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To the United States Environmental Protection Agency - Region 1:

We write to express our concern about EPA's re-permitting process of the Chelsea Sandwich Petroleum, Gulf Oil, Global REVCO, Global Petroleum, Global South, Sunoco, and Irving oil terminals based on their history of non-compliance with NPDES permits and lax data reporting. As part of a Capstone Research project through Northeastern University's Health Sciences program (led by Dr. Sara Wylie in collaboration with the Environmental Data Governance Initiative and GreenRoots), the authors analyzed available federal data from EPA's Enforcement and Compliance History Online (ECHO) database for the above bulk oil storage terminals and identified concerning patterns of non-compliance.

Facilities holding a NPDES permit have a "duty to comply." This duty is cited by statute 40 CFR § 122.41 a 1 where it is also explained that any permit noncompliance is a violation of the Clean Water Act (CWA) and is "grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application".[1] All facilities under this permit review have had consistent compliance issues over the past five years, yet EPA is proposing to continue to permit them. When asked about the consideration of compliance in re-permitting these facilities, an EPA representative stated at the public meeting on March 15th, 2021 that the EPA permitting division does "not generally develop permits' limits based on past compliance."[2] Given the requirements laid out above and the fact that Chelsea Creek is already deemed impaired by EPA for all parameters including for fishing and swimming related to the persistent noncompliance of these facilities—particularly the presence of petroleum

[1] Clean Water Act of 1972, 40 CFR § 122.41 a 1 (1972). https://www.law.cornell.edu/cfr/text/40/122.41
[2] https://www.youtube.com/watch?v=NMWbSQJE23Q

hydrocarbons,[3] we question why EPA is not considering denying or withholding permits based on non-compliance and the already compromised status of the Creek?

The oil storage facilities all have a history of violating their existing permits. The issue of non-compliance by these oil storage facilities first came to the authors' attention based on a collaborative research project, Chemicals in the Creek, when Dr. Wylie worked with GreenRoots to analyze effluent violations from the oil storage facilities between 2013 and 2017.[4] This research culminated in a public art event where lanterns were released onto the Creek to remind viewers that these numbers represent tangible pollution, which in aggregate contribute to compromising the Creek. The facilities were invited to the event, and we held two follow up meetings to discuss historical non-compliance with them and how they might improve. We were hopeful that the public attention and positive interactions would lead to improved compliance. However, their record of 36 further violations since, belied that hope.

Since the beginning of 2017, there have been 36 further violations across the five companies. Particularly concerning are the recent benzene violations from Global Petroleum considering the fact that benzene is a carcinogen. Between 2013 and 2020, the seven facilities in Chelsea violated their permits at least 100 times collectively (Figure 1), not accounting for data gaps, which will be discussed later. All facilities have continued to violate their permits in the last five years. The most common violations are of total suspended solids (TSS). Global Petroleum facilities have been out of compliance at least once every year for benzene releases with a total of 13 violations for benzene. On two occasions, they exceeded their benzene limit by over 1000 percent. To summarize non-compliance issues, four of these seven facilities under permit review had at least one quarter of known noncompliance with CWA permits, and three of those were in noncompliance more often than in compliance (See Figure 1). This type of historic noncompliance must be considered in the re-permitting process in order to hold terminals accountable for consistent permit violations.

[3] United States Environmental Protection Agency (2016). [How's My Waterway Assessment]. https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA71-06/2016

