

**Mr. John Beard Jr.,**  
Founder and CEO  
Port Arthur Community Action Network  
Port Arthur, Texas

***Written Testimony for* House Natural Resources Committee Hearing on H.R.\_\_\_\_ (Graves of Louisiana), “Building United States Infrastructure through Limited Delays and Efficient Reviews Act”**

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In 1987 the United Church of Christ, under the leadership of the venerable Dr. Benjamin Chavis released the landmark report, *Toxic Wastes and Race in the United States*.<sup>1</sup> In characterizing environmental racism, a term Dr. Chavis coined and how it operates and manifests, the report notes, “Racism is the intentional or unintentional use of power to isolate, separate, and exploit others.” It continues, “Both consciously and unconsciously, racism is enforced and maintained by the legal, cultural, religious, educational, economic, political, environmental, and military institutions of societies. Racism is more than just a personal attitude, it is the institutionalized form of that attitude.”

My name is John Beard, I serve as the founder and executive director of the Port Arthur Community Action Network. I live in Port Arthur, Jefferson County, Texas, an environmental justice community afflicted by institutionalized environmental racism. West Port Arthur is a predominantly Black community along the Gulf Coast of Texas, that has been an economic and energy “sacrifice zone” for the fossil fuel industry. West Port Arthur, like many Black, Brown, and Indigenous communities throughout the United States, was intentionally segregated through the practice of redlining - a discriminatory and racist practice that consisted of the systematic denial of mortgages based on race, and the forced centralization of Black people in ways not seen since the height of chattel slavery in the United States. In addition to pillaging the ability of Black folk to establish and maintain generational wealth, redlining also is responsible for the placement of toxic facilities and operations proximate to Black and Indigenous communities, which, in too many instances, has denied their generational health.

Port Arthur, home to one of the largest concentrations of oil refineries in the nation, with three major refineries and 8 additional oil and gas operating facilities, is the epitome of the afflictions directly associated with redlining. For instance, the asthma rate for children in West Port Arthur is twice the national average. In comparison to the average Texan, Black residents in Jefferson County, where Port Arthur is located, are 15% more likely to develop cancer and 40% more likely to die from cancer.<sup>2</sup> Sulfur dioxide, a hazardous chemical that is released by fossil fuel

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<sup>1</sup> “Toxic Wastes and Race In The United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites”, Benjamin Chavis, Commission for Racial Justice; 1987. Article found at: <https://www.nrc.gov/docs/ML1310/ML13109A339.pdf>

<sup>2</sup> “Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities”, National Association for the Advancement of Colored People (NAACP);

facilities like those in West Port Arthur, has been correlated with an increase in strokes, pulmonary diseases, and death.<sup>3</sup> While the Environmental Protection Agency (EPA) has set the Sulfur Dioxide threshold at 75 parts per billion, nearby facilities in West Port Arthur routinely surpass 100 parts per billion,<sup>4</sup> proving the sage words of environmental justice scholars and practitioners Dr. Beverly Wright and Dr. Robert Bullard who describe communities like mine as, “the wrong complexion for protection”.<sup>5</sup>

And while the fossil fuel industry argues that oil and gas development placement in West Port Arthur supports the local economy, the unemployment rate of my community has continued to grow in spite of fossil fuel industry expansion.<sup>3</sup> Additionally, the proximity of West Port Arthur to fossil fuel facilities and operations continues to exhibit an adverse impact on property values - in effect, reducing them to levels that are lower than when some of them were originally purchased. The impacts of redlining are still felt in communities like West Port Arthur and other cities and states nationwide - in “blue states” just as much as in “red states” and throughout Indian Country.

The struggles of my community are not felt in isolation. Numerous “cancer alley” communities are along the gulf coast, just like “asthma alleys” throughout the northeast and western cities. While we all consume oil and gas products, a study found that in the United States, PM2.5 air pollution is disproportionately induced by White Americans and disproportionately inhaled by communities of color.<sup>6</sup> And while fossil fuel industry pollution creates health and economic consequences for everyone, these consequences are unquestionably borne unequally and disproportionately impact communities of color, low-income communities and Indigenous communities<sup>7</sup>.

