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Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: 60-Day Notice of Intent to File a Clean Air Act Citizen Suit

I. Introduction

Please take this letter as our office's intent to sue on behalf of "*Laredo Children for a Better Tomorrow*," pursuant to the Federal "Clean Air Act, ("CAA"). Among other relevant sections of the "CAA", 42 U.S.C. §7604(a)(2) allows citizens to bring suit, "against the Administrator where there is alleged failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator."¹ This section of the "CAA" allows the federal district courts, with jurisdiction, to also compel agency action that has been unreasonably delayed.² By delaying community meetings, and the installation of an Ethylene Oxide ("ETO") surveillance program, the U.S. Environmental Protection Agency ("EPA") is failing to properly protect the residents of Laredo which goes against the mandate of the "EPA" and the "CAA".

The City of Laredo ("Laredo") is a border community along the Texas-Mexican border with approximately 256,000 people, of which 95% are Hispanic.³ These numbers may not be, and are most likely not, the true representation of the current population and the transitory population, due to the fact that "Laredo" is an international port of entry and home to the largest inland port in the United States.⁴ Of the residents that have

¹ 42 U.S.C. § 7604(a)(2)

² Id.

³ <https://www.census.gov/quickfacts/laredocitytexas>

⁴ <https://www.laredoedc.org/site-selection/international-trade/#;:text=The%20Port%20of%20Laredo%20is,Bureau%20data%20analyzed%20by%20WorldCity>.

been counted in the U.S. census, 23.9% of these individuals are living in poverty and 28% are underinsured.⁵

“Laredo” has been medically underserved for decades, with only 1/3 of the primary care physicians and healthcare professionals needed for a population of its size.⁶ Besides having limited health care options, “Laredo” has historically had very few oncologists and no children’s hospital.

Congress passed the “CAA” to empower the “EPA” to regulate all sources of air emissions in the United States.⁷ The “CAA” also authorized the “EPA” to create the National Ambient Air Standards (“NAAQS”) to protect the public health and environment.⁸ Ethylene oxide (“ETO”) is one of approximately 187 hazardous air pollutants or “air toxics” regulated by the EPA, and the World Health Organization (“WHO”) has found ETO to be carcinogenic and harmful to humans.⁹ The “EPA” has posted online risk maps and information for the high-risk facilities emitting this carcinogen.¹⁰ As seen in the *Los Angeles Times* reporting, this information spotlights that these emissions could be causing harm to the communities in which they are located.¹¹

A. ProPublica/Tribune Investigative Reporting

Last year (11/2/2021), a five-year analysis of industry data performed by ProPublica and The Texas Tribune (“*ProPublica/Tribune Analysis*”) found that a commercial sterilizer located in close proximity to an elementary school in Laredo was the most toxic facility of its kind in the country.¹² Until this analysis was published, several of the residents and local officials were unaware of the potential dangers associated with the

⁵ See id.

⁶ <https://data.hrsa.gov/tools/shortage-area/mua-find>; <https://datausa.io/profile/geo/laredo-tx/#:~:text=Between%202018%20and%202019%2C%20the,from%2029.1%25%20to%2028.6%25>; <https://www.lmtonline.com/news/article/Why-is-Laredo-a-medically-underserved-region-16437310.php>

⁷ <https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter85&edition=prelim>

⁸ See id.

⁹ <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/ethylene-oxide-updates>

¹⁰ See id.

¹¹ <https://www.latimes.com/environment/story/2022-08-09/medical-sterilizing-facilities-face-growing-scrutiny>

¹² <https://www.lmtonline.com/local/article/Laredo-facility-among-23-EPA-identifies-for-risk-17354765.php>

sterilizer.¹³ As more information was released by the EPA, it was reported that up to 15 local schools were in the impacted area.¹⁴

B. Town Hall Meeting

This triggered a series of community meetings with local officials, scientists, and the Clean Air Coalition (“CAC”), where several proposals to monitor and mitigate any potential effects from the emissions were presented to the sterilizer.¹⁵ Some of the most significant proposals were discussed on December 8, 2021 at a Town Hall meeting where several residents living in the impacted area described losing family members to cancer due to unknown or environmental factors.¹⁶ One of the proposals introduced by the Local Health Authority for the City of Laredo, was the creation of a ETO surveillance program, that either involved biological surveillance in coordination with the CDC,¹⁷ and/or installing air quality monitors around the sterilizing plant.¹⁸ These types of mitigation measures and monitoring have been implemented by other communities throughout the country that are located around sterilizing plants.¹⁹ To our knowledge, none of the mitigation measures or proposals have been accepted or implemented by the sterilizer in Laredo.

