

Delivered via electronic mail

April 12, 2021

The Honorable Frank Pallone, Jr.
Chair
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Carolyn Maloney
Chair
Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone and Chairwoman Maloney:

Florida made international news this week for an environmental disaster: the near-collapse of a radioactive, toxic phosphogypsum stack at Piney Point and the discharge of hundreds of millions of gallons of wastewater into Tampa Bay. The full extent of the environmental damage is still being assessed, including the expected development of a harmful algal bloom and fish kill. This looming environmental and public health catastrophe is but the tip of the iceberg. More than 70 mountainous piles of radioactive, toxic waste called “phosphogypsum stacks” plague communities in Arkansas, Florida, Idaho, Illinois, Iowa, Louisiana, Mississippi, Missouri, North Carolina, Texas, Utah, and Wyoming.¹ Phosphogypsum is the waste generated in creating phosphoric acid used in fertilizer,² stored in stacks precisely because of its radioactivity and unacceptable fatal cancer-causing risks, with both actively growing and “closed” stacks like Piney Point becoming more dangerous and less stable by the day.

In February, a coalition of 17 conservation and public health organizations petitioned the EPA for rulemaking pursuant to the Resource Conservation Recovery Act and Toxic Substances Control Act concerning the regulation of phosphogypsum and process wastewater.³

However, to help shed light on this issue and identify additional resources that Congress could provide to address these dangerous waste piles, **we request (1) a congressional hearing to investigate the regulatory framework of the phosphate industry and the failure to evaluate and minimize the unreasonable risk or ensure protection of human health and the environment through adequate regulation of phosphogypsum and process wastewater; and (2) identify areas where Congress can provide additional resources to help EPA quickly and comprehensively address this problem.**

Phosphogypsum stacks have caused extensive groundwater contamination, dike breaches, leakage, seepage, sinkholes, and unpermitted discharges. Many are in BIPOC and/or low-wealth communities. Numerous documented environmental crises have resulted from inadequate phosphogypsum stack management over the past 30 years, including but not limited to:⁴

¹ EPA, *TENORM: Fertilizer and Fertilizer Production Wastes*, <https://www.epa.gov/radiation/tenorm-fertilizerand-fertilizer-production-wastes#tab-2>.

² For every one ton of phosphoric acid created, five tons of phosphogypsum are produced.

³ <https://biologicaldiversity.org/w/news/press-releases/epa-petitioned-to-protect-communities-environment-from-radioactive-phosphogypsum-stacks-wastewater-2021-02-08/>.

⁴ EPA, *Report to Congress on Special Wastes from Mineral Processing* (1990) at 12-31.

- 2020 - \$775,000 settlement between J.R. Simplot and EPA for **commingling hazardous waste** with exempt waste in Wyoming.⁵
- 2019 - Uncle Sam **phosphogypsum stack moving laterally and in danger of collapsing** in St. James Parish, Louisiana.⁶
- 2017 - EPA designated the Mississippi Phosphate phosphogypsum stack a **Superfund site**.⁷
- 2016 - New Wales phosphogypsum stack sinkhole releasing **215 million gallons** of process wastewater into the Floridan aquifer in Mulberry, Florida.⁸
- 2015 - \$2 billion settlement between Mosaic Fertilizer, LLC and EPA for comingling **60 billion pounds** of hazardous waste with exempt waste in Florida and Louisiana.⁹
- 2013 - Mississippi Phosphates phosphogypsum stack discharge of **38 million gallons** of process wastewater into Bayou Cosette, Mississippi.¹⁰
- 2012 - Mississippi Phosphates phosphogypsum stack discharge of **90 million gallons** of process wastewater into Bayou Cosette, Mississippi.¹¹
- 2011 – Piney Point phosphogypsum stack discharge of **170 million gallons** of process water into Bishop’s Harbor near Tampa Bay, Florida.¹²
- 2009 - PCS phosphogypsum stack sinkhole release of **84 million gallons** of process wastewater in White