The gulf coast has been lucrative for fossil fuel executives, who benefit financially from fossil fuel extraction at the cost of the health and well-being of fence-line communities, predominantly low-income communities of color, who breathe in the toxins released by these facilities. From West Port Arthur, Texas, to Houston, Texas, to St. Johns Parish, Louisiana - our communities

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November 2017. Article found at: <https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american>

<sup>3</sup> “Port Arthur, Texas: American Sacrifice Zone”, Natural Resources Defense Council; Article found at: <https://www.nrdc.org/onearth/port-arthur-texas-american-sacrifice-zone>

<sup>4</sup> “Any Way the Wind Blows: A Koch-owned chemical plant in Texas spent years running from the Clean Air Act. New evidence suggests it bent the law until it broke.”, Naveena Sadasivam, Clayton Aldern; Grist, February 2023; Article found at: <https://grist.org/project/accountability/koch-oxbow-port-arthur-texas-clean-air-act-pollution/>

<sup>5</sup> “The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities”, Robert D. Bullard, Beverly Wright, 2012, Article found at: <https://muse.jhu.edu/book/17926>

<sup>6</sup> “Inequity in consumption of goods and services adds to racial–ethnic disparities in air pollution exposure”, Tessum et. al, March 2019, Article found at: <https://www.pnas.org/doi/full/10.1073/pnas.1818859116>

<sup>7</sup> “The 2020 Report of the Lancet Countdown on Health and Climate Change: Responding to Converging Crises,” The Lancet, vol. 397, no. 10269, pp. 129-170, 9 January 2021. [https://www.thelancet.com/article/S0140-6736\(20\)32290-X/fulltext](https://www.thelancet.com/article/S0140-6736(20)32290-X/fulltext).

are interconnected by a shared struggle that is intensifying in severity. We are the frontline of polluting industries and the frontline of climate catastrophes as increasingly powerful hurricanes continue to batter our coasts and are anticipated to become more powerful and calamitous if we continue to pollute our atmosphere with toxic emissions that result from the extraction, refining, and emitting of fossil fuels. With each storm, we witness the destruction of our communities, coupled with the massive displacement of our communities and deeper entrenchment into poverty.

Communities in the Gulf Coast stand at the intersection of social justice movements rooted in environmental justice, climate justice, civil rights, feminist economies, and much more. Our fight for justice goes beyond the Gulf Coast, as communities of color throughout the United States disproportionately bear the brunt of toxic facilities. The National Environmental Policy Act (NEPA) of 1970 is one of the few federal laws that provides some protections and requires environmental review and consideration for proposed actions in communities like mine.

Attempts to deregulate and weaken NEPA represent a clear and present danger for residents of West Port Arthur and surrounding communities and must be seen as nothing more than a thinly veiled diminishing of the scanty defenses available to us in the first place. Previous bipartisan efforts have attempted to weaken protections offered to public health and the natural environment. Yet, as I explain below, the Building United States Infrastructure through Limited Delays and Efficient Reviews Act or “BUILDER Act” is yet another bill that will benefit fossil fuel corporations who have donated extensively to members advancing their interests.<sup>8</sup>

I will specifically discuss the proposed rollbacks to NEPA contained in the BUILDER act and how they would have deleterious effects in the areas of Community Input/Public Participation, Due Process, and Federal Transparency as stipulated in myriad United States codes and regulations, including but not limited to, 5 U.S.C. §§ 551–559, the Administrative Procedure Act.

