b>77.77%</b>	<b>80.04%</b>

Furthermore, as documented in the *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana* report, the annual reports by Conoco Phillips, Entergy, Georgia Gulf, PPG Industries and Sasol of their releases of dioxins show the same dioxin compounds that significantly contribute to the total concentration of dioxins that ATSDR detected in the attic and indoor dust of Mossville residents' homes, their yard soil, the fruits, vegetables, and nuts grown by residents, and in the fish that residents typically catch from local waters.<sup>119</sup>

<sup>118</sup> EPA, Toxic Release Inventory (2004).

<sup>119</sup> Mossville Environmental Action Now, *et al.*, *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana*, *supra* note 15, at pp. 8-14.

Although it is indisputable that dioxin exposure is a serious threat to human life and health, governmental health and environmental agencies have failed to: investigate the industrial facilities that are known sources of dioxins; recommend the relocation of Mossville residents to healthier environs; facilitate the delivery of medical services to Mossville residents suffering from toxic exposures; or offer a meaningful role for Mossville residents to participate in the dioxin exposure investigation. Instead, the leading public health agency, ATSDR, has repeatedly broken promises to assist the community in obtaining medical services, failed to provide information requested by Mossville residents, and denied residents a participatory role in its dioxin exposure investigation.<sup>120</sup>

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<sup>120</sup> See the following attachments to Mossville Environmental Action Now, *Chronology of Events*, *supra* note 58, App. 8.

*Attachment 10:* “As you know from your blood/dioxin tests and the symptom survey research by Dr. Marvin Legator, our community is suffering from significant health problems. A work group to plan a health clinic in the Mossville community is a priority.” (Letter from Edgar Mouton, Jr., President of Mossville Environmental Action Now, to Dr. John Abraham, ATSDR *et al.* (July 6, 1999)).

*Attachment 23:* “This year has been filled with the agencies failing to respond to our letters, last-minute cancellations of meetings without explanation, and resistance to working with our community, and ignoring the urgent concerns and needs by our community.” (Letter from Edgar Mouton, Jr., President of Mossville Environmental Action Now, to Dr. John Abraham, ATSDR (Apr. 24, 2000)).

*Attachment 24:* “As you may know, meetings that were scheduled by ATSDR and other agencies in our community for February 25 and 26, 2000 were abruptly canceled without adequate explanation. In our letters of February 24 and 29, 2000 we raised several issues and questions, which to date, your agencies have refused to address or respond to.” (Letter from Edgar Mouton, Jr. and Dorothy Felix, Mossville Environmental Action Now, to Dr. Henry Falk, ATSDR *et al.* (May 1, 2000)).

*Attachment 24:* “During the April 29<sup>th</sup> [2003] meeting, ATSDR’s lack of goof faith in dealing with our community was discussed. You heard from several Mossville residents, some of whom were tested for dioxin by ATSDR, who shared with you their concerns about not knowing what, if anything, ATSDR is doing to respond to the health crisis in our community. Additionally, you were informed that several attempts had been made by MEAN to hold regularly scheduled conference calls with ATSDR staff to keep the Mossville community



Louisiana environmental and health agencies have also been antagonistic to in-depth investigation into dioxin exposures in Mossville. In 1997, the Louisiana Department of Health and Hospitals refused to look into evidence of Mossville residents' exposure to dioxin.<sup>121</sup> In 1999, this health department publicly denounced the findings made by Dr. Peter Orris, an ATSDR medical consultant, who observed that local sources were likely responsible for the dioxin exposures in Mossville.<sup>122</sup> In March 2000, Louisiana state agencies participated in an inter-agency meeting on the dioxin exposure investigation in Mossville in which there was consensus on the following two positions: to not invite Dr. Peter Orris, the ATSDR medical consultant, to a future meeting because the "state [of Louisiana] feels his presence would be a disruptive force" and also to reject an environmental justice or "EJ" process that would invite and facilitate meaningful public participation by Mossville residents.<sup>123</sup>

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updated on ATSDR's activities and allow residents to make suggestions on how ATSDR can respond to our serious environmental health problems. However, key staff from ATSDR, who worked on the dioxin exposure investigation, failed to participate in these conference calls. These conference calls lasted only a few weeks before they were stopped without an explanation. You responded to our complaints by acknowledging that the cancelled meetings and broken communications were mistakes in the past." (Letter from Edgar Mouton, Jr., Mossville Environmental Action Now, to Dr. Henry Falk, ATSDR (July 21, 2003)).

<sup>121</sup> See letter from Frank J. Welch, Medical Director, Environmental Epidemiology & Toxicology, Louisiana Department of Health and Hospitals, to Robert C. McCall (October 14, 1997) ("The mean 2,3,7,8,-TCDD [a dioxin compound] concentration is 10.39 parts per trillion (ppt) . . . . According to . . . ATSDR . . . the average level of 2,3,7,8,-TCDD in human blood ranges from 4.0 – 7.6 ppt . . . . [I have determined that] no further action is recommended.") Mossville Environmental Action Now, *Chronology of Events*, *supra* note 58, App. 8, at attachment 1.

<sup>122</sup> See David W. Hood, Secretary of the Louisiana Department of Health and Hospitals, *DHH Only Interested in Facts*, Letters to the Editor, AMERICAN PRESS (Lake Charles, LA), (Oct. 17, 1999) (denouncing ATSDR's medical consultant for "interjecting unscientific opinions" in his health consultation report.") Mossville Environmental Action Now, *Chronology of Events*, *supra* note 58, App. 8, at attachment 17.

<sup>123</sup> Notes from Mossville Summary Issues (meeting of Louisiana officials), Wednesday, Mar. 8, 2000, Baton Rouge, LA, App. 12.

### ***Toxic Air Pollution***

It is important to note that the significant exposure of Mossville residents to dioxin is just one among many of the serious environmentally related health problems they face.<sup>124</sup> As explained by ATSDR medial consultants, “the specific chemicals tested in the blood of these individuals are, in all likelihood, only a small component of the overall toxic exposure to the population of these communities.”<sup>125</sup>

Reports by government and industry provide only a partial quantification of the overall toxic exposures in Mossville because such reports are restricted to specified toxins and/or specified facilities. Nevertheless, publicly available pollution data provided by the “Toxic Release Inventories” or “TRIs,”<sup>126</sup> show that, on a cumulative basis, Mossville area industrial facilities released several million kilograms (pounds) of toxic chemicals into the air between 1987 and 2006.<sup>127</sup> The known health effects of the toxic chemicals released into the air include cancer, respiratory and digestive diseases, as well as developmental and reproductive impairments, among other serious health problems. This pollution data also indicates that a significant amount of the industrial air pollution was released from smokestacks as well as through leaks in the pipes, flanges, and connectors in the facilities. These toxic airborne leaks

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<sup>124</sup> See, e.g., report by Wilma Subra, *supra* n. 7, App. 3 at pp. 3-5, 7-11, 16-20 (identification and quantification of toxic chemicals released by industrial facilities in the Mossville area).

<sup>125</sup> Report by Drs. Peter Orris & Katherine Kirkland; Letter from Dr. Orris to ATSDR, *supra* note 18, App. 6.

<sup>126</sup> U.S. law requires certain industrial facilities to report information concerning the releases of some toxic chemicals to the Toxic Release Inventory. Emergency Planning and Community Right-to-Know Act (“EPCRA”), United States Code title 42, section 11023.

<sup>127</sup> Toxic Release Inventory for the years 1987 – 2006, App. A. (Note: Appendices to this Second Amended Petition are designated by letters; any references to appendices with numbers are references to the appendices submitted with the original petition.)

are substantial and escape at ground level near Mossville residents. The TRI data also documents that Mossville area industries reported a release of 135 million kg of “criteria pollutants.”<sup>128</sup> Criteria pollutants are six compounds (carbon monoxide, lead, nitrogen oxide, ozone, particulate matter, and sulfur dioxide) whose concentration in the ambient air is limited by federal laws which seek to protect public health and welfare from respiratory irritants, smog, acid rain, and other associated negative health effects.

An additional source of air pollution data is collected by the LDEQ from air monitoring stations. The air monitoring stations detect numerous toxic chemicals that are present in the air that Mossville residents breathe. (*See* Table 4, below.)

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<sup>128</sup> Environmental Defense, Scorecard: The Pollution Information Site, “Facilities with Emissions of Criteria Air Pollutants” compiled from the 1999 Toxic Release Inventory, *available at* [www.scorecard.org](http://www.scorecard.org). Based on their known association with significant negative health effects, six air pollutants have been designated “criteria pollutants” pursuant to the Clean Air Act: carbon monoxide; lead; nitrogen dioxide; ozone; particulate matter; and sulfur dioxide. United States Code title 42, section 7409.

**Table 4: Air Monitoring Data of Maximum Toxic Chemical Concentration in the Mossville Area (January 12, 1999 – December 26, 1999)**

Toxic Chemical	Maximum Concentration	Toxic Chemical	Maximum Concentration
Freon-12	0.81 ppb	Trans-1,3 dichloropropene	0.08 ppb
Chloromethane	1.01 ppb	1,1,2-trichloroethane	0.14 ppb
Freon-114	0.15 ppb	Toluene	1.29 ppb
<b>Vinyl Chloride</b>	<b>0.83 ppb</b>	2-Butanone	1.81 ppb
1,3-Butadiene	0.48 ppb	<b>1,2-Dibromoethane</b>	<b>0.13 ppb</b>
Bromomethane	0.39 ppb	Tetrachloroethylene	0.58 ppb
Carbon Disulfide	0.15 ppb	Methyl Acrylate	0.67 ppb
Chloroethane	0.13 ppb	Chlorobenzene	0.15 ppb
Freon-11	0.37 ppb	Ethylbenzene	0.22 ppb
Acetonitrile	1.51 ppb	Vinyl Acetate	4.55 ppb
1,1-Dichloroethene	0.26 ppb	m/p Xylene	0.42 ppb
Methylene Chloride	0.39 ppb	Styrene	0.13 ppb
Freon-113	0.22 ppb	oXylene	0.29 ppb
Acetone	11.49 ppb	2-Nitropropane	0.00 ppb
1,1-Dichloroethane	0.13 ppb	1,1,2,2-Tetrachloroethane	0.15 ppb
cis-1,2-Dichloroethene	0.13 ppb	1,3,5-Trimethylbenzene	0.19 ppb
Acrylonitrile	0.34 ppb	1,2,4-Trimethylbenzene	0.24 ppb
Chloroform	0.32 ppb	Chlorobutane	0.02 ppb
<b>1,2-Dichloroethane</b>	<b>17.56 ppb</b>	Benzyl Chloride	0.10 ppb
Diethyl ether	0.00 ppb	4-methyl-2-pentanone	0.22 ppb
1,1,1-Trichloroethane	1.11 ppb	Chloroacetonitrile	0.38 ppb
Benzene	0.66 ppb	1,3-Dichlorobenzene	0.31 ppb
Carbon Tetrachloride	0.28 ppb	1,4-Dichlorobenzene	0.16 ppb
Allyl Chloride	0.11 ppb	1,2-Dichlorobenzene	0.15 ppb
1,2-Dichloropropane	0.14 ppb	1,2,4-Trichlorobenzene	0.21 ppb
Trichloroethylene	1.00 ppb	1,3-Hexachlorobutadiene	0.17 ppb
cis-1,3-dichloropropene	0.09 ppb	2-Hexanone	0.86 ppb
MTBE	0.47 ppb	Methyl Methacrylate	0.09 ppb
Tetrahydrofuran	0.20 ppb	Ethyl Methacrylate	0.01 ppb
Methacrylonitrile	0.60 ppb	Nitrobenzene	1.80 ppb

