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Congress of the United States
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COMMISSION ON SECURITY AND COOPERATION
IN EUROPE (U.S. HELSINKI COMMISSION)

February 22, 2021

The Honorable Joe Biden
President of the United States
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden,

Thank you for your administration's commitment to urgently address climate change and to center environmental justice in your response.¹ Within your first 100 days, you have already undertaken ambitious and necessary executive actions to protect communities' clean air and clean water and to address the COVID-19 pandemic and economic crisis that is disproportionately affecting Black, Indigenous, and Latino communities across the country.

As you take immediate action to address the climate crisis, I write to ask your administration to direct the Army Corps of Engineers to rescind its recent verification of the use of the Nationwide Permit 12 for the proposed Byhalia crude oil pipeline that would threaten the drinking water and disrupt the property rights of predominantly Black neighborhoods in my district.

¹ "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," The White House, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>.

The proposed Byhalia Pipeline would impose yet another burden on Black neighborhoods in southwest Memphis that have, for decades, unfairly shouldered the pollution burdens of an oil refinery, and coal- and gas-fired power plants.² As stated in an article recently published in *Moyers on Democracy*, “This battle isn’t just about people who are living and drinking the water now. It is thinking more generationally, what is going to happen 25, 50 years from now to this pipeline?”³ And as former Vice President Al Gore tweeted on February 20, 2021, “Building more fossil fuel pipelines is reckless and many proposed routes are racist. I stand with those opposing the Keystone, DAPL, MVP, Line 3, and Byhalia pipelines.”⁴

To ensure that the Corps appropriately considers the concerns of the Black communities whose drinking water and property will be directly affected by the siting of this proposed crude oil pipeline, I urge your administration to require the project proponent to undertake an individual permitting process pursuant to Section 404 of the Clean Water Act.

In addition, as a member of the Water Resources and Railroads, Pipelines, and Hazardous Materials subcommittees of the House Committee on Transportation & Infrastructure, I urge your administration to review and reconsider the propriety of using the fast-track Nationwide Permit 12 for risky and unnecessary new oil and gas pipelines. This administration should not provide fast-track approval for fossil fuel infrastructure projects while our planet faces an existential climate crisis. As the Byhalia crude oil pipeline project so clearly shows, the use of Nationwide Permit 12 for new fossil fuel infrastructure cuts the concerns of local Black, Indigenous, and Latino communities out of the permitting process. Our government should do everything possible to help us to move away from dirty oil and toward cleaner sources of renewable energy, while not repeating the unjust siting decisions of the past that have overburdened our Black, Indigenous, and Latino communities in Memphis and across the country.⁵

The Byhalia Pipeline project smacks of environmental injustice. A Texas company known as Plains All American and its business partner Valero Energy Corp. propose building a high-pressure crude oil pipeline across a pristine drinking water aquifer in an active earthquake zone in Memphis, Tennessee, and northern Mississippi. That aquifer provides drinking water to more than one million people.

² Just this week, the local Valero refinery—Valero is a partner in the Byhalia pipeline project—shot hellish “orange and white hot” gas flares into the air in the same Southwest Memphis neighborhoods where its proposed pipeline would run. See <https://www.commercialappeal.com/story/news/2021/02/16/valero-memphis-fire-flame-refinery-during-winter-sky/6762146002/> (“Memphis-based writer Melonee Jinaki took note of the environmental concern for South Memphis, writing, ‘Nothing to see here. Just a Memphis refinery contaminat[ing] air, soil, and water in adjacent South Memphis, predominately Black community with sudden (and regular, according to reports) unannounced gas flare and contributing to global warming during a historic winter storm.’”)

³ Burroughs, Asa, “When a Community Says No to Big Oil,” *Moyers on Democracy*, <https://billmoyers.com/story/when-a-community-says-no-to-big-oil/>

⁴ Gore, Al, Twitter, <https://twitter.com/algore/status/1360703896012914697>

⁵ A 2017 report by the NAACP and the Clean Air Task Force found that Black people are 75% more likely to live near a polluting facility such as a refinery, and/or gas-powered and coal-burning power plants. https://www.naacp.org/wp-content/uploads/2017/11/Fumes-Across-the-Fence-Line_NAACP_CATF.pdf.

If built, the pipeline will cross a municipal wellfield that supplies drinking water to local Black residents in Memphis. The pipeline route cuts through several Black communities in southwest Memphis, including the Boxtown community, which got its name after formerly enslaved people used scraps of materials and wood from train boxcars to build homes there in the late 19th century. Southwest Memphis is already burdened by dozens of industrial facilities, and subjecting those Black communities to more environmental degradation is wrong. A land agent for the pipeline company offended many Black community members by stating that the company chose to site the pipeline in southwest Memphis because it is “the point of least resistance.”

The recent decision by the Army Corps to verify the pipeline company’s use of Nationwide Permit 12—which occurred within the first few weeks of your administration—perpetuates this unfair approach to siting fossil fuel infrastructure by cutting communities out of the permitting process. Further, the proposed pipeline threatens the sole drinking water source for Memphis and Shelby County, Tennessee. According to a report provided to the Corps shortly *after* it made its decision, due to the vulnerability of the aquifer in the area, groundwater containing highly mobile contaminants could reach drinking water wells serving Black neighborhoods in southwest Memphis in a matter of years, not decades as some suggest.

This is particularly concerning as it is very difficult to remove oil from the soil and groundwater once it has been released. Given that the pipeline crosses through the southwest Memphis community’s wellfield, it fails to comply with General Condition 7 under Nationwide Permit 12 (which prohibits activities “in proximity” to public drinking water intakes), has more than minimal adverse impacts on clean water, and is not in the public interest.

Your leadership is instrumental to protecting the rights of our communities to clean drinking water and a livable climate. To ensure that you achieve your administration’s goal of centering environmental justice in our nation’s response to the climate crisis, I urge you to take immediate action to direct the Army Corps to rescind its Nationwide Permit 12 verification of the Byhalia Pipeline project, and to reevaluate the propriety of the use of Nationwide Permit 12 for new oil and gas pipeline infrastructure across the country.

I sincerely appreciate your attention to this matter and look forward to working with you on these important issues.

As always, I remain,

Most sincerely,



Steve Cohen
Member of Congress