## **I. Community Input and Public Participation**

Pursuant to the plain language of Title 40 Section 6.203(a)(5) of the Code of Federal Regulations, “[Lead Agencies and Responsible Officials] must use appropriate communication procedures to ensure meaningful public participation throughout the NEPA process.” The section goes on to say that agencies must “make reasonable efforts to involve the potentially affected communities where the proposed action is expected to have environmental impacts or where the proposed action may have human health or environmental effects in any communities, including minority communities, low-income communities, or federally-recognized Indian tribal communities.”<sup>9</sup>

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<sup>8</sup> “Fossil Fuel Subsidies Overview,” Oil Change International. Article found at: <https://priceofoil.org/fossil-fuel-subsidies/>

<sup>9</sup> 40 CFR § 6.203 - Public participation. Article found at: <https://www.law.cornell.edu/cfr/text/40/6.203>

As pointed out by EPA, Department of Energy, and other federal agencies, “In addition to promoting transparency, public involvement is crucial for facilitating better decision-making.”<sup>10</sup> Further, key benefits of a robust and transparent public participation process, “is the development of capacity for managing difficult social problems. This capacity includes improved relationships and trust between decision-makers and the public, and among different stakeholders themselves. Also, when done well, public participation helps to teach stakeholders meaningful and collaborative ways to approach each other, manage difficult decisions, and resolve disputes”.<sup>11</sup> All to say, enhancing and improving community involvement and public participation would not result in impediments to proposed actions. Rather, it would improve trust between stakeholders, and establishing trust, in turn, can reduce legal challenges and other actions that could delay the environmental review process.

The Motiva Port Arthur Refinery is the largest oil refinery in North America.<sup>12</sup> The Motiva Refinery was located 300 yards from the Carver Terrace public housing project.<sup>13</sup> Residents at the Carver Terrace public housing project experienced such poor health and associated diminished economic mobility that advocates pushed for the relocation of the public housing project. Advocates were successful in their pursuit. However, it is unsettling to comprehend that residents intentionally sought relocation to escape the hazardous conditions of the Motiva Refinery. Community input allowed residents to escape the toxicity of the Motiva refinery. However, the Motiva Refinery never underwent public input since it was erected in 1902, decades before NEPA was enacted.

The largest air pollution emitters in Texas are by and large in Jefferson County - The Motiva refinery, Oxbow Calcining’s Port Arthur plant, the Beaumont Refinery, and Valero’s Port Authority Refinery were all created before the enactment of NEPA.<sup>14</sup> Over the decades, many of these refiners have undergone significant expansions and have been able to subjugate parts of the NEPA process since the primary facility itself was “grandfathered” in. For example, ExxonMobil announced last week that they intend to start up its expanded Beaumont Refinery, becoming the second largest in refining capacity.<sup>15</sup>

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<sup>10</sup> Public Involvement in NEPA”, Department of Energy. Article found at: <https://www.energy.gov/em/public-involvement-nepa>

<sup>11</sup> “ Public Participation Guide: Introduction to Public Participation” Environmental Protection Agency (EPA). Article found at: <https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation>

<sup>12</sup> Motiva - Homepage; Found at: <https://motiva.com/about/what-we-do/refining>

<sup>13</sup> “PORT ARTHUR, TEXAS: The End of the Line for an Economic Myth”, Environmental Integrity Project; August 2017. Article Found at: <https://environmentalintegrity.org/wp-content/uploads/2017/02/Port-Arthur-Report.pdf>

<sup>14</sup> “Nitrogen Oxides Pollution Reductions Needed in Texas to Meet new EPA Health Based, Air Quality Standard for Ozone”; Sierra Club Lone Star Chapter; Article Found at: [http://www.energyjustice.net/map/server-test/uploads/tx\\_facilities\\_nox.pdf](http://www.energyjustice.net/map/server-test/uploads/tx_facilities_nox.pdf)

<sup>15</sup> “Exxon prepares to start up \$2 bln Texas oil refinery expansion”; Erin Sewba, Reuters; January 2023, Article Found at: <https://www.reuters.com/business/energy/exxon-prepares-start-up-12-bln-texas-oil-refinery-expansion-sources-2023-01-13/>

The environmental degradation of these fossil fuel projects, alongside many other projects throughout the United States, catalyzed numerous environmental protection bills, including NEPA. In the 1970s, when NEPA was signed into law, it seemed widely agreed upon that the federal government must step in to protect the earth's resources, especially air, and water, that are fundamental to the health and well-being of communities. While NEPA could not mitigate past harms caused by facilities, it ought to be used to prevent further ecosystem deterioration.