[4] http://datalanterns.com/

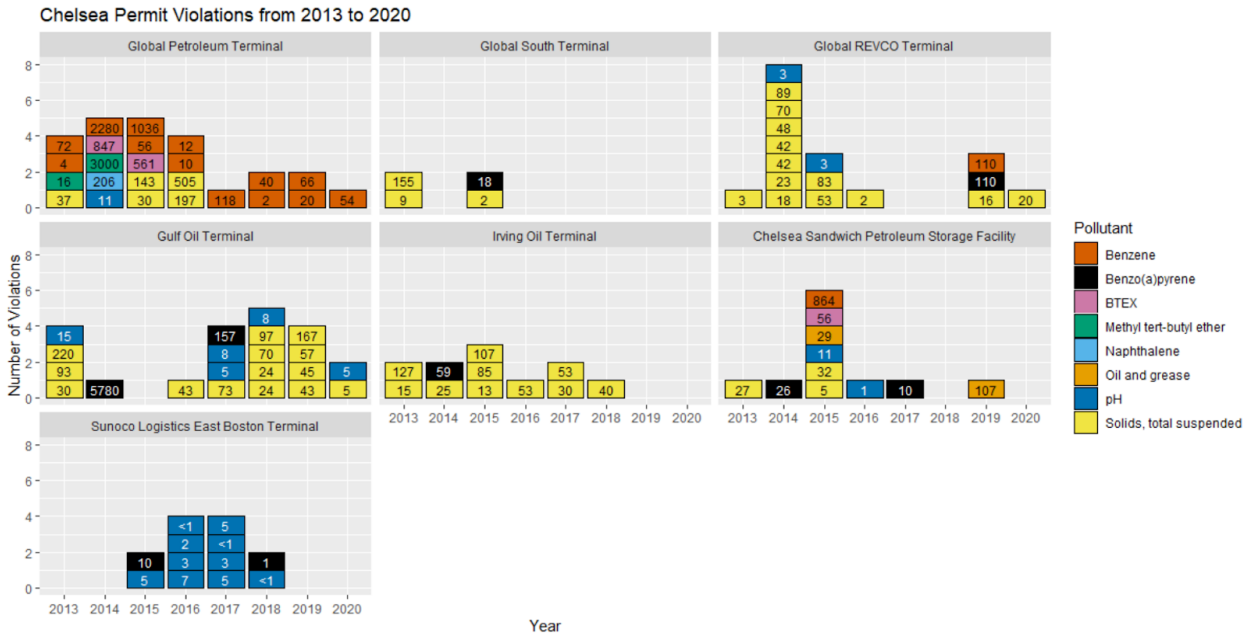

Figure 1. This figure, made with data drawn from EPA Enforcement and Compliance History Online (ECHO) database, shows each time a facility self-reported that it discharged more of a regulated chemical than it was permitted to. Each box refers to one recorded effluent exceedance, color coded by chemical. The number inside each box shows the percent by which they exceed their permitted amount. All facilities have a history of noncompliance with permits.
*Not including 169 late or missing reports between 2016 and 2020

The consolidation of Global's three facilities under one permit is especially concerning given they have had the majority of violations and specifically benzene violations (13 from Global Petroleum alone, as previously mentioned). Between these three facilities, there have been 14 benzene, 21 TSS, 2 methyl tert-butyl ether, 3 pH, 1 naphthalene, 2 benzo(a)pyrene, and 2 BTEX violations between 2013-2020 (see Figure 1). 45 out of the 100 violations occurred between the three Global facilities. When asked about the proposal to consolidate these permits into one, an EPA representative stated at the public meeting on March 15th, 2021 that this is based upon "administrative ease."[5] This is problematic reasoning since combining the facilities' permits may make it harder to identify specific facilities' permit exceedances. What measures will be taken to ensure that these facilities are held accountable for their violations after consolidation under one permit when violations have already gone unanswered as three separate permits?

This question is particularly pressing considering EPA's lack of inspection and enforcement actions. Based on available ECHO data, none of the facilities have faced any enforcement actions in the last five years, and none have been inspected more recently than 2014 for CWA compliance. There have been at least 69 violations since 2014. Notably, there have been at least 18 occasions in which multiple violations occurred at one facility in the same year across the

[5] https://www.youtube.com/watch?v=NMWbSQJE23Q

seven facilities. Ultimately, these facilities have not been held accountable for violations and have not undergone inspection prior to being re-permitted.

