

Attachment No. 7



Environmental Justice Organizations post Comments on Carbon Capture and Storage to the White House Council on Environmental Quality

- April 19, 2022



Brenda Mallory
Chairwoman, Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Re: Request for Comments Council for Environmental Quality's "Carbon Capture, Utilization, and Sequestration Guidance," 87 Federal Register 8808 (February 16, 2022), Docket CEQ-2022-0001

18 April 2022

Dear Chair Mallory:

The Climate Justice Alliance (CJA) in coordination with Indigenous Environmental Network, Institute for Policy Studies, Grassroots Global Justice Alliance, Michigan Environmental Justice Coalition, and New York Lawyers for the Public Interest appreciate the opportunity to offer comments on the Council on Environmental Quality's, *Carbon Capture, Utilization, and Sequestration Guidance* Document ("Guidance Document").

These comments, led by environmental justice organizations, and supported by numerous ally organizations, highlight the serious concerns with the recently issued Guidance Document on carbon dioxide removal technologies that includes: carbon capture and sequestration/carbon capture utilization and storage (CCS and CCUS), direct air capture (DAC), and other related technologies.

Technological fixes such as CCS/CCUS will never address extraction-driven climate and ecological crises as long as fossil fuels continue to be extracted and burned, or put to other toxic uses such as hydrogen combustion or plastics production. Likewise, bioenergy with carbon capture and storage (BECCS) will never address the ecological crisis caused by destruction of forests for fuel. It should be noted that, currently, the only large-scale use of "captured" carbon dioxide is for enhanced oil recovery (EOR). Currently, 75 percent of carbon dioxide captured via industrial means is used to boost fossil fuel recovery, a fact that is profoundly overlooked in the Guidance Document.

From our perspective, the Guidance Document appears to act as a mechanism for fast-tracking the approval of massive CCS/CCUS and associated carbon dioxide permits in spite of significant opposition from the environmental justice community as well as the larger ecosystem of climate justice advocates. Even the timing of the Guidance Document's release seems concomitant with the Infrastructure Investment and Jobs Act (IIJA), which includes provisions that significantly undermine the National Environmental Policy Act (NEPA), which acts as a vanguard for environmental justice communities. In addition, IIJA diminishes the ability of communities to secure injunctions for harmful projects by expediting environmental reviews and increasing hurdles for communities to challenge projects in court.

President Biden declared it the policy of his administration to, "secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment..." However, this intention is not reflected in the Guidance Document or the process that led to its preparation. We, therefore, invite CEQ to consider our concerns and work more intentionally with Indigenous and environmental justice communities prior to the proliferation of CCS/CCUS technology and associated infrastructure in such a way that better aligns with the commitments made by President Biden, CEQ, and other federal agencies to prioritize environmental justice.

Background and Framing

The proliferation of CCS/CCUS and associated infrastructure will inevitably have a profound impact on environmental justice communities – in some instances it already has, as was the case in Yazoo County, Mississippi following the rupture and explosion of a carbon dioxide pipeline that left many injured. CCS/CCUS also contributes to worsened air quality by increasing lifecycle emissions of toxic air pollutants, disproportionately harming disadvantaged and other environmental justice communities. In addition to worsening existing sources of

pollution, CCS/CCUS has the potential to expose environmental justice communities to new, under-studied risks associated with the buildout of carbon dioxide pipelines, as was the case in the aforementioned Yazoo County, Mississippi incident.

We declare the entire concept of CCS/CCUS is antithetical to environmental justice principles. As such, any attempt to reconcile CCS/CCUS guidance in the context of environmental justice is an exercise in futility. Whereas CCS/CCUS is an “end of the pipe” solution that attempts to remove carbon dioxide after fossil fuels have been extracted, transported, processed, and burned, causing harm to communities and ecosystems at every stage. True environmental justice requires addressing the root causes of the problem by leaving fossil fuels in the ground and reducing emissions expeditiously.