This table shows that three chemical compounds – vinyl chloride, 1,2-dichloroethane, and 1,2-dibromoethane – were detected at concentrations that exceed ambient air quality standards

established by the state government of Louisiana.<sup>129</sup> The known health effects of these chemicals include cancer and reproductive damage.<sup>130</sup>

Air monitoring conducted by EPA in the Mossville area has shown alarmingly high levels of vinyl chloride. Vinyl chloride is a human carcinogen that is also known to damage the liver and central nervous system.<sup>131</sup> In addition, vinyl chloride can also damage the reproductive system and harm the growth and development of children.<sup>132</sup> Mossville residents complained to EPA that local stationary air monitors were not detecting toxic emissions at the times when residents noticed noxious odors and fumes. In June 1999, EPA responded by using a trace atmospheric gas analyzer (“TAGA”), which is a mobile unit designed to identify and measure toxic air pollutants on a real-time basis. The trace atmospheric gas analyzer revealed that Mossville residents were exposed to an average concentration of 30 parts per billion of vinyl chloride,<sup>133</sup> significantly above the ambient air quality standard set at 0.47 parts per billion to protect human health.<sup>134</sup> The wind direction at the time of EPA’s monitoring indicated that the high levels of vinyl chloride were emitted by the Condea Vista complex (now Georgia Gulf and

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<sup>129</sup> Louisiana Administrative Code, title 33, section 705.

<sup>130</sup> ATSDR, *ToxFAQs (Hazardous Substance Fact Sheet)* for vinyl chloride, 1,2-dichloroethane, and 1,2-dibromoethane, *available at* <http://www.atsdr.cdc.gov/toxfaq.html>.

<sup>131</sup> Technology Transfer Network, EPA, *Air Toxics Website: Fact Sheet on Vinyl Chloride*, *available at* <http://www.epa.gov/ttn/atw/hlthef/vinylchl.html>.

<sup>132</sup> ATSDR, *Toxicological Profile for Vinyl Chloride*, p. 15 (July 2006), *available at* <http://www.atsdr.cdc.gov/toxprofiles/tp20.html#bookmark07>.

<sup>133</sup> *See* report by Wilma Subra, *supra* note 8, at p. 3, App. 3 (this report includes an analysis of EPA’s TAGA air monitoring conducted in June of 1999 in the Mossville area).

<sup>134</sup> Louisiana Administrative Code title 33, section 705.

Sasol) and PPG Industries,<sup>135</sup> both of which report releasing vinyl chloride to the environment purportedly at levels allowed by government-issued environmental permits.

Fugitive emissions represent another significant source of toxic air pollution in the Mossville area. These emissions emanate from leaks in valves, pipes, and other equipment that connects processing units.<sup>136</sup> Fugitive emissions are of particular concern because, unlike stack emissions, they occur at ground level, close to Mossville residents. Thus, the potential for human exposure is significant. Fugitive emissions constitute a large portion of the total air emissions produced by industrial facilities in the Mossville area. For example, in 2000, Mossville area facilities Georgia Gulf, Arch Chemical, and Tetra Chemicals reported fugitive emissions that were substantially greater than each of their stack air emissions.<sup>137</sup> In 2000, ten facilities surrounding Mossville reported releases of over 220,000 kg (487,000 pounds) of toxic chemicals through fugitive emissions.<sup>138</sup>

The TRI reports, LDEQ air monitoring report, and EPA TAGA detections document the fact that Mossville residents are routinely exposed to a multitude of toxic chemicals in the air. Although environmental laws require governmental agencies to collect and to publish industrial pollution data, these laws do not establish any obligation on the part of agencies to implement

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<sup>135</sup> Report by Wilma Subra, *supra* note 8, at p. 3, App. 3.

<sup>136</sup> *See, e.g.*, EPA definition: “Fugitive emissions occur from valves, pumps, compressors, pressure relief valves, flanges, connectors, and other piping components.” EPA, *Enforcement Alert*, Volume 2, No. 9, EPA 300-N-99-014 (Oct. 1999), *available at* <http://www.epa.gov/compliance/resources/newsletters/civil/enfalert/emissions.pdf>.

<sup>137</sup> Report by Wilma Subra, *supra* note 8, at p. 6, App. 3.

<sup>138</sup> *Id.* The ten facilities reporting fugitive emissions in the Mossville area are: Arch Chemical, Biolab, Certainteed, Condea Vista (now Sasol and Georgia Gulf), Conoco Lake Charles Refinery (now Conoco Phillips), Entergy Roy S. Nelson Power Plant, Georgia Gulf, Lyondell, PPG Industries, and Tetra Chemicals.

any health or environmental protections that prevent the multiple, cumulative, and synergistic exposures to the numerous toxic chemicals released by industrial facilities into the air.

The health concerns caused by industrial pollution in Mossville cannot be limited to one pollutant or one facility. It is the multiple, cumulative, and synergistic effects of all hazardous industrial pollution from all sources in the Mossville area that create a significant threat to the health and lives of residents. No federal or state agency has ever investigated the multiple, cumulative, and synergistic impacts of all the toxic releases in the Mossville area, nor do these agencies consider such impacts in environmental permitting decisions.

An example of an environmental permitting decision that disregarded the multiple, cumulative, and synergistic health impacts of pollution is the August 12, 1999 decision by the LDEQ to issue air permits that allowed the Conoco Lake Charles Refinery (now Conoco Phillips) to increase its air pollution.<sup>139</sup> With the approval of EPA<sup>140</sup> and the strong support of a Louisiana legislator,<sup>141</sup> the LDEQ allowed the Conoco oil refinery to increase its annual air emissions of volatile organic compounds, carbon monoxide, nitrous oxide, sulfur dioxide, and particulate matter by more than 900,000 kg (2,000,000 pounds).<sup>142</sup> Some of the known health

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<sup>139</sup> Permit issuance letters from State of Louisiana Department of Environmental Quality to Robert J. Hassler, Manager, Conoco Lake Charles Refinery (Aug. 12, 1999), App. 13.

<sup>140</sup> Letter from Jole C. Luehrs, EPA Region 6 Air Permits Section Chief, to Larry Devillier, LDEQ Air Quality Division, (July 22, 1999), App. 13.

<sup>141</sup> Letter from Dan Flavin, State of Louisiana House of Representatives to Dale Givens, LDEQ Secretary (July 14, 1999), App. 13.

<sup>142</sup> Louisiana Department of Environmental Quality, *Briefing Sheet: Petrozuata Syncrude Project, Lake Charles Refinery, Conoco, Inc. Westlake, Calcasieu Parish, Louisiana PSD-LA-584(M-2)*, p. 3 (Aug. 12, 1999), App. 13.

effects of these air pollutants include respiratory ailments<sup>143</sup> and cardiovascular disease.<sup>144</sup> For this reason, Mossville Environmental Action Now submitted their objections, which included a petition signed by approximately one hundred Mossville residents opposing the issuance of the air permits to the Conoco oil refinery. In its comments, the organization listed the pollution data of surrounding facilities, including the Conoco oil refinery, and urged the DEQ to assess “[t]he combined impacts of these reported toxic release pollutants before and after Conoco’s proposed increases.”<sup>145</sup> Notwithstanding these and other comments detailing the harmful health impacts of pollution increases at the Conoco oil refinery, LDEQ summarily determined that there would be “no ‘adverse’ and ‘disparate’ impact on the surrounding area” as a result of increased air emissions by the Conoco oil refinery.<sup>146</sup> According to LDEQ, compliance with the Clean Air Act permit requirements is presumptively protective of human health and the environment. However, the Clean Air Act permit requirements do not address in any way the health impacts of long-term chronic exposures to the numerous toxic chemicals released by the Conoco oil refinery, either alone or in concert with other polluting facilities.<sup>147</sup>

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<sup>143</sup> ATSDR, *Toxicological Profile for Sulfur Dioxide, Public Health Statement*, Sections 1.5 – 1.6 (Dec. 1998), available at <http://www.atsdr.cdc.gov/toxprofiles/tp116-c1-b.pdf>.

<sup>144</sup> Joel Schwartz, *Total Suspended Particulate Matter and Daily Mortality in Cincinnati, Ohio*, ENVIRONMENTAL HEALTH PERSPECTIVES, vol. 102, p. 186 (Feb. 1994).

<sup>145</sup> Letter from Edgar Mouton, Jr., President of Mossville Environmental Action Now, to Gustave Von Bodungen, LDEQ Assistant Secretary (July 30, 1999), App. 13.

<sup>146</sup> Louisiana Department of Environmental Quality, Permits Division, *Public Comments Response Summary, PSD and Part 70 Operating Permits, Lake Charles Refinery, Areas A, B, C, D, and Excel Paralubes, Conoco Inc., Westlake, Calcasieu Parish, Louisiana, Response to Comment No. 8*, p. 10 (Aug. 12, 1999), App. 13.