Additionally, available ECHO data shows many gaps in reporting. Between March 2016 and March 2020 there were 3,515 missing discharge monitoring report (DMR) values out of 14,500 reports (24%). Reasons listed under the no data indicator description (nodi_desc) for missing DMR values included "Conditional Monitoring - Not Required this Period", "Insufficient Flow for Sampling", "Frozen Conditions", "No Discharge", and "Below Detection Limit/No Detection." 169 reports out of these 3,515 (4.8%) resulted in "DMR Non-Receipt Reporting Violations," in which 13 (7.7%) reports are currently unresolved and 141 (83%) reports have gone unresolved for 2+ years. This creates a gap in data — thus, 100 reported violations means there are 100 violations at a minimum. Where reports are missing, neither EPA nor the public can know how much of each compound those facilities are releasing into the water and when.

In addition to the above concerns about the importance of reviewing facilities' compliance history prior to permitting, we are concerned about EPA's presentation of public comments. EPA's paraphrasing and quoting of comments, rather than publishing comments in full, makes it difficult to meaningfully assess the quality of EPA's response, as the original argument is unavailable. According to the public notice released concerning the draft permits, "the Regional Administrator has determined, pursuant to 40 CFR §124.12, that a significant degree of public interest exists in the proposed permits and that a public hearing should be held in Chelsea, Massachusetts to consider the permits."[6] The Chelsea River Bulk Oil Terminal Community Information Sheet indicates that the EPA "will respond in writing to all significant issues raised during the public comment period."[7] A public hearing provides an opportunity for the residents of Chelsea, East Boston and Revere to both provide and receive insight regarding the draft permits. It is vital that such a hearing allows the communication of information not only between the public and the EPA but also between the different stakeholders that exist within the public itself.

Full disclosure of all public comments is crucial. These comments, made orally or formally, must not be altered as it interferes with the transparency necessary for the public to judge whether the EPA has delivered a substantial response to the data and questions proposed. Without reading the original comment, it is unclear to the public if EPA may have misrepresented a commenter's original argument or failed to respond to a specific portion of the comment. The 2014 NPDES permits issued by the EPA include a Response to Public Comments section at the end of the permit, however, it is noted that the public comments "may be paraphrased," yet there is no

[6] United States Environmental Protection Agency - Region 1 (EPA) Water Division (2021). [Public Notice]. https://www3.epa.gov/region1/npdes/chelseacreekfuelterminals/pdfs/2021/crbpsf-pn.pdf

[7] United States Environmental Protection Agency (2021). *Chelsea River Bulk Oil Terminal Community Information Sheet* [Fact Sheet]. https://www3.epa.gov/region1/npdes/chelseacreekfuelterminals/pdfs/2021/crbot-community-info-sheet.pdf

indication made to distinguish between what has been paraphrased and what was a direct quote from the submitted comments. Such paraphrasing interferes with the very purpose of a public hearing. Directly quoting the commenters is essential to maintaining the integrity of a public comment. Public comments should not only be a comment made by a member of the public but also a comment made available to the public in an unaltered form.

We thank you for the opportunity to comment on the drafted permits for the facilities in question. We are glad to see that the proposed permits are more stringent for already regulated compounds and do regulate some additional chemical hazards. However, we ask that EPA review facilities' compliance histories and conduct inspections prior to re-permitting. Given that the 2014 Memorandum to the CWA National Pollutant Discharge Elimination System Compliance Monitoring Strategy states that "compliance is the cornerstone of the EPA's program to achieve clean water," we believe that omitting compliance from re-permitting processes is undercutting the original purpose of the permits.[8] One of the goals of the CWA is to "achieve water quality that is both 'fishable' and 'swimmable'",[9] however, this process is contributing to further depletion of an already impaired waterway. Continuing to issue permits for facilities with records of consistent permit violation is a trespass on public trust and does not comply with the EPA's own written NPDES guidelines for permit renewal.

Thank you for your consideration,

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[8] Lund, L. (2014, July 21). *Issuance of Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy* [Memorandum]. United States Environmental Protection Agency. https://www.epa.gov/sites/production/files/2013-09/documents/npdescms.pdf
[9] United States Environmental Protection Agency. (n.d.). *Statute and Regulations addressing Impaired Waters and TMDLs.* https://www.epa.gov/tmdl/statute-and-regulations-addressing-impaired-waters-and-tmdls