Therefore, we call on CEQ to withdraw the Guidance Document, and undertake a better, more inclusive process that demonstrates and exercises transparency, participation, as well as the consent of environmental justice community members that leads to a new guidance document. Further, we request a longer comment period of at least 60 days, and an additional process that would give stakeholders more opportunities to give input on CEQ’s guidance, including:

- Broader community engagement including direct outreach to frontlines and environmental justice communities, potential geographic hearings or listening sessions, etc;
- Development of further reports that go beyond CEQ’s 2021 report to Congress, *Council on Environmental Quality Report to Congress on Carbon Capture, Utilization, and Sequestration* (“CEQ 2021”), to assess the potential harmful impacts of CCUS on disadvantaged and other environmental justice communities that should be completed before any final guidance is issued; and
- A recommendation by CEQ for the cessation of all CCS/CCUS permitting projects until the final guidance is developed with robust stakeholder engagement.

Further, we are extremely concerned, pursuant to the Consolidated Appropriations Act of 2021, CEQ has been tasked with establishing “not less than [two] task forces, which shall each cover a different geographical area with differing demographic, land use, or geological issues,” for the purpose of facilitating the permitting and development of CCS projects. The law was enacted in December 2020 and gave CEQ 18 months to establish these task forces, which likely means that the process of establishing these task forces is close to completion. However, we, and numerous environmental advocates with whom we frequently work, have heard of no public announcements from CEQ whatsoever about which geographic regions they have selected, who the proposed members of the task forces are, nor any other relevant information.

We find this lack of transparency to be deeply concerning, and demand that CEQ immediately:

- Make public its plans for establishing these task forces;
- Prohibit the task forces from recommending permit processes for CCS/CCUS projects until environmental justice principles of transparency, consent, and participation are met to the satisfaction of the environmental justice community; and
- Provide meaningful opportunities for impacted communities in the selected geographic regions to engage and participate in the work of these task forces.

CEQ Failed to Undertake Meaningful Engagement with Indigenous and Environmental Justice Communities

Environmental justice movements arose in response to decades of disproportionate environmental harms experienced by Indigenous, Black, Latin(a/o), Asian, and other communities of the global majority, and the poor in the United States and worldwide resulting from centuries of slavery, colonization, and the promulgation of racist, sexist, and inequitable policies. In response to legacy environmental racism, environmental justice movements have developed key principles, such as the 1991 Principles of Environmental Justice, the 1996 Jemez Principles of Democratic Organizing, and various principles of Just Transition.

Unfortunately, CEQ failed to consider any of these principles or include consultation with Indigenous and environmental justice Peoples and organizations in its preparation of the Guidance Document. This is antithetical to Section 219 of President Biden's Executive Order (E.O) 14008, which, in part, stipulates, "Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts."

Additionally, the Guidance Document does not comply with mandated consultation policies with federally recognized Tribes pursuant to E.O. 13175. It is our assertion that CEQ and the Biden Administration should require Indigenous Peoples' consent, not just consultation, in accordance with the principle of Free Prior and Informed Consent for any decision impacting Indigenous Peoples, before any guidance on CCS/CCUS is issued to ensure meaningful consultation.

Furthermore, the process that led to the Guidance Document is inconsistent with CEQ's own "Guiding Principles for Meaningful Engagement" included as part of its 2016 Document, *Promising Practices for EJ Methodologies in NEPA Reviews*. Therein, CEQ recommends, "Meaningful engagement efforts with potentially affected minority populations, low-income populations, and other interested individuals, communities, and organizations are generally most effective and beneficial for agencies and communities when initiated early and conducted (as appropriate) throughout each step of the NEPA process."

The Guidance Document is inconsistent with public engagement recommendations and conclusions contained in CEQ 2021. For instance, the Guidance Document indicates the 2021 report was "... developed in response to the Congressional mandate to identify public engagement opportunities through existing laws, including under the National Environmental Policy Act of 1969." However, we find that the Guidance Document's assurances of consultation with environmental justice communities, and safeguards to prevent any harm to them, are specious. In fact, it can be argued that the entire process associated with the introduction of legislative priorities for carbon dioxide removal technologies has lacked inclusion and consent, since the views of environmental justice communities were not intentionally solicited, such as during a Congressional hearing for the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act (which is included as part of Consolidated Appropriations Act of

2021), which, did not include a single representative of an environmental justice community or climate justice organization.