<sup>147</sup> Under the Clean Air Act, industrial air emissions are regulated by categories of technological standards that require the use of pollution control devices or processes that are specified for individual industrial sectors. For example, the “best achievable control technology” applied in the Conoco air permits is based on an analysis of emission reductions that can be achieved by



### ***Toxic Water Pollution***

In addition to breathing air laden with toxic chemicals, people in Mossville are regularly threatened by pollution in surface and ground waters contaminated by toxic industrial discharges. The concentration of industrial facilities in the Mossville area has transformed the nearby Calcasieu Estuary – approximately 65 kilometers (40 miles) of bayous, a lake, and a river that flow into the Gulf of Mexico – from a pristine ecosystem popular for fishing and recreation into a repository for toxic substances.<sup>148</sup> Mossville residents depend on these waters for food.<sup>149</sup> Like most Mossville residents, Petitioner Ollie Mae Hadnot routinely ate fish that came from local waters: “I ate fish every week all the time. The fish were large and easy to catch because there were so many of them.”<sup>150</sup> Similarly, Petitioner Edgar Mouton, Jr. explains that he grew up eating lots of fish and learned from his father how to fish from the estuary: “We fished in the Calcasieu River, the lake, and bayous. We shared our catch with neighbors and friends.”<sup>151</sup> Mr. Mouton further explains that local waters were also used for baptisms, and provided residents with recreational opportunities such as swimming:

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existing technology already in use by other oil refineries. United States Code title 42, section 7411.

<sup>148</sup> See EPA, *Final Baseline Human Health Risk Assessment for Calcasieu Estuary, Lake Charles, Louisiana*, section 8-2 (Sept. 2003).

<sup>149</sup> According to Petitioner Edgar Mouton, Jr., some Mossville residents continue to fish from local waters because they cannot afford to buy sufficient food. See Statement of Edgar Mouton, Jr. (Audiotape recording of statement on file with Advocates for Environmental Human Rights.)

<sup>150</sup> Statement of Petitioner Ollie Mae Hadnot. (Audiotape recording of statement on file with Advocates for Environmental Human Rights.)

<sup>151</sup> Statement of Petitioner Edgar Mouton, Jr. (Audiotape recording of statement on file with Advocates for Environmental Human Rights.)

When the bayou waters were high enough we would play in it when we were kids. We used to baptize people in the bayou, but you can't do that anymore because of all the pollution.<sup>152</sup>

From 1987 to 2000, industrial facilities surrounding Mossville reported discharging over 907,000 kg (18,000,000 pounds) of toxic chemicals into local waters.<sup>153</sup> The facilities nearest the Mossville community – Condea Vista (now Sasol and Georgia Gulf), Conoco Lake Charles Refinery (now Conoco Phillips), and PPG Industries – contributed approximately 90% of the industrial waste pollution that is discharged in surface waters in the Mossville area.<sup>154</sup>

The U.S. National Oceanic and Atmospheric Agency (“NOAA”) conducted an extensive study of fish contamination in the Mossville area in 1997. NOAA reported high levels of dioxin-like compounds in the fish, sediment, and waters of the Calcasieu Estuary nearest Mossville.<sup>155</sup> The NOAA report identifies the vinyl chloride manufacturing facilities, PPG Industries and Condea Vista (now Sasol and Georgia Gulf), and the Conoco Lake Charles Refinery (now Conoco Phillips), as the primary contributors to contamination of local waterways and fish populations.<sup>156</sup> According to the report:

[a]mong the major industrial facilities discharging to the estuary PPG, Conoco and [Condea] Vista appear to contribute higher contamination burdens than the other firms.<sup>157</sup>

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<sup>152</sup> *Id.*

<sup>153</sup> Toxic Release Inventory, App. 2.

<sup>154</sup> *Id.*

<sup>155</sup> Mark S. Curry *et al.*, National Oceanic and Atmospheric Agency, *Contamination Extent Report and Preliminary Injury Evaluation for Calcasieu Estuary*, 56-DGNC-5-50107 (1997).

<sup>156</sup> *Id.* at pp. 1-4.

<sup>157</sup> *Id.*

The U.S. EPA and the Louisiana Department of Environmental Quality (“LDEQ”) have also reported that industrial facilities are responsible for the high levels of toxins polluting Bayou D’Inde and other waters in the estuary.<sup>158</sup>

In addition to dioxin-like compounds, area surface waters have been contaminated with ethylene dichloride, a toxic chemical and suspected human carcinogen<sup>159</sup> that is a common feedstock material in PVC production. According to EPA studies, Conoco and Sasol are responsible for the significant levels of this toxin found in a three-mile stretch of Bayou Verdine.<sup>160</sup> This bayou, which is situated approximately one mile to the east of the Mossville community, receives toxic waste discharges from Conoco Phillips, Condea Vista (now Sasol and Georgia Gulf), and PPG Industries.<sup>161</sup> EPA has taken certain steps to address the contamination. According to a May 2003 news report pertaining to the remediation project, EPA acknowledged that removing ethylene dichloride from one area of Bayou Verdine required the removal of 498 tons of sediment and 96 tons of clay,<sup>162</sup> which indicates the extent of this contamination. In the same news report, an EPA official observed that “the entire estuary could be in danger of further contamination” from the ethylene dichloride in the bayou if the sediment and clay are not

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<sup>158</sup> *Id.*

<sup>159</sup> U.S. Department of Health and Human Services, ATSDR, *Toxicological Profile for 1,2-Dichloroethane*, p. 12 (Sept. 2001), available at <http://www.atsdr.cdc.gov/toxprofiles/tp38-c2.pdf>.

<sup>160</sup> Memorandum from John Meyer, Remedial Project Manager, EPA, to Myron Knudson, Director Superfund Division, EPA, regarding Request for a Removal Action at the Calcasieu Estuary Site, Bayou Verdine Area of Concern, Lake Charles, Louisiana, p. 1 (June 21, 2002), available at <http://www.epa.gov/earthlr6/6sf/pdf/bvamwd.pdf>.

<sup>161</sup> *Id.* at p. 4. As of May 2002, Sasol redirected its effluent waste stream from Bayou Verdine to the Calcasieu River.

<sup>162</sup> Marty Briggs, *EPA Bayou Verdine Study Released*, KPLC-TV (May 6, 2003), available at <http://www.kplctv.com/Global/story.asp?S=1266666&nav=0nqxFh42>.

removed.<sup>163</sup> EPA ordered Sasol and Conoco to remove the ethylene dichloride that their facilities spilled because it constitutes “an imminent and substantial endangerment to the public health, welfare, or environment.”<sup>164</sup> Although the ultimate success of the EPA ordered clean-up is uncertain, it is indisputable that these waterways will remain contaminated for the foreseeable future, posing a continued serious threat to the health of Petitioners and others who swim in and eat fish from these waters.

The NOAA, EPA, and LDEQ reports, in addition to other studies, have led governmental agencies to warn against eating fish from local waters. ATSDR warned against eating fish from Bayou D’Inde, which lies approximately one mile from Mossville, because the agency found the fish to contain significant levels of dioxins.<sup>165</sup> The LDEQ has also issued advisories and posted signs in the estuary warning people not to eat the fish due to industrial pollution.<sup>166</sup>

Agencies have also cautioned against human contact with local waters. Both EPA and LDEQ have issued reports for many years documenting the exceedingly unhealthy levels of water

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<sup>163</sup> *Id.*

<sup>164</sup> Memorandum from John Meyer, *supra* note 160 at p. 6.

<sup>165</sup> ATSDR, *Health Consultation: Follow-Up Exposure Investigation, Calcasieu Estuary (a/k/a Mossville), Lake Charles, Calcasieu Parish, Louisiana*, *supra* note 102, at p. 38.

<sup>166</sup> According to the State of Louisiana *Water Quality Management Plan, Water Quality Inventory, Section 305(b) 2000 Report*, there are four advisories warning against eating fish from the Calcasieu Estuary because of local industrial discharges, *available at* <http://www.deq.louisiana.gov/static/305b/2000/index.htm>.

pollution in the Calcasieu Estuary.<sup>167</sup> The LDEQ has issued advisories warning people against coming into contact with contaminated sediment and swimming in parts of the estuary.<sup>168</sup>

The contamination is not limited to surface waters, but also affects Mossville's groundwater resources. Mossville residents once relied on private wells that drew water from the upper levels of the Chicot Aquifer, a local underground source of drinking water for Mossville residents, as well as for people in southwest Louisiana and eastern Texas. Government and industry reports have acknowledged that PPG Industries, Conoco Lake Charles Refinery (now Conoco Phillips), and Condea Vista (now Sasol and Georgia Gulf) have leaked ethylene dichloride from their facilities into the aquifer.<sup>169</sup> The full extent of the ethylene dichloride contamination is unknown and remains the subject of an ongoing EPA and LDEQ remediation study.<sup>170</sup>

Mossville residents have long complained about the quality of their drinking water, which is currently drawn from deeper levels in the Chicot Aquifer. They describe their tap water as having a very bad odor. Petitioner Lorraine Cole, an 84-year old Mossville resident explains:

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<sup>167</sup> See generally State of Louisiana Water Quality Management Plan, Water Quality Inventory, Section 305(b) reports for 1996, 1998, 2000 and 2002, available at <http://www.deq.louisiana.gov/portal/tabid/98/Default.aspx>.

<sup>168</sup> *Id.*

<sup>169</sup> See U.S. Environmental Protection Agency Region VI, *CLEAN First Quarterly Meeting Questions*, p. 24 (June 25, 1999) ("The industries, such as Condea Vista and PPG, have monitoring wells to determine rates of recovery and containment of EDC groundwater contamination. Conoco at Westlake has groundwater monitoring wells at the refinery and at the dock's EDC spill site.")

<sup>170</sup> McNeese State University, Howell Institute, Forum on Chicot Aquifer (March 12, 2002) (Meeting of LDEQ officials and industry representatives, among others, to present data on ethylene dichloride and other volatile organic compounds detected by monitoring wells in the Chicot Aquifer), available at <http://www.mcneese.edu/colleges/sci/howell/chicot.htm#20>.