2. There is enough Scientific Evidence to Warrant action by the EPA for the Installation of ETO Monitors

The installation of ETO emission monitors is long overdue in the Laredo area. In light of the known scientific evidence, the lack of independent ETO emissions monitoring, is a gross failure by the EPA to protect this

¹³ <https://www.propublica.org/article/a-plant-that-sterilizes-medical-equipment-spews-cancer-causing-pollution-on-tens-of-thousands-of-schoolchildren>

¹⁴ <https://www.epa.gov/national-air-toxics-assessment>

¹⁵ <https://www.kgns.tv/2022/03/24/midwest-sterilization-tour-met-with-protest/>

¹⁶ <https://www.lmtonline.com/news/article/Town-Hall-talks-EtO-emissions-16687904.php>

¹⁷ <https://www.wabe.org/blood-tests-show-environmental-exposure-to-ethylene-oxide-near-illinois-plant/>

¹⁸ See id.

¹⁹ See id.

medically underserved community. As mentioned, the agency inaction goes against the basic mandate of the EPA and is a violation of the of the “CAA”.

A. The EPA has Known Science and Research about Ethylene Oxide

From the EPA’s own research (“***EPA ETO Research***”), since 2016, the EPA has known and concluded that ethylene oxide was 30 times more carcinogenic than previously thought for people who continuously inhale it as adults and 50 times more carcinogenic for those who are exposed since birth.²⁰ ***So children are more impacted by these emissions.***²¹ One of the reasons is that ethylene oxide can damage DNA, and growing children are more susceptible to DNA damage because their cells divide more rapidly than adults.²²

Additionally, since 2018 the EPA has known that some of the communities that it identified are at risk from ethylene oxide pollution.²³ This was the basis of some of the preliminary public meetings that were initiated.²⁴ Unfortunately, none of these meetings occurred in Laredo, and occurred in communities with better economic and healthcare resources.²⁵

B. DSHS Cancer Cluster Study

Most recently, the Texas Department of State Health Services (“DSHS”) published the results of a cancer cluster study (“***Laredo Cancer Study***”), in which the study examined rates of four different types of cancer that have been linked to ethylene oxide exposure in three different census tracts nearest the Laredo plant, focusing on

²⁰ <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/frequent-questions-about-ethylene-oxide-eto>

²¹ See id.

²² See id.

²³ <https://www.lmtonline.com/local/article/Laredo-facility-among-23-EPA-identifies-for-risk-17354765.php>

²⁴ See id.

²⁵ See id.

diagnoses from 2006 to 2019.²⁶ The study found that rates of one type of cancer associated with ethylene oxide exposure, extranodal non-Hodgkin lymphoma, were “*significantly greater than expected*” given the population.²⁷ With the reality that many of the residents fall into low-income, underinsured, or individuals that travel to Mexico to receive more affordable care, the “*Laredo Cancer Study*” likely did not include some of the data that may be available.

C. Disagreement Among Regulatory Agencies

There has been fundamental disagreement between the Texas Commission on Environmental Quality (“TCEQ”) and the U.S. Environmental Protection Agency (“EPA”), over the exposure concentration at which Ethylene Oxide may cause cancer, and the predicted ambient concentration near plants.²⁸ Even though the U.S. Environmental Protection Agency has superseding jurisdiction over emissions in the United States,²⁹ *neither position can be known without a proper ETO Monitoring Program.*