These and other recommendations to better engage with disadvantaged and other environmental justice communities were clearly absent from the process that led to the Guidance Document. Therefore, as previously mentioned, CEQ must undertake broader community engagement including direct outreach to frontline, Indigenous, and environmental justice communities through a series of public hearing opportunities that are accessible to concerned and other interested residents.

Guidance Documented Cites Selective Data That Fail to Document Past and Present CCS/CCUS Challenges

The Guidance Document is largely informed by key findings included as part of CEQ 2021, which includes a litany of inconsistencies, unfounded conclusions, and, in some cases, blatant inaccuracies. For instance, one of CEQ 2021's key findings asserts, "Key guidance documents and best practices have been developed by the Federal Government, industry, and non-governmental organizations to assist CCUS project developers in moving CCUS efforts forward responsibly and efficiently." However, CEQ failed to cite any of these sources in CEQ 2021 and they are largely unknown to the various environmental justice organizations we solicited to determine their familiarity with these "key guidance documents and best practices."

Additionally, CEQ 2021 claims, "The Federal Government has an existing regulatory framework that is rigorous and capable of managing permitting and review actions while protecting the environment, public health, and safety as CCUS projects move forward." Yet, as our comments will demonstrate, CEQ itself confirms there is, for instance, no federal agency that currently holds jurisdiction over carbon dioxide pipelines – they are largely regulated by the states. In short, the fact that the recommendations of the Guidance Document are informed by CEQ 2021 is concerning and should be addressed prior to finalization of any guidance for the permitting and regulation of CCS/CCUS and associated infrastructure.

CEQ claims there is "growing scientific consensus" CCUS technologies and permanent sequestration are likely needed to prevent the worst impacts of climate change but fails to provide any references to back up this claim. However, CEQ conveniently ignored the growing body of evidence proving that carbon removal methods have not demonstrated energy efficiency or efficacy. As an example, according to three leading climate scientists, reliance on technological carbon removal, and the underlying misleading concept of "net zero" emissions targets, create a false sense of complacency by holding onto the promise of non-existent or experimental technologies, which could mitigate greenhouse gas emissions in the distant future, reducing the impetus to make deep cuts in emissions today.

Furthermore, the Guidance Document omits consensus from numerous environmental justice organizations who contend that carbon removal technologies perpetuate harm and risk to environmental justice communities. In fact, President Biden's White House Environmental Justice Advisory Council (WHEJAC), which includes leaders of the environmental justice community, explicitly named CCS/CCUS as an example of the types of projects that will not benefit disadvantaged and other environmental justice communities. Additionally, national

climate justice base-building organizations such as CJA have unequivocally indicated their opposition to CCS/CCUS, as well more than 500 national and international organizations who recently called on lawmakers in the United States and Canada to, “reject carbon capture and storage (CCS) and Carbon Capture, Utilization, and Storage (CCUS) as dangerous distractions and to end the ‘carbon capture of climate policy.’”

Omitting these resources from the Guidance Document could be seen as the federal government not acting objectively and signaling its preference for one technology over another. And, the fact that the IIJA earmarked an estimated \$12.1 Billion for CCS/CCUS projects compared to less than \$1 Billion for renewable energy projects compounds our concerns. This, despite the fact that over 80 percent of CCS/CCUS projects globally have been scuttled due to irreconcilable and exorbitant costs and/or the ineffectiveness of the technology altogether.

The Guidance Document makes no mention of the vast amount of taxpayer dollars spent on CCS/CCUS demonstration projects that never came to fruition. It’s troubling that CEQ makes no mention of the report prepared by the Government Accountability Office (GAO) which reveals that all eight Department of Energy (DOE) funded CCS demonstration projects for coal fired power plants have either been withdrawn, terminated, or are no longer in operation. Even the Wall Street Journal declared that government funded CCS/CCUS initiatives have, “a dismal record,” as part of a piece that also revealed the fact that there are neither federal requirements nor incentives that discourage corporations utilizing CCS/CCUS from releasing greenhouse gasses into the atmosphere.