I don't drink the water. I drink bottled water. A lot of people in Mossville buy their water for drinking and cooking, but we still bathe in it. Before stores sold bottled water, my family and I drank water from a well that my father dug in my backyard about 60 years ago. There were times when the well water was so bad that you couldn't drink it or wash with it because the water smelled so bad and had a brown color that would stain your clothes when you washed them in the well water. Now I'm on the Mossville water system, but my water still has a bad odor that you can smell every time you turn on the faucet.<sup>171</sup>

Petitioner Sally Comeaux, who was born in Mossville and has lived there for 55 years, has requested that EPA and ATSDR test her tap water for chemicals. As Ms. Comeaux explains,

There is an odor in the water. I have taken a sample of my water that smelled like oil and gas. I showed this sample to Danielle DeVoney, who works at ATSDR. Danielle said that this water is contaminated. For years there have been odors in the water. Now that I know about the EDC [ethylene dichloride] contamination in our groundwater, I'm very concerned about our lives and our health. We are only about one-half mile from where we get our water supply. With the danger of the groundwater contamination, who's to say that it's not going deeper in the aquifer? I live right next to where groundwater is contaminated with EDC, just across the road from Condea Vista [now Georgia Gulf and Sasol].<sup>172</sup>

Severe water pollution in the Mossville area continues. The Toxic Release Inventory for the year 2002 shows that six of the fourteen industrial facilities surrounding Mossville that are required to report their water pollution discharges were responsible for releasing over 272,155.42 kg (600,000 pounds) of toxic chemicals.<sup>173</sup>

### ***Actual Toxic Exposures in Mossville Greatly Exceed Reported Exposures***

Unfortunately, for a number of reasons, the staggering data regarding exposure to toxic chemicals in Mossville significantly underestimate the full pollution burden regularly born by

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<sup>171</sup> Statement of Petitioner and Mossville resident Lorraine Cole. (Audiotape recording on file with Advocates for Environmental Human Rights.)

<sup>172</sup> Statement of Petitioner and Mossville resident Sally Comeaux. (Audiotape recording on file with Advocates for Environmental Human Rights.)

<sup>173</sup> 2002 Toxic Release Inventory, App. 2. The six facilities reporting surface water emissions in the Mossville area are: Certainteed, Conoco Lake Charles Refinery (now Conoco Phillips), Lyondell, PPG Industries, and Sasol.

residents as a result of the concentration of industrial facilities in their community. First, not all companies that emit toxic chemicals are required to report those emissions; the reporting requirement applies only to certain companies in certain industrial sectors.<sup>174</sup> For example, only nine of the fourteen industrial facilities in Mossville were required to report their toxic air releases for the year 2002 Toxic Release Inventory (EPCRA”).<sup>175</sup> Moreover, although U.S. companies manufacture tens of thousands of chemicals for commercial use,<sup>176</sup> the Emergency Planning and Community Right-to-Know Act requires these companies to report only their releases of 582 individually listed chemicals and thirty chemical categories.<sup>177</sup> These chemicals are not necessarily the most toxic. For example, it was not until thirteen years after EPCRA was enacted that regulated companies were required to report releases of dioxin,<sup>178</sup> which is one of

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<sup>174</sup> The Emergency Planning and Community Right-To-Know Act (“EPCRA”) requires facilities to report releases if they have 10 or more full-time employees; operate in specified industry sectors; and their manufacturing or processing of a listed toxic chemical exceeds a specified quantity. United States Code title 42, section 11023. Although chemical manufacturing is an industrial sector for which reporting is required, several facilities near Mossville either release toxic chemicals that are not listed as reportable or release listed toxic chemicals in amounts that do not exceed the specified quantity. United States Code title 42, section 11023(b)(1)(A).

<sup>175</sup> The nine facilities that recently reported their air emissions of toxic chemicals in the Mossville area in the year 2002 are: Arch Chemical; Biolab; Certainteed; Phillips Refinery; Georgia Gulf; Lyondell; PPG Industries; Sasol; and Tetra Chemicals. Toxic Release Inventory, App. 2. The four facilities that are not required to report their releases of toxic substances are: Air Liquide; Excel Paralubes; PHH Monomers; and Tessengerlo (formerly Jupiter Chemicals).

<sup>176</sup> *Body Burden* is a study of human exposures to toxic chemicals. The study was conducted by the Mt. Sinai School of Medicine, in collaboration with the Environmental Working Group, and Commonweal. See, e.g., *Findings and Recommendations of Body Burden: The Pollution in People*, (acknowledging that “U.S. chemical companies hold licenses to make 75,000 chemicals for commercial use.”), available at <http://archive.ewg.org/reports/bodyburden1/findings.php>.

<sup>177</sup> United States Code title 42, sections 11001 – 11050.

<sup>178</sup> EPCRA was enacted in 1986. However, it was not until 1999 that EPA promulgated regulations under EPCRA that: (1) required permitted facilities to report releases of dioxin and dioxin-like compounds; and (2) lowered the dioxin release threshold which triggers reporting

the most toxic compounds known to science. In addition, it has been shown that industrial facilities significantly underreport their toxic release data, resulting in a systematic underreporting in the Toxic Release Inventory. One report found that “emissions of toxic chemicals, including known carcinogens such as benzene and butadiene, are four to five times higher than is reflected in the TRI.”<sup>179</sup> To make matters worse, in December 2006, EPA promulgated a new regulation under EPCRA that now allows up to ten times more pollution to be released by a facility before that facility is required to submit to EPA an annual report of its pollution.<sup>180</sup>

A second reason that the data on exposure to toxic substances in Mossville significantly underestimates the full pollution burden is that the U.S. environmental protection system relies on stationary air monitoring devices that do not detect all toxic substances released by industrial facilities.<sup>181</sup> Such facilities near Mossville frequently have both authorized (*e.g.*, allowed by their permits) and unauthorized (*e.g.*, not allowed by their permits) releases of many harmful and flammable substances that are not detectable by such stationary air monitors.<sup>182</sup> With respect to unauthorized releases alone, for the years 200 and 2001, reports filed by the Conoco Lake Charles Refinery (now Conoco Phillips) indicate the unauthorized release of 136,183 kg

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requirements. Federal Register volume 64, p. 58,666 (Oct. 29, 1999). This regulation only took effect as of the 2000 reporting year.

<sup>179</sup> Environmental Integrity Project, *Who’s Counting? The Systematic Underreporting of Toxic Air Emissions*, *supra* note 7, at p. 1. This report includes data showing that for the year 2001 the Sasol facility in Mossville underestimated its toxic air release data by 347%. *Id.* at p. 13.

<sup>180</sup> *Toxic Release Inventory Burden Reduction Final Rule*, Federal Register volume 71, p. 76,932 (Dec. 22, 2006) to be codified in the U.S. Code of Federal Regulations volume 40, part 372.

<sup>181</sup> Report by Wilma Subra, *supra* note 8, at p. 9, App. 3.

<sup>182</sup> *Id.* at p. 13.



(300,233 pounds) of toxic and flammable substances that are not detectable by stationary air monitors.<sup>183</sup> In the same time period, reports filed by PPG Industries indicate the unauthorized release of 23,265 kg (51,291 pounds) of pollutants that are not detectable by stationary monitors.<sup>184</sup> However, as with all such reports pertaining to unauthorized releases, there is no independent way of determining whether such reports are always filed in every instance of an unauthorized release. Another limitation of the stationary air monitors is that they sample the air only once every six days. Experts have noted that industrial operators often know the air monitoring schedule and thus can release large amounts of pollution at times when such releases will escape detection.<sup>185</sup>

### **3. Health Problems Suffered by Mossville Residents Are Associated with Dioxin and Other Toxic Pollution**

As noted above, human exposure to dioxins is known to cause severe health effects such as cancer, damage to the reproductive system, impairment of the immune system, and extensive disruption of normal hormone functions, including neurobehavioral development.<sup>186</sup> EPA estimates that the risk of cancer from average background levels of dioxin in the United States

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<sup>183</sup> See report by Wilma Subra, *Unauthorized Releases by Major Industrial Facilities Near Mossville, Louisiana, 2000, 2001, 2006, 2007*, p. 5, table 6 (June 2008), App. C. (Note: Appendices to this Second Amended Petition are designated by letters; any references to appendices with numbers are references to the appendices submitted with the original petition.)

<sup>184</sup> Report by Wilma Subra, *supra* note 8, at p. 20, App.3.

<sup>185</sup> *Id.* at p. 9.

<sup>186</sup> M. Kogevinas, *Human Health Effects of Dioxins*, *supra* note 16.; B. Eskenazi *et al.*, *Serum Dioxin Concentrations and Menstrual Cycle Characteristics*, *supra* note 16; P. Mocarelli *et al.*, *Paternal Concentrations of Dioxin and Sex Ratio of Offspring*, *supra* note 16; M. Warner *et al.*, *Serum Dioxin Concentration and Breast Cancer Risk in the Seveso Women's Health Study*, *supra* note 16.

could be as high as 1 in 100 people developing cancer.<sup>187</sup> EPA further explains that for the most highly exposed populations, such as the residents of Mossville, the dioxin-related cancer risk can be 2 to 3 times higher.<sup>188</sup>

Petitioners Sally Commeaux, Ollie Mae Hadnot, Lilly Adams, and David Prince are among those Mossville residents who volunteered to have their blood tested by ATSDR for dioxins. Ms. Hadnot, who raised her three daughters in Mossville, is aggrieved by the death of her daughter Carol Ann James, who was tested by ATSDR for dioxins:

My daughter, Carol Ann, was really sick. She was 51 years old when she died from what the doctors called septic shock on May 27, 2002. She was in pain and cried all the time. The doctors said that she had a disease of her arteries that caused them to become very thin and it was difficult for blood to flow. She had ulcers on her legs that were large and became infected and never healed. The infection entered her bloodstream and she died. The doctors amputated one of her legs and she died three days later. In January or February 2002, she couldn't walk because of the ulcers, and was bedridden. She also had renal failure and was getting dialysis treatment for a year before she died because her kidneys did not function. It was how she suffered before she died that really bothered me. It was like a nightmare to see her like that. When I visited her in the hospital she would sometimes not know who I was, and that really hurt, too. And the doctors would talk to you, but in my opinion, they really didn't know what caused all of her health problems. Carol complained about the pollution because she knew it caused her health problems. My daughter thought that something would get done to stop the pollution and provide medical services to people after ATSDR found out about the dioxin problems in Mossville, but nothing like that happened. My daughter is not the only person who has died after being tested by ATSDR. Alan Ryan, who lived in Mossville, was tested for dioxin, and he died from cancer.<sup>189</sup>

Ms. Commeaux describes the declining health of her brother, Alan LeBlanc, a Mossville resident tested for dioxins by ATSDR:

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<sup>187</sup> EPA, *Draft Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds*, p. 88 (2000), available at <http://www.epa.gov/ncea/pdfs/dioxin/part3/chapter1-6.pdf>.

<sup>188</sup> *Id.*

<sup>189</sup> Statement of Petitioner and former Mossville resident Ollie Mae Hadnot. (Audiotape recording on file with Advocates for Environmental Human Rights.)