3. Laredo Is at Even Higher Risk Due to Existing Disparities and Medical Underservice

Across the United States, the Health Resources and Services Administration “HRSA” has defined a medically underserved area (“MUA”) and/or medically underserved population (“MUP (MUA/P)”) as areas or populations with a shortage of health care services.³⁰ Documentation of shortages include several factors, in addition to the availability of health care providers.³¹ These factors include infant mortality rate, poverty rate and

²⁶ <https://www.dshs.texas.gov/epitox/CancerClusters/CSum-22001.pdf>

²⁷ See *Id.*

²⁸ <https://www.lmtonline.com/local/article/Laredo-facility-among-23-EPA-identifies-for-risk-17354765.php>

²⁹ <https://www.epa.gov/radiation/what-authorities-does-epa-have-protect-people-radiation>

³⁰ <https://data.hrsa.gov/tools/shortage-area/mua-find>

³¹ See *Id.*

percentage of population aged 65 and older.³² “Laredo” is a community that has been medically underserved for decades with very few oncologist, no children’s hospital, and a significant portion of the community that are underinsured.

A. Harvard Study On Disparate Impact of Air Pollution Among Hispanic Communities

According to research from the Harvard T.H. Chan School of Public Health (“*Harvard Study*”), Hispanics and low-income populations are being exposed to higher levels of dangerous fine particulate air pollution than other groups.³³ As mentioned Laredo is 95% Hispanic, 28% of the population are underinsured, and 23.9% live in poverty.³⁴

These studies have shown that racial and ethnic minorities and lower-income groups in the U.S. are at higher risk of premature death from exposure to air pollution as compared to other populations and income groups.³⁵ More importantly is that the studies show that there are clear disparities in exposure to air pollution among these groups.³⁶ These studies demonstrate that because “ETO” is carcinogen and mutagenic, the emissions could be creating a systemic and generational public health problem for years to come.³⁷

4. Conclusion and Requested Monitoring

The “*ProPublica/Tribune Analysis*,” the “*EPA Research*,” the “*Laredo Cancer Study*,” and the “*Harvard Study*,” all point to the fact that the Laredo community should be a place for “ETO” monitoring and would be significantly more impacted than other communities because of its limited medical resources. By not having

³² See id.

³³ <https://www.hsph.harvard.edu/news/press-releases/racial-ethnic-minorities-low-income-groups-u-s-air-pollution/#~:text=Previous%20research%20has%20shown%20that,air%20pollution%20among%20these%20groups>

³⁴ [https://datausa.io/profile/geo/laredo-tx/#~:text=Race%20and%20Ethnicity&text=95.2%25%20of%20the%20people%20in,are%20hispanic%20\(242k%20people\)](https://datausa.io/profile/geo/laredo-tx/#~:text=Race%20and%20Ethnicity&text=95.2%25%20of%20the%20people%20in,are%20hispanic%20(242k%20people))

³⁵ See id.

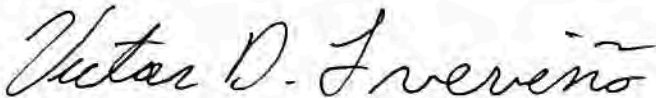
³⁶ See id.

³⁷ See id.

surveillance programs similar to other communities,³⁸ and delaying community engagement, this has put the residents of “Laredo” in a critically disadvantageous position. This position is further reinforced by the EPA’s August 3, 2022, announcement that the Laredo sterilizing plant is among 23 identified sterilizers across the country that created an excess cancer risk for nearby residents of at least 1 in 10,000. What this represents is that that out of 10,000 people exposed to that amount of ethylene oxide over their lifetimes, at least one would likely develop cancer.³⁹ This is one child or adult too many, especially when the cancer can be prevented through mitigation and proper monitoring.

Based on the overwhelming scientific evidence associated with ethylene oxide, the known information on emissions in Laredo, and the community public health concerns, the “Clean Air Act” requires the EPA to act. This action would be through the implementation of Air Quality Monitors, and/or a biological surveillance program, and community engagement on the true risks associated with these emissions on current and future generations.

Sincerely,



Victor D. Trevino

Attorney

³⁸ <https://www.medicaldesignandoutsourcing.com/report-eto-blood-levels-higher-in-illinois-neighbors-of-medline-sterilization-plant/>

³⁹ See id.