For these reasons and more, CEQ must prepare additional reports that go beyond CEQ’s 2021 report in an effort to assess costs to taxpayers for subsidizing this technology and potential harmful impacts of CCS/CCUS on disadvantaged and other environmental justice communities.

Guidance Document Contains Inconsistent Policy Conclusions That Could Result in Confusion and Litigation

CEQ must elucidate the extent to which federal agencies have jurisdiction over carbon dioxide (CO₂) pipelines. The Guidance document and CEQ 2021 offer differing and, at times, ambivalent determinations. For instance, CEQ 2021 indicates, “no Federal entity is responsible for siting interstate CO₂ pipelines across Federal and non-Federal lands. States establish the regulatory frameworks within their state boundaries, which include responsibility for siting and permitting intrastate pipelines as well as segments of interstate hazardous liquids pipelines within the state boundary.” It goes on to say, “Because states and localities have distinct regulatory regimes, it may be more complex to move CCUS efforts forward in some jurisdictions than others.” However, the Guidance document suggests, “Because multiple Federal and State agencies will be responsible for planning and permitting priority pipeline pathways, and in order to ensure that these actions are aligned with climate, economic, and public health objectives, CEQ will convene the relevant agencies to assess opportunities for improvement in carbon dioxide pipeline permitting.”

CEQ must better stipulate which Federal, and which state agencies have jurisdiction over these pipelines. Moreover, since CO₂ pipelines in most cases would be transporting gasses that will eventually be utilized for a wide range of products (such as fertilizer, EOR and other forms of

commerce), CEQ must indicate how CO2 transported via pipeline across state lines would be consistent with the Interstate Commerce Clause.

Regarding compliance with NEPA, the Guidance Document evokes the idea of Tiering via Programmatic Environmental Impact Statements (EIS) to increase the efficiency of the permitting processes for CCS/CCUS and associated infrastructure. This is a problematic approach when considering that analyses of larger regions may not necessarily accurately account for the baseline conditions of physical, socioeconomic, or cultural resources for a specific geography within a larger region. This is precisely why, 43 CFR § 46.140(b) stipulates, “To the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.” Moreover, according to CEQ’s 2014 document, *Effective Use of Programmatic NEPA Reviews (2014)*, the agency, “finds it inappropriate to establish a presumption that substantive analysis is unnecessary or should be precluded in subsequent tiered documents.” Furthermore, CEQ must ensure their recommendations for tiering are not viewed as segmenting – the breaking up of a larger project into smaller components, in order to avoid finding no significant impact of a project considered as a whole, which, pursuant to 40 CFR 1500 – 1508, is prohibited.

Utilizing Programmatic EISs also increases the risk for localized environmental justice impacts to be overlooked and unaccounted for. Broader analyses will not necessarily depict specific, localized environmental justice impacts of a proposed action that is part of a larger, regional proposal. In fact, it is common practice to identify an environmental justice community by comparing the socioeconomic demographics of a local geography to its surrounding area. As such, a larger project’s demonstration of no impact in one area of a region is not necessarily representative of potential impacts for the entire region, or for local areas specifically. Inadequate analysis of environmental justice impacts would be inconsistent with Executive Order 12898 and could lead to litigation.

To these ends, CEQ should recommend that all CCS/CCUS projects require project-level EISs in lieu of programmatic EISs. Efficiency should never come at the expense of thorough analyses that investigate the full scope of potential impacts, especially to Indigenous and other environmental justice communities.

Conclusion

CCS/CCUS is an unproven, profligate technology scheme that’s already cost taxpayers billions of dollars while putting Indigenous and other environmental justice communities at increased risk for disproportionate impacts including, but not limited to, exposure to toxic emissions and explosions due to ruptured and malfunctioning pipelines. The Guidance Document fails to address these issues or demonstrate the efficacy of CCS/CCUS as a true solution for reducing emissions. In fact in certain cases, such as the Quest Plant in Alberta, Canada, CCS/CCUS actually released more carbon dioxide than it sequestered.

Environmental justice organizations and advocates are gravely concerned that CEQ is hastily promoting an ineffective technology that will only allow the fossil fuel industry to continue emitting greenhouse gasses at a time when the science tells us we have less than a decade to

properly address the climate crisis. For environmental justice communities, where the vast majority of CCS/CCUS facilities would be located, the situation is even more dire and CEQ's Guidance Document provides little to no reassurances that impacts to these communities will be properly analyzed or mitigated.