My brother, Alan LeBlanc, was one of the people tested for dioxin by ATSDR. He has been bedridden off and on. He's bedridden now [June 2003] because his body is deteriorating. The family takes care of him because he can't care for himself.<sup>190</sup>

Ms. Adams, whose blood-dioxin levels were determined by ATSDR to be 91.49 ppt in 1998 and 92.11 ppt in 2001 – which is significantly higher than the comparison level<sup>191</sup> – describes her health and the health of her family:

I'm the mother of five children. Four of them were born premature while I was living in Mossville, and two of my premature babies did not survive. I do believe that the premature births are related to the toxic pollution in Mossville. My oldest daughter had a heart attack when she was about 37 years old. My other daughter has had surgery to remove a lump from her breast. My husband's lungs collapsed three times. I have diabetes and skin rashes.<sup>192</sup>

Mr. Prince and his late wife, Diane, raised a family in Mossville. For several years, the Prince family lived across the street from a vinyl manufacturing facility that is now owned by Georgia Gulf. Both Mr. and Mrs. Prince volunteered to have their blood tested for dioxins by ATSDR, and both were found to have elevated levels. Mrs. Prince suffered from recurring ovarian cancer and passed away in 2005 from this disease.

The implications for children in Mossville are especially troubling, as the unborn and infants are particularly vulnerable to the hormone-damaging effects of dioxins.<sup>193</sup> The hormone system

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<sup>190</sup> Statement of Petitioner and Mossville resident Sally Comeaux. (Audiotape recording on file with Advocates for Environmental Human Rights.)

<sup>191</sup> Letter from ATSDR to Lillie Adams (Sept. 24, 2002), App. 15.

<sup>192</sup> Statement of Petitioner and former Mossville resident Lillie Adams. (Audiotape recording on file with Advocates for Environmental Human Rights.)

<sup>193</sup> Theo Colburn *et al.*, *Developmental Effects of Endocrine-Disrupting Chemicals in Wildlife and Humans*, ENVIRONMENTAL HEALTH PERSPECTIVES, volume 101, p. 378 (1993); P. Mocarelli *et al.*, *Clinical Laboratory Manifestations of Exposure to Dioxin in Children: A Six-Year Study of the Effects of an Environmental Disaster Near Seveso, Italy*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, volume 256, p. 2,687 (1986).

controls all phases of human development, from embryo to adult. Dioxins' harm to the hormone system has been shown to cause birth defects, learning disabilities, reduced IQs, and hyperactive behavior in children.<sup>194</sup> Dioxins are not the only toxic substances to which Mossville residents are exposed. As noted by ATSDR's health consultant, "[t]he chemicals tested in the blood are . . . only a small component of the overall toxic exposure to the population of these communities."<sup>195</sup>

A 1998 health survey by Dr. Marvin Legator, a noted toxicologist at the Medical Branch of the University of Texas at Galveston, documented the health problems suffered by Mossville residents that are associated with exposure to dioxins and other toxic substances. One hundred randomly chosen Mossville residents participated in the "symptom survey" that evaluated health problems in the community. Ninety-one percent of those surveyed reported at least one health problem known to be related to exposure to the numerous toxic chemicals produced by local industrial facilities.<sup>196</sup> Specifically, the survey revealed that, of the Mossville residents surveyed:

- 91% had symptoms of ear, nose, and throat illnesses, such as burning eyes, nasal soreness, nose bleeds, and sinus and ear infections;<sup>197</sup>
- 84% had symptoms of central nervous system illnesses such as headaches, dizziness, tremors, and seizures;<sup>198</sup>
- 71% had symptoms related to illnesses of the cardiovascular system such as irregular heart beat, stroke, heart disease, and chest pain;<sup>199</sup>

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<sup>194</sup> *Id.*

<sup>195</sup> Report by Drs. Peter Orris & Katherine Kirkland; Letter from Dr. Orris to ATSDR, *supra* note 18, App. 6.

<sup>196</sup> Marvin Legator, *Mossville Health Symptom Survey*, *supra* note 12, at p. 15, App. 4.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

- 57% had symptoms related to digestive system illnesses such as frequent vomiting, ulcers, frequent diarrhea, and jaundice;<sup>200</sup>
- 57% had symptoms related to skin illnesses such as eczema, unusual rashes, hives, and itchy skin;<sup>201</sup>
- 55% had symptoms related to immune system problems such as brittle hair, allergies, frequent colds, and loss of hair;<sup>202</sup>
- 46% of the *nonsmokers* had symptoms related to respiratory illnesses such as persistent bronchitis, shortness of breath, wheezing, and coughing up blood;<sup>203</sup>
- 40% had symptoms related to urinary tract illnesses such as kidney infections, bladder infections, blood in the urine, and bladder disease;<sup>204</sup>
- 36% had symptoms related to illnesses of the blood such as persistent anemia, abnormal blood count, spleen problems, and clotting disorder;<sup>205</sup> and
- 24% had symptoms related to endocrine system illnesses including thyroid malfunctioning, diabetes, hypoglycemia, and hormonal conditions.<sup>206</sup>

Mossville residents are all too familiar with this litany of illnesses.

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<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

As Dorothy Felix, a sixty-six year old lifelong Mossville resident explains:

It is really scary to find that so many of my relatives and neighbors are suffering from cancers, endometriosis, and asthma. I am talking about teenage girls with endometriosis and young children who have asthma attacks all the time. When I was growing up in the 1950's you didn't have all this sickness when the plants were not here. Now, it is so common to know people who frequently go to the doctor for all kinds of health problems.<sup>207</sup>

The survey concluded that the number of health problems suffered by Mossville residents is two to three times higher than a comparison control group. Based on the survey results, scientists at the University of Texas at Galveston have determined that Mossville is “a very sick community.”<sup>208</sup> Dr. Marvin Legator recommends that Mossville residents obtain medical aid and decrease their exposure to pollutants.<sup>209</sup>

The impact of exposure to toxic chemicals is not limited to physical disease and injury but also extends to mental health impairment. Recent research indicates that people who live in communities impacted by environmental hazards often suffer long-term chronic stress and depression.<sup>210</sup> These studies correlate with the experiences of Mossville residents. Petitioner Ollie

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<sup>207</sup> Statement of Petitioner and Mossville resident Dorothy Felix. (Audiotape recording on file with Advocates for Environmental Human Rights.)

<sup>208</sup> See Mossville Environmental Action Now, *Chronology of Events*, supra note 58, App. 4, at attachment 2 (news report by Liz Maples, *Survey: Community Is 'Very Sick,'* AMERICAN PRESS (Lake Charles, LA) p. B1 (Oct. 21, 1998)).

<sup>209</sup> *Id.*

<sup>210</sup> A psychological study in the African American community of Alsen, Louisiana, for example, found high levels of near-clinical anxiety and depression among residents who lived in close proximity to large oil refineries, petrochemical facilities, and landfills. E. Foulks & T. McLellan, *Psychologic Sequelae of Chronic Toxic Waste Exposure*, SOUTHERN MEDICAL JOURNAL, volume 85, p. 122 (1992).

In studies of the psychological impacts of environmental disasters from nuclear facilities and hazardous waste sites, researchers found that residents not only suffered from anxiety disorders and depression, but also biological indicators of chronic stress, such as increased blood pressure. These studies also found that the psychological impact and related physiological signs

Mae Hadnot, who has lived in Mossville for more than 50 years, has frequent nightmares about facility hazards:

You try to go about a normal life of working and providing for your children. But, all the while we never knew whether Conoco or PPG would have an emergency so bad that it would kill us all. You see, the things going on in those plants that caused chemicals to spill right next to my home or very big flaring over our heads happened all the time. Besides that, we had to deal with bad odors from the plants, not knowing what we were breathing and what it could do to our bodies. We just had to get used to feeling frightened, and praying that nothing dangerous would happen to us.<sup>211</sup>

Petitioner and Mossville resident Lorraine Cole, who was a young woman in the 1940's when industrial facilities began operating in the Mossville area, says:

PPG and the other plants have had problems from day one. And I lived through all of them. I would be in my home reading or listening to the radio when all of a sudden my house would start shaking and my windows would rattle because of some problem at the plants. A few times my windows cracked. It was frightening and scary because it happened all the time and you felt the power of what these plants could do to you. I don't only feel frightened, but deeply frustrated that no one who has the authority cares enough about my life or my children's lives to stop allowing these plants to get bigger when they can't operate safely.<sup>212</sup>

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of stress and anxiety lasted for years following a major hazardous environmental event. A. Baum *et al.*, *Emotional, Behavioral, and Physiologic Effects of Chronic Stress at Three Mile Island*, JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY, volume 51, p. 565 (1983), A. Baum & I. Fleming, *Implications of Psychological Research on Stress and Technological Accidents*, AMERICAN PSYCHOLOGY, volume 48, p. 665 (1993).

A recent study in Texas showed the correlation between the level of exposure to a spilled chemical and the amount of psychological stress present two years after the unauthorized release. H. H. Dayal *et al.*, *Hazardous Chemicals: Psychological Dimensions of the Health Sequelae of a Community Exposure in Texas*, JOURNAL OF EPIDEMIOLOGY AND COMMUNITY HEALTH, volume 48, p. 560 (1994).

<sup>211</sup> Statement of Petitioner and former Mossville resident, Ollie Mae Hadnot. (Audiotape recording on file with Advocates for Environmental Human Rights.)

<sup>212</sup> Statement of Petitioner and Mossville resident, Lorraine Cole. (Audiotape recording on file with Advocates for Environmental Human Rights.)