Since the inception of NEPA, the opportunity for public comment has been an integral part of the NEPA process. Public comment has served as a way for communities to have their voices heard. Public comment is vital in communities intentionally placed alongside facilities due to practices such as redlining and who had no say in the initial development of the fossil fuel infrastructure.

## **II. Due Process and Government Accountability**

The United States legal system is based on the concept of due process - that is, when and where harm to people and communities can be demonstrated, these entities are then afforded due process of the law pursuant to Amendment 14 of the Constitution. In fact, various iterations of the US Supreme Court have held in its decisions that this entitlement and associated protections apply to ALL people regardless of race, color, and citizenship.

For NEPA, due process is actualized by the environmental review requirement, including an analysis of potential environmental justice and other socioeconomic impacts, for all federally funded and sponsored projects/proposed actions. NEPA enables communities to ensure due process in the face of major projects and developments. Should any environmental review process be deemed by an impacted community to be incomplete, inadequate, or intentionally or unintentionally duplicitous, due process provides these communities with the use of the judicial system to intervene and determine if NEPA was complied with and, if not, direct mitigation for those impacts significant threats to public health, safety, and welfare and the natural ecosystem at large.

A recent example of a judicial intervention that supported communities was blocking the Keystone XL pipeline. In November 2018, in *Indigenous Environmental Network v. U.S. Department of State*, Indigenous Environmental Network won its case against the U.S. Department of State when a federal judge ruled that the Keystone XL pipeline had an inadequate assessment conducted, violating NEPA.<sup>16</sup> Due to this ruling, construction of the tar sand pipeline was halted. The Keystone XL pipeline went on to have numerous other legal battles before the project was ultimately discontinued by President Obama, and again by President Biden - since the pipeline's terminus was slated for Port Arthur, the end of the Keystone XL pipeline was a victory for my community.

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<sup>16</sup> "Final Ruling - Case 4:17-cv-00029-BMM" November, 18. Article found at: <https://www.sierraclub.org/sites/www.sierraclub.org/files/blog/KXL%20ruling.pdf>

A more recent example of how NEPA intervention prevented environmental harm and environmental racism is the defeat of the controversial Byhalia Pipeline that was slated to be constructed, in part, through Memphis, Tennessee. The pipeline would have disproportionately impacted the majority Black communities, including Boxtown, a community founded by freed slaves during the Civil War. Additionally, according to the Southern Environmental Law Center (SELC), Boxtown, based on a 2013 study, has a cumulative cancer risk that's four times higher than the national average, likely due to the high concentration of industrial facilities in the area and associated exposure to high levels toxic solid waste and air emissions.<sup>17</sup>

The NEPA process, combined with powerful and indomitable grassroots organizing, prevented the Byhalia Pipeline from becoming another example of environmental racism and, instead, an example of how NEPA assists with increasing environmental justice. Had laws like the BUILDER Act been in effect, Byhalia would have been fast-tracked and rammed through a community already experiencing disproportionate environmental and health impacts, which is why we need to understand and state plain that the BUILDER Act, if passed, would extend our nation's toxic legacy of treating Black, Indigenous, other People of Color, and the poor communities as disposable, ineffable, and sacrificial.

The BUILDER Act includes multiple provisions that would impede communities' ability to exercise due process. The BUILDER Act seeks to prohibit injunctive action, allowing long-term damage to begin despite community concern. If judicial injunctions were no longer a legal tool, then the KeystoneXL pipeline would have been able to begin construction while the case was in court. The BUILDER Act would also block communities from filing claims if they could not participate in the public comment period. Public comment periods are often inaccessible to communities, especially due to their short time frames. Failure to participate in the public comment period should not lead to the exclusion of communities from participation in the judicial system. The BUILDER Act would also limit the time to file a claim from the typical statute of limitations of six years to 120 days. This would essentially bar communities, particularly low-income communities, from being able to file a claim due to the financial obstacles that communities face in seeking legal aid. Communities have often been protected from harmful developments due to the judicial system. Any actions that limit communities' ability for judicial intervention directly infringes on our right to due process. The BUILDER Act's attempt to minimize meaningful participation must be called out, confronted, and elucidated as an infringement on communities' self-determination nationwide so that fossil fuel corporations can continue their business model that prioritizes profits over people.