CEQ must revisit the entire process that led to the Guidance Document and allow for a longer comment period of at least 60 days, as well as undertake an additional process that allows Indigenous and other environmental justice communities more opportunities for broader community engagement, direct outreach to environmental justice communities, and additional studies to assess the potential harmful impacts of CCS/CCUS.

We look forward to working with CEQ in an effort to assist the Biden Administration with living up to its environmental justice commitments as stipulated in EO 14008 and public statements made by the president and numerous representatives of federal agencies.

Sincerely,

Climate Justice Alliance
Grassroots Global Justice Alliance
Indigenous Environmental Network
Institute for Policy Studies Climate Policy Program
Michigan Environmental Justice Coalition
New York Lawyers for the Public Interest

Supporting Environmental Justice Organizations:

7 Directions of Service
Alliance for Affordable Energy
Asian Pacific Environmental Network (APEN)
Center for Coalfield Justice
Center for Community Action and Environmental Justice
Communities for a Better Environment
Central California Asthma Collaborative
Central Valley Air Quality Coalition (CVAQ)
Cheyenne River Grassroots Collective
Citizens for Clean Air and Water in Freeport Texas
Citizens for Coalfield Justice
Coalition Against Death Alley
Common Ground Rising
Communities for a Better Environment
Cooperation Jackson
Detroit Hamtramck Coalition for Advancing Healthy Environments
East Michigan Environmental Action Council
Friends For Environmental Justice
Giniw Collective
Greater New Orleans Housing Alliance
Greater New Orleans Interfaith Climate Coalition
Gulf Coast Center for Law & Policy
Harambee House, Inc. / Citizens for Environmental Justice
Healthy Gulf

Honor the Earth
Idle No More SF Bay
Inclusive Louisiana
Indigenous Lifeways
Ironbound Community Corporation
Just Transition Alliance
Kickapoo Peace Circle
Lakota People's Law Project
Little Manila Rising
Little Village Environmental Justice Organization
Micronesia Climate Change Alliance
Migiziwillfly
Mujeres Unidas y Activas
Multicultural Alliance for a Safe Environment
Native Movement
NC Climate Justice Collective
New York City Environmental Justice Alliance
Nicaragua Center for Community Action
North Dakota Native Vote
OPAL Environmental Justice Oregon
Parable of the Sower Cooperative
People Organizing to Demand Environmental and Economic Rights (PODER)
People's Action
Pueblo Action Alliance
SouthWest Organizing Project
Spirit of the Sun, Inc.
Texas Environmental Justice Advocacy Services (t.e.j.a.s.)
The People's Justice Council
Turtle Island Restoration Network
United Native Americans
UPROSE
UUFDF Environmental Justice Team
Waterspirit
Women's Earth and Climate Action Network

Supporting Organization Sign On:

1000 Grandmothers for Future Generations
198 methods
350 Bay Area Action
350 Colorado
350 Conejo / San Fernando Valley
350 Mass
350 New Orleans
350 Seattle
350 Seattle
350 Triangle
350.org
350Hawaii

5 Gyres Institute
A Community Voice
Accelerate Neighborhood Climate Action
Activist San Diego
AFGE Local 704
Agricultural Justice Project
Animals Are Sentient Beings Inc
Association of Young Americans
Athens County's Future Action Network/ACFAN
Beyond Plastics
Biofuelwatch
Bold Alliance
Breathe Project
Buckeye Environmental Network
Businesses for a Livable Climate
Cabrini Care for Creation
California Communities Against Toxics
California Faculty Association
California Safe Schools
Call to Action Colorado
Capitol Heights Presbyterian
Care for Creation Team
CatholicNetwork US
Center for Biological Diversity
Center for Environmental Health
Center for International Environmental Law
Citizen Power, Inc.
Citizen's Alliance for a Sustainable Englewood
Citizens Resistance At Fermi Two (CRAFT)
Clean Air Council
Clean Energy Action
Climate Hawks Vote
CO Businesses for a Livable Climate
CO Dem. Party – Energy & Environmental Initiative
CO Small Business Alliance
Coalition to Protect New York
COCRN Colorado Community Rights Network
Colorado Western Slope Businesses for a Livable Climate
Community for Sustainable Energy
Concerned Citizens of St. John
Concerned Health Professionals of Pennsylvania
ConnectX Eco
Dakota Rural Action
DC Statehood Green Party
Divest Ed
Dogwood Alliance
Don't Waste Arizona
Earth Action, Inc.