### C. GOVERNMENTAL APPROVAL OF THE TOXIC POLLUTION BURDENS IN MOSSVILLE IS A FORM OF RACIAL DISCRIMINATION

The disproportionate permitting of polluting facilities in the historically African American community of Mossville reflects a nationwide pattern in the United States known as environmental racism. Governmental and academic research has documented the racial inequalities that result in hazardous industrial facilities operating in close proximity to communities that are heavily populated by African American, Latino, Native American, and Asian American people in the United States, and the inferior environmental protection in these communities of color.<sup>213</sup> The victims of environmental racism have reported an increase in health problems and a degraded

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<sup>213</sup> See generally U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*, GAO/RCED-83-168, B-211461 (June 1, 1983), available at <http://www.gao.gov/docdb/lite/info.php?rptno=RCED-83-168>; United Church of Christ Commission for Racial Justice, *Toxic Waste and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites* (1987); Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (Westview Press 1990); Benjamin A. Goldman, *The Truth About Where You Live: An Atlas for Action on Toxins and Mortality* (Three Rivers Press 1991); Marianne Lavelle and Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, THE NATIONAL LAW JOURNAL (Special Issue) (Sept. 21, 1992); *Race and the Incidence of Environmental Hazards: A Time for Discourse* (Bunyan Bryant & Paul Mohai eds. 1992); Rae Zimmerman, *Social Equity and Environmental Risk*, RISK ANALYSIS: AN INTERNATIONAL JOURNAL, vol. 13, no. 6, p. 649 (1993); *Confronting Environmental Racism: Voices from the Grassroots* (Robert D. Bullard ed., South End Press 1993); *Unequal Protection: Environmental Justice and Communities of Color* (Robert D. Bullard ed., Sierra Club Books 1994); Robert D. Bullard et al., *Toxic Wastes and Race at Twenty, 1987 – 2007: A Report Prepared for the United Church of Christ* (2007).

For more than twenty years, these studies have documented the existence of environmental racism have contributed to a growing awareness of the problem in the United States, as evidenced by former United States President William Jefferson Clinton's issuance of an executive order that directs federal agencies, including EPA, "to address" the problem of disproportionate pollution burdens on racial minorities and the poor. Executive Order, No. 12898, *Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations*, Federal Register volume 59, p. 7,629 (Feb. 16, 1994). However, the executive order, which does not have the force of law, has had little effect in solving the problem of environmental racism.



quality of life following such toxic pollution burdens in their communities.<sup>214</sup> A recent study found that larger and more chemical intensive facilities, like those in Mossville, tend to be located in counties with larger African-American populations, regardless of income levels.<sup>215</sup> Further, this study found that even after adjusting for location risk there is a greater risk of accidents for facilities in heavily African-American counties.<sup>216</sup>

In Louisiana, environmental racism is evident from the fact that industrial facilities releasing toxic chemicals are disproportionately located in areas where the population is majority African American.<sup>217</sup> Research has shown that 80% of African Americans in Louisiana live within three miles of an industrial facility that releases toxic chemicals, even though African Americans compose only 34% of the state's population.<sup>218</sup> The overwhelming majority of African Americans have hazardous industrial facilities that operate in close geographic proximity to their homes, churches, and playgrounds, notwithstanding the fact – which is acknowledged by both EPA and industrial corporations – that such operations can kill people residing nearby. It is well documented that African American communities in Louisiana have been torn down and residents relocated as a result of severe and extensive industrial toxic pollution. These

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<sup>214</sup> Jay M. Gould, *Quality of Life in American Neighborhoods, Levels of Affluence, Toxic Waste, and Cancer Mortality in Residential Zip Code Areas* (Westview Press 1986); *Confronting Environmental Racism: Voices from the Grassroots* (Robert D. Bullard ed., South End Press 1992); *Unequal Protection: Environmental Justice and Communities of Color* (Robert D. Bullard ed., Sierra Club Books 1994); Robert D. Bullard *et al.*, *Toxic Wastes and Race at Twenty: 1987 – 2007: A Report Prepared for the United Church of Christ* (2007).

<sup>215</sup> M.R. Elliott, *et al.*, *Environmental Justice: Frequency and Severity of US Chemical Industry Accidents and the Socioeconomic Status of Surrounding Communities*, *JOURNAL OF EPIDEMIOLOGY AND COMMUNITY HEALTH*, volume 58, p. 24 (2004).

<sup>216</sup> *Id.*

<sup>217</sup> Deep South Center for Environmental Justice, *Double Jeopardy in Cancer Alley*, App. 17.

<sup>218</sup> *Id.*

communities are Reveilletown,<sup>219</sup> Sunrise,<sup>220</sup> Morrisonville,<sup>221</sup> Diamond,<sup>222</sup> and the Bel Air section of the Mossville community.<sup>223</sup>

Mossville is located in Calcasieu Parish where 73.6% of the population is white and only 24.6% of the population is African American.<sup>224</sup> The African Americans residing in Mossville live near industrial facilities that rank among the worst in the United States.<sup>225</sup> As a result, unhealthy air in Mossville is the norm, unlike the rest of Calcasieu Parish, which is deemed to have healthy air quality in terms of criteria pollutants.<sup>226</sup> See maps generated by EPA Region 6 at App. 1 accurately reflecting that: (1) several “TRI sites” are clustered in closed geographic proximity to Mossville; (2) the racial minority population of Mossville exceeds 68.4%; and (3) the combination of these factors contributes to the high ranking of Mossville as an environmental justice concern. Thus, it is

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<sup>219</sup> Louisiana Advisory Committee to the United States Commission of Civil Rights, *The Battle for Environmental Justice in Louisiana . . . Government, Industry, and the People*, p. 46 (September 1993), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12en8z.pdf>.

<sup>220</sup> *Id.* at p. 48.

<sup>221</sup> *Id.* at p. 50.

<sup>222</sup> David Lerner, *Diamond: A Struggle for Environmental Justice in Louisiana’s Chemical Corridor* (MIT Press, 2004).

<sup>223</sup> *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana, supra* at p. 7.

<sup>224</sup> US Census Bureau, *2000 Summary Profile for Calcasieu Parish*, available at [http://factfinder.census.gov/bf/\\_lang=en\\_vt\\_name=DEC\\_2000\\_SF1\\_U\\_DP1\\_geo\\_id=05000US2019.html](http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_SF1_U_DP1_geo_id=05000US2019.html).

<sup>225</sup> The Conoco Phillips Lake Charles Refinery, PPG Industries, and Sasol, which are located in closest geographic proximity to Mossville, are ranked as the “dirtiest/worst facilities in the United States.” The national ranking of these facilities as “dirtiest/worst facilities” is based on Toxic Release Inventory data collected by EPA that is compiled from facility reports documenting chemical releases and waste transfers by the facilities. See Environmental Defense Scorecard: The Pollution Information Site, available at [http://www.scorecard.org/env-releases/er-report-descriptions.tcl#major\\_chemical\\_releases](http://www.scorecard.org/env-releases/er-report-descriptions.tcl#major_chemical_releases).

<sup>226</sup> Environmental Defense Scorecard, Air Quality Index, County [sic] of Calcasieu, App. 16.

indisputable that African Americans in Mossville bear a racially disproportionate burden of severe industrial pollution.

Furthermore, Mossville is a sad testament to the fact that, to this day, people of color are provided inferior and unequal environmental protection from EPA and other regulatory agencies.<sup>227</sup> It is ironic that, twenty years after the initial report documenting the inferior environmental protection afforded to people of color in the U.S.,<sup>228</sup> little has changed:

[C]ommunities [of color] not only face the same problems they did back then, but now face new ones because of government cutbacks in enforcement, weakening health protection, and dismantling the environmental justice regulatory apparatus.<sup>229</sup>

## **VI. THE FAILURE OF THE UNITED STATES GOVERNMENT TO ADEQUATELY PROTECT THE ENVIRONMENT OF MOSSVILLE RESIDENTS VIOLATES THEIR RIGHTS TO LIFE AND HEALTH**

The United States has failed to protect the rights to life and health of Mossville residents. Mossville residents have an inherent right to life and health pursuant to Articles I and XI, respectively, of the American Declaration of the Rights and Duties of Man which binds the United States through its membership in the OAS. Article I of the American Declaration provides that “[e]very human being has the right to life, liberty and the security of his person.” Article XI of the American Declaration provides that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”

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<sup>227</sup> Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, *supra* note 9.

<sup>228</sup> United Church of Christ Commission for Racial Justice, *Toxic Wastes and Race in the United States*, *supra* note 9.

<sup>229</sup> Robert D. Bullard *et al.*, *Toxic Wastes and Race at Twenty: 1987 – 2007*, *supra* note 9.

The Commission has recognized the interrelationship between the rights to life and health in the context of environmental degradation, explaining that:

The realization of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one's physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated.

The American Declaration of the Rights and Duties of Man, which continues to serve as a source of international obligation for all member states, recognizes the right to life, liberty and personal security in Article I, and reflects the interrelationship between the rights to life and health in Article XI, which provides for the preservation of the health and well being of the individual.

*Report on the Situation of Human Rights in Ecuador*, Inter-Am. C.H.R., OEA/Ser.L/V/II.96, doc. 10 rev. 1, ch. VIII at "The Applicable Legal Framework, 2. Relevant Inter-American Law" (1997).

The Commission's *Report on the Situation of Human Rights in Ecuador* provides a detailed review of the environmental damage suffered by indigenous peoples as a result of oil and petrochemical pollution in the Ecuadorian Amazon. Such damage led the Commission to conclude that environmental degradation can violate the rights to life and health:

[R]ights inhere in the individual simply by virtue of being human. Respect for the inherent dignity of the person is the principle which underlies the fundamental protections of the right to life and to preservation of physical well-being. Conditions of severe environmental pollution, which may cause serious physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being.

*Id.*, "Conclusions" at ¶ 1.<sup>230</sup>

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<sup>230</sup> In two recent cases, the Commission issued precautionary measures to protect the lives and health of people suffering from toxic industrial operations. Inter-Am. C.H.R., OEA/Ser.L/V/II.122, doc. 5 rev.1, ch. III.C.1, at ¶ 44 (2004) (pollution from open air mine affecting local residents and children suffering from high levels of lead in their blood); Inter-Am. C.H.R., OEA/Ser.L/V/II.130, doc. 22 rev. 1, ch. III.C.1, at ¶ 46 (2007) (residents suffering from a series of health problems stemming from high levels of air, soil, and water pollution as a result of local industrial operations).

In 1985 the Commission rendered a judgment declaring that the rights to life and health set forth in the American Declaration were violated by the failure of the government of Brazil to adequately protect the environment of the Yanomami Indians.<sup>231</sup> In 1997 the Commission further condemned the Brazilian government's authorization of the vast exploitation of natural resources by mining prospectors in the Amazon, which caused the "destruction of the [Yanomami] environment by such means as pollution from mercury in the waste matter discarded by the 'garimpeiros' (prospectors for gold, diamonds, etc.),"<sup>232</sup> and other severe environmental harms.<sup>233</sup>

The Commission explicitly recognizes the necessity for considering how the rights protected by the American Declaration are interpreted and applied in the developing field of international human rights law.