So let's be clear, this is less about NEPA and constitutional due process slowing down proposed actions like KXL and Byhalia and more about the inability of projects like these to demonstrate no significant impacts on public health and the natural environment in a way that is legally defensible. And further, it's also about the proclivity of these kinds of projects to exacerbate environmental racism and the climate crisis alike and their inability to prove otherwise.

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<sup>17</sup> "How the Byhalia Pipeline would have impacted Memphis" March 10. Southern Environmental Law Center. Article found at: <https://www.southernenvironment.org/news/byhalia-pipeline-basics/>

### **III. Federal Transparency**

The BUILDER Act would allow project sponsors the opportunity to create their environmental documents. We have seen numerous times, especially among the fossil fuel industry, that fossil fuel companies will intentionally omit and manipulate information to the public that would hurt their bottom line.

One example that has gained much national attention is that Exxon did complex scientific analysis in the 1970s that accurately predicted the impacts of climate change.<sup>18</sup> Yet, despite Exxon's awareness of the catastrophic effects on the globe of their fossil fuel operations, Exxon spent millions of dollars over the past few years on public campaigns and lobbying to deny the impacts of climate change. While Exxon's deception has gained attention due to its national reach, they aren't the only Texas-based fossil fuel company that has decreased public trust by withholding information.

Oxbow Calcining's Port Arthur plant was recently found to have intentionally changed its operating procedures to avoid getting noticed for air quality violations.<sup>4</sup> Oxbow would reduce or modify their operating systems when the wind blew toward air quality monitors. When the wind was not blowing toward monitors, they would resume normal operations, although the operations themselves exceeded air quality regulations.

If major fossil fuel companies with the most financial resources to hire researchers have used their scientific expertise to deceive the public, can we trust them to disclose and conduct environmental impact statements accurately? The scientific process is meant to be an unbiased analysis. However, the scientists themselves often hold their own biases. Allowing scientists with a vested interest in corporations to prepare documents would mean the scientific integrity of the reports is diminished, the efficacy of the statement reduced, and the legitimacy of NEPA at large eroded.

Allowing sponsors to prepare their documents is a giveaway to the fossil fuel industry that would inevitably lead to fast-tracking fossil fuel industries at the continued demise of communities like mine. To further weaken the analysis performed under an environmental statement, the BUILDER Act would make it so that agencies are no longer liable to do new scientific research when conducting environmental impact assessments. This is deeply troubling as we continue to see more and more new scientific research showcasing the negative health impacts of chemical pollutants and the effects of the fossil fuel industry on the climate. In not conducting necessary additional scientific studies, the federal government would choose a path of negligence on the potential long-term ramifications of a proposed project.

### **Conclusion**

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<sup>18</sup> "Exxon Knew about Climate Change almost 40 years ago"; *Shannon Hall, Scientific American*; Article Found at: <https://www.scientificamerican.com/author/shannon-hall/>

Each of you took an oath in which you swore to uphold and defend the United States Constitution - yet there are those of you who are advocating for a piece of legislation that would ostracize the people who employ you from exercising an epochal and cherished Constitutional right to Due Process. If we are truly to be a nation of laws, they cannot be established or articulated by legislative bodies that operate through a lens of profound contradictions.

As we discuss the future of NEPA, we must shift away from determining ways that NEPA should be “reformed” and instead imagine ways in which NEPA can be strengthened to better serve and protect communities based on the best scientific understanding and analysis available today. The science is clear - communities of color disproportionately bear the brunt of polluting industries and the accompanying health impacts. The science also shows us that climate change already has, and will continue to be, a threat multiplier, wherein communities struggling today will be the first and worst impacted by impending climate catastrophes. Inequality in the United States continues to grow - from America’s disparities in life expectancy to the racial wealth gap. We cannot bring equality, let alone equity, in our nation without intentionally putting protections for communities of color into law.