Earth Care
Earth Guardians
ecoAmerica
EcoEquity
Ecology Center
Empower our Future
End Climate Silence
Extinction Rebellion San Francisco Bay Area
Food & Water Watch
Fox Valley Citizens for Peace & Justice
FracTracker Alliance
FreshWater Accountability Project
Friends of the Earth
GAIA
Grassroots International
Greater New Orleans Climate Reality Project
Greenpeace USA
Heartwood
I-70 Citizens Advisory Group
Indivisible Ambassadors
Indivisible Ventura
Indigenous Outreach at St.Frances Cabrini Church
Inland Ocean Coalition
Interfaith Council for Peace and Justice
John Muir Project
Long Beach Alliance for Clean Energy
Long Island Progressive Coalition
Loudoun Climate Project
Louisiana League of Conscious Voters
Louisville Metro Public Defender
Madhvi4EcoEthics
Mayfair Park Neighborhood Association Board
Mental Health & Inclusion Ministries
Mn350
Montbello Neighborhood Improvement Association
Mothers Out Front Colorado
MoveOn.org Hoboken
Nancy Negrette Brows, Hair & Lashes Studio
Natural Capitalism Solutions
NELA Climate Collective
Network for a Sustainable Tomorrow
New Energy Economy
New Mexico Environmental Law Center
North American Climate, Conservation and Environment(NACCE)
North Range Concerned Citizens
Northern Alaska Environmental Center
Nuclear Energy Information Service (NEIS)
Nuclear Information and Resource Service (“for a nuclear-free, carbon-free world”)

Ohio Poor People's Campaign
Oil Change International
Our Revolution
Peace Action WI
Peak Plastic Foundation
Physicians for Social Responsibility – Los Angeles
Physicians for Social Responsibility Pennsylvania
PIIC
Plastic Pollution Coalition
Plymouth Friends for Clean Water
Private Equity Stakeholder Project
Progressive Democrats of America
Property Rights and Pipeline Center
Protect Our Water Heritage Rights (POWHR)
Putnam Progressives
Rachel Carson Council
RapidShift Network
Resist the Pipeline
Revolving Door Project
Richmond Our Power Coalition
River Valley Organizing
Rogue Climate
San Antonio Bay Estuarine Waterkeeper
San Francisco Bay Physicians for Social Responsibility
San Luis Valley Ecosystem Council
Santa Cruz Climate Action Network
Saphron Initiative
Save EPA (former employees)
School Sisters of Notre Dame
Science and Environmental Health Network
Science for the People – Twin Cities
SEED of SW NM
Small Business Alliance
SoCal 350 Climate Action
Social Eco Education (SEE)
Solar Wind Works
SolidarityINFOService
Southwest Organization for Sustainability
St Frances Cabrini Catholic Community
St luke presbyterian
Sunnyside United Neighbors, inc (SUNI)
System Change Not Climate Change
Terra Advocati
Texas Campaign for the Environment
The Green House Connection Center
The Last Plastic Straw
The Romero Institute
The Shame Free Zone

Third Act Virginia
Tishman Environment & Design Center, The New School
Triple Justice Organization
UCAN
Unitarian Universalist Association
Unitarian Universalist Mass Action
Unite North Metro Denver
United Women in Faith
Valley Watch, Inc.
Vote Climate
Wall of Women
Waterway Advocates
Western Slope Businesses for a Livable Climate
WildEarth Guardians
Wilwerding Consulting
Women's Environment and Development Organization (WEDO)
Working for Racial Equity
Womxn from the Mountain
YUCCA (Youth United for Climate Crisis Action)
Zero Hour