[I]n interpreting and applying the Declaration, it is necessary to consider its provisions in the context of the international and Inter-American human rights systems more broadly, in the light of developments in the field of international human rights law since the Declaration was first composed and with due regard to other relevant rules of international law applicable to member states against which complaints of violations of the Declaration are properly lodged . . . .

Developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may in turn be drawn from the provisions of other prevailing international and regional human rights instruments.

*Mary and Carrie Dann v. United States*, Case 11.140, Inter-Am. C.H.R., Report No. 75/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 at ¶¶ 96-97 (2002); and *Garza v United States*, Case 12.243, Inter-Am. C.H.R., Report No. 52/01, at OEA/Ser./L/V/II.111, doc. 20 rev. at ¶¶ 88-89 (2000).

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<sup>231</sup> *Yanomami v. Brazil*, Case No. 7617, Inter-Am. C.H.R., Resolution No. 12/85, OEA/Ser.L/V/II/66, doc. 10 rev. 1, ch. III (1984-85).

<sup>232</sup> *Report on the Situation of Human Rights in Brazil*, Inter-Am. C.H.R., OEA/Ser.L/V/II.97 doc. 29 rev. 1 ch. VI at ¶ 22 (1997).

<sup>233</sup> *Id.* at ¶¶ 67, 82(f).

With respect to the relevant rules of other international law applicable to the United States, the right to life is also protected by the International Covenant on Civil and Political Rights (“ICCPR”),<sup>234</sup> which has been ratified by the United States. Similar to the Commission, the Human Rights Committee<sup>235</sup> has observed that an environmental danger created by government “raises serious issues, with regard to the obligation of the State parties to protect human life (Article 6(1)).” *EHP v. Canada*, Human Rights Committee, Communication No. 67/1980, U.N. Doc. CCPR/C/17/D/67/1980 (Oct. 27, 1982). In *EHP v. Canada*, the Committee found that a complaint against the Canadian government’s storage of nuclear waste near a residential area constituted a *prima facie* case of a violation of the right to life of the ICCPR.<sup>236</sup> Furthermore, according to the Committee, the right to life:

has been too often narrowly interpreted . . . . [It] cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.

Human Rights Committee, *General Comment No. 6: The Right to Life (art. 6) Covenant on Civil and Political Rights*, 16<sup>th</sup> Session (1982).

With respect to the relevant rules of other international law applicable to the United States, the right to health is also protected by the International Convention on the Elimination of All Forms

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<sup>234</sup> International Covenant on Civil and Political Rights, Article 6(1): “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

<sup>235</sup> The Human Rights Committee was established by the International Covenant on Civil and Political Rights, Article 28(1).

<sup>236</sup> International environmental and human rights law expert Dinah Shelton explains that “[a]lthough the [United Nations Human Rights] Committee ultimately declared the complaint [*EHP v. Canada*] inadmissible because local remedies had not been exhausted, the Committee only reaches this point if it finds that the petition *prima facie* concerns rights protected under the Covenant.” Dinah Shelton, *Human Rights, Environmental Rights, and the Right to the Environment*, 28 STANFORD JOURNAL OF INTERNATIONAL LAW, volume 28 at pp. 123-24 (1991).

of Racial Discrimination (“CERD”),<sup>237</sup> which has been ratified by the United States. Pursuant to CERD, the Committee on the Elimination of Racial Discrimination<sup>238</sup> has recommended that the United States pay particular attention to the right to health . . . which may be infringed upon by activities threatening . . . [the] environment.” CERD, *Early Warning and Urgent Action Procedure, Decision 1 (68), United States of America*, U.N. doc. CERD/C/USA/DEC/1 at ¶ 8 (April 11, 2006). The Committee determined that activities by the federal government threatening the environment of Western Shoshone people – such as efforts to open a nuclear waste repository, and to process permits allowing open pit gold mining and geothermal energy production on Western Shoshone ancestral lands, among other harms – should be stopped in order to find resolution pursuant to CERD. *Id.* at ¶ 10.

Thus, it is well established by the Commission that the rights to life and health set forth in the American Declaration are intrinsically linked to the environment, and that States have the obligation to protect these rights by preventing environmental degradation. The Commission’s interpretation is reinforced by decisions of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination regarding the protection of the rights to life and health, which the United States is obligated to uphold pursuant to its ratification of the ICCPR and CERD.

As set forth above in the “Introduction” and “Background” sections of this petition, the United States has violated Articles I and XI of the American Declaration by issuing environmental permits to toxic industrial facilities knowing that this would subject the

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<sup>237</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e)(iv): “States parties undertake to prohibit and eliminate racial discrimination . . . and to guarantee the right of everyone . . . to equality before the law, notably in the enjoyment of the following rights: the right to public health.”

<sup>238</sup> The Committee on the Elimination of Racial Discrimination was established by the International Convention on the Elimination of All Forms of Racial Discrimination, Article 8(1).

Petitioners and all other residents of Mossville, Louisiana to life-threatening industrial operations and severe health problems associated with toxic chemical exposures.

**VII. THE FAILURE OF THE UNITED STATES GOVERNMENT TO ADEQUATELY PROTECT THE ENVIRONMENT OF MOSSVILLE RESIDENTS VIOLATES THEIR RIGHT TO EQUAL PROTECTION AND FREEDOM FROM RACIAL DISCRIMINATION**

The United States has failed to protect the right of Mossville residents to equal protection and freedom from racial discrimination. Mossville residents have an inherent right to equal protection and freedom from racial discrimination pursuant to Article II of the American Declaration, which binds the United States through its membership in the OAS, and provides that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race . . . or any other factor.”

Central to the Commission’s recitation of facts in Chapter VI of its *Report on the Situation of Human Rights in Brazil*<sup>239</sup> and Chapter VIII of its *Report on the Situation of Human Rights in Ecuador*,<sup>240</sup> is the obvious unequal and discriminatory treatment of indigenous people who are victimized by the exploitation of their lands and natural resources. Such unequal and discriminatory treatment underlies the human rights abuses suffered by the indigenous peoples. The Commission’s human rights situation reports for Brazil and Ecuador acknowledge the following instances of unequal and discriminatory treatment:

- in Brazil, historical racism against indigenous peoples, and a governmental land demarcation system that “violates the equality of all citizens;”<sup>241</sup>

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<sup>239</sup> *Report on the Situation of Human Rights in Brazil*, *supra* note 232, at ¶¶ 1-81.

<sup>240</sup> *Report on the Situation of Human Rights in Ecuador*, *supra* p. 80, at “Analysis.”

<sup>241</sup> *Report on the Situation of Human Rights in Brazil*, *supra* note 232, at ¶¶ 19, 50.



- in both Brazil and Ecuador, political support for environmentally destructive industrial development in indigenous communities, and the failure of the governments of Brazil and Ecuador to establish and/or enforce adequate safeguards to protect the environment and health of indigenous peoples;<sup>242</sup>
- in Ecuador, the exclusion of indigenous peoples from direct participation in governmental decision-making on environmental matters affecting them, insufficient information regarding environmental issues provided to indigenous peoples, and inadequate access to judicial remedies for indigenous peoples.<sup>243</sup>

The Commission's reports indicate the inherent relationship that discrimination has to the virtual non-existence of both environmental protection in indigenous communities and the protection of indigenous land rights.

In the case of *Mary and Carrie Dann v. United States*, the Commission determined that, contrary to Article II of the American Declaration, the United States did not afford equal protection to petitioners, who are tribal members of the Western Shoshone people whose ancestral lands were being transferred to developers.<sup>244</sup> Recognizing that the United States had neither a reasonable justification nor a legitimate objective for denying the indigenous group the same property rights that are afforded to non-indigenous people, the Commission recommended that the United States provide an effective remedy in accordance with Article II and other relevant articles of the American Declaration.<sup>245</sup>

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<sup>242</sup> *Id.* at ¶¶ 48-62, 65-73; *Report on the Situation of Human Rights in Ecuador*, *supra* p. 80, at “The Situation in the Oriente” and “Government Action on the Issue of Oil Development.”

<sup>243</sup> *Id.* at “Conclusions.”

<sup>244</sup> *Mary and Carrie Dann v. United States*, *supra* p. 82.

<sup>245</sup> *Id.* at ¶ 171.

In its interpretation and application of the right to equal protection and freedom from discrimination, the Commission has acknowledged the necessity of considering “the evolving rules and principles of human rights law in the Americas and in the international community more broadly, as reflected in treaties, custom and other sources of international law.”<sup>246</sup> The United States has ratified the Convention on the Elimination of All Forms of Racial Discrimination, which has been interpreted and applied by the Committee on the Elimination of Racial Discrimination to oblige the United States to “[f]reeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers.”<sup>247</sup> The Committee has also expressed concern about the actions of other nations that undermine the right to equality and freedom from racial discrimination in the context of environmental protection for groups who are victimized by historical and contemporary forms of discrimination, such as indigenous peoples,<sup>248</sup> people of African descent,<sup>249</sup> and Roma people.<sup>250</sup>

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<sup>246</sup> *Id.* at ¶ 124.

<sup>247</sup> CERD, *Early Warning and Urgent Action Procedure Decision 1(68) United States of America*, *supra* p. 83 at ¶ 10.

<sup>248</sup> See CERD, *Decision 2(54) on Australia*, U.N. doc. A/54/18, para. 21(2) at ¶ 6 (1999) (expressing concern regarding Australian law that appeared to create legal certainty for governments and third parties regarding mining rights at the expense of indigenous title); see also CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ecuador*, U.N. doc. A/48/18, paras. 128-146 at ¶ 132 (1993) (requesting information regarding the effect of Ecuadorean governmental programs in protecting the natural resources and environment of indigenous people in the Amazon region).

<sup>249</sup> See *Report of the Committee on the Elimination of Racial Discrimination (Sessional/Annual Report of Committee)*, U.N. doc. A/54/18 at ¶ 469 (1999) (“Concern is expressed that development and resource exploration programmes on land subject to the property rights of indigenous and Afro-Colombian communities have been pursued without . . . sufficient concern for the environmental and socio-economic impacts of these activities.”).

<sup>250</sup> See *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Slovakia*, U.N. doc. CERD/C/304/Add.110 at ¶ 14 (2001) (expressing concern over the “high exposure to environmental pollution in Roma settlements” and recommending that Slovakia

As set forth above in the “Introduction” and “Background” sections of this petition, the United States has violated Article II of the American Declaration by issuing environmental permits to toxic industrial facilities knowing that this would create racially disproportionate pollution burdens that harm the health and lives of the African American residents of Mossville, Louisiana.

**A. THE ARGUMENT BY THE UNITED STATES GOVERNMENT THAT THE AMERICAN DECLARATION REQUIRES A CLEAR SHOWING OF *INTENTIONAL* DISCRIMINATION IS NOT SUPPORTED BY HUMAN RIGHTS LAW**

In the *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Mossville Environmental Action Now*, the United States Government incorrectly asserts that “a clear showing of *intentional* discrimination based on factors such as race . . .” is required of Mossville petitioners.<sup>251</sup> The United States Government does not cite any legal authority whatsoever – because there is no such authority.

The mandate of the Commission is the defense of inviolable human rights, which includes Article II of the American Declaration. The Commission has determined that a violation of Article II occurs when a government’s treatment of a group is distinct from that of another group without a reasonable justification or legitimate objective, and uses means that are disproportionate to the end sought. *Mary and Carrie Dann v. United States*, *supra* p. 82, at ¶143 (citation omitted).

The Commission’s interpretation and application of Article II is clearly consistent with well established human rights law. The scope of Article 24 of the American Convention on

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“take all necessary measures to ensure that the Roma enjoy the full right to health and health care.”).

<sup>251</sup> *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Mossville Environmental Action Now, Petition No. 242-05, Precautionary Measure No. 25-05* at p. 6 (emphasis added).

Human Rights, which is substantially identical to Article II of the American Declaration, has been explained by the Inter-American Court of Human Rights to prohibit unequal treatment by a government when (1) the treatment in analogous or similar situations is different; (2) the difference has no objective and reasonable justification; and (3) the means employed are not reasonably proportional to the aim being sought.<sup>252</sup> Furthermore, the European Court of Human Rights has established three similar elements to determine when there is discrimination under Article 14 of the European Convention for Human Rights: (1) the facts found disclose a differential treatment; (2) the distinction does not have a legitimate aim; (3) there is no reasonable proportionality between the means employed and the aim sought to be realized. *Geillustreerde Pers N.V. v. the Netherlands*, D&R8 at p. 5 (14-15) (1977), as cited by P. Van Dijk and G. J. H. Van Hoof, *Theory and Practice of the European Convention on Human Rights*, p. 753.

As set forth in the “Introduction” and “Background” sections of this petition, the United States has violated Article II of the American Declaration by: (1) affording unequal environmental protection based on race without any reasonable justification; (2) creating a pattern of environmental racism that serves no legitimate aim whatsoever; and (3) establishing woefully inadequate and ineffective means for achieving environmental protection, with knowledge that people of color bear the significantly disproportionate burden of such inadequate and ineffective measures.

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<sup>252</sup> *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion, Inter-Am. Ct. H.R., (Ser. A) No. 4 at ¶ 12 (Jan. 19, 1984).

## VIII. THE FAILURE OF THE UNITED STATES GOVERNMENT TO ADEQUATELY PROTECT THE ENVIRONMENT OF MOSSVILLE RESIDENTS VIOLATES THEIR RIGHTS TO PRIVACY AND INVIOABILITY OF THE HOME

The United States has violated the rights of Mossville residents to privacy and inviolability of the home. Mossville residents have an inherent right to privacy and inviolability of the home pursuant to Articles V and IX of the American Declaration, which respectively provide that “[e]very person has the right to the protection of the law against abusive attacks on his . . . private and family life,” and the right to the “inviolability of his home.”

The interpretation and application of the right to privacy and inviolability of the home by other sources of international law recognize that adverse environmental conditions created by a government can undermine a nation’s obligation to safeguard the right of privacy and inviolability of the home for its residents.<sup>253</sup>

A unanimous European Court of Human Rights held in *Lopez Ostra v. Spain* that Spain’s failure to prevent a waste treatment plant from polluting nearby homes violated the right to privacy of the European Convention, Article 8.<sup>254</sup> App. No. 16798/90, 20 Eur. H.R. Rep. 277 (1994). Pollution from the wastewater treatment plant located 12 meters from the home of the

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<sup>253</sup> In its interpretation and application of human rights, the Commission has acknowledged the necessity of considering “the evolving rules and principles of human rights law in the Americas and in the international community more broadly, as reflected in treaties, custom and other sources of international law.” *Mary and Carrie Dann v. United States*, *supra* p. 82.

<sup>254</sup> Similar to Article IX of the American Declaration, Article 8 of the European Convention provides that “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

complainant, a young girl, caused her to suffer from chronic nausea, vomiting, allergic reactions, and bronchitis. The European Court ruled that Spain

. . . did not succeed in striking a fair balance between the interest of the town's economic well-being – that of having a waste-treatment plant – and the applicant's effective enjoyment of her right to respect for her home and her private and family life. There has accordingly been a violation of Article 8.

*Id.* at 297. Notwithstanding the fact that the government had not built the facility, the European Court still held Spain responsible because the government had allowed the facility to operate and had financed the construction of the facility. *Id.* at ¶ 52 and ¶ 55.

In *Fadeyeva v. Russia*, the European Court of Human Rights found that Russia violated the right to private life and enjoyment of the home of the European Convention, Article 8 as a result of persistent pollution from a nearby steel mill. Eur. Ct. H.R., App. No. 55723/00 (June 9, 2005). Although Russian legislation required a buffer zone to create a spatial separation between the steel mill and a residential area, the complainant and hundreds of other residents lived within the zone and suffered ill health effects from the steel mill's significant pollution. *Id.* at ¶¶ 10-11,

15. The Court ruled:

Even assuming that the pollution did not cause any quantifiable harm to her health, it inevitably made the applicant more vulnerable to various illnesses. Moreover, there can be no doubt that it adversely affected her quality of life at home. Therefore, the Court accepts that the actual detriment to the applicant's health and well-being reached a level sufficient to bring it within the scope of Article 8 of the Convention.

*Id.* at ¶88.

Thus, to protect the right to privacy and inviolability of the home, governments should ensure adequate environmental protection. However, as set forth above in the “Introduction” and “Background” sections of this petition, the United States has violated Article IX of the American Declaration by issuing permits that allow fourteen toxic industrial facilities to release massive

quantities of pollution in close proximity to the homes of Petitioners and all other Mossville residents, which has caused residents to suffer significant deterioration of their health and quality of life.

**IX. THE ARGUMENT BY THE UNITED STATES GOVERNMENT THAT THERE IS NO ENFORCEABLE MANDATE UNDER THE AMERICAN DECLARATION FOR THE REMEDIES SOUGHT BY PETITIONERS IS CONTRADICTED BY THE LEGAL DECISIONS OF THIS COMMISSION**

In the *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Mossville Environmental Action Now*, the United States Government argues that “there is no enforceable mandate under the American Declaration” to provide the relief sought by Mossville residents.<sup>255</sup> Once again, the United States Government does not cite legal authority – because there is no such authority. It is indisputable that the Commission has in fact recommended precisely the types of remedies that Mossville residents seek in this petition. The Commission generally recognizes that a government found to have violated human rights “is obliged to resolve the situation in light of its contemporary obligations under international human rights law . . . .”<sup>256</sup> With respect to a government’s failure to protect human rights as a result of state-created severe environmental degradation, the Commission has made specific recommendations to governments pursuant to the American Declaration that include the following: the provision of health care to protect the lives and health of people harmed by environmental degradation;<sup>257</sup> the review of laws,

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<sup>255</sup> *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Mossville Environmental Action Now, Petition No. 242-05, Precautionary Measure No. 25-05* at p. 6.

<sup>256</sup> See, e.g., *Mary and Carrie Dann v. United States*, *supra* p. 82, at ¶ 167.

<sup>257</sup> *Yanomami v. Brazil*, *supra* note 231, at ¶ 3.

procedures and practices that appear to interfere with human rights;<sup>258</sup> the adoption of legislative or other measures necessary to prevent environmentally destructive projects and to provide remedial action;<sup>259</sup> and the suspension of all decisions that have an effect on the communities of people whose human rights have been violated.<sup>260</sup> Thus, the argument of the United States is without merit.

## **X. REQUEST FOR REMEDIES**

Petitioners seek remedies for the violation of their human rights and respectfully request that the Commission, pursuant to human rights laws and standards, recommend to the United States that it:

1. provide medical services to Mossville residents suffering from diseases and health problems associated with environmental toxic exposures, including health monitoring services;
2. offer appropriate relocation to consenting Mossville residents that allows them to live in healthier environs, away from toxic industrial facilities and contaminated sites;

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<sup>258</sup> See *Mary and Carrie Dann v. United States*, *supra* p. 82 at ¶ 173 (2) (The Commission recommended that the United States “[r]eview its laws, procedures and practices to ensure that . . . rights are determined in accordance with the rights established in the American Declaration . . .”).

<sup>259</sup> See *id.* at ¶ 173 (1) (The Commission recommended that the United States “[p]rovide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures . . . in accordance with . . . the American Declaration . . .”) See *Report on the Situation of Human Rights in Ecuador*, *supra* p. 80, at “Recommendations” (The Commission recommended that Ecuador “adopt the measures necessary to translate this concern into preventive and remedial action.”).

See also CERD, *Early Warning and Urgent Action Procedure, Decision 1(68), United States of America*, *supra* note 247, at ¶ 10 (a) (recommending that the United States “[f]reeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers.”).

<sup>260</sup> See *Report on the Situation of Human Rights in Brazil*, *supra* note 232, at ¶ 82. (The Commission recommended that Ecuador “suspend all decisions on municipalization that have an effect on Indian lands . . .”).

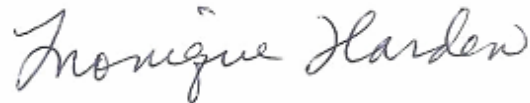


3. refrain from issuing environmental permits and other approvals that would allow any increase in pollution by existing industrial facilities located in close proximity to the Mossville community, and to refrain from issuing any environmental permits and other approvals that would allow the introduction of any new industrial facility in the Mossville area; and
4. reform its existing environmental regulatory system to:
  - a. establish in all regulatory programs pollution limits that protect against the multiple, cumulative, and synergistic health impacts of numerous toxic and hazardous substances released into the air, water, and land by one or more industrial facilities;
  - b. require a safe distance between a residential population and a hazardous industrial facility so that the population is not located within the area where deaths or serious injury would result in the event that a toxic or flammable substance stored, processed, or generated by the facility would be released to the environment through explosion, fire, or spill; and
  - c. remedy past practices and prevent future actions that intentionally or inadvertently impose racially disproportionate pollution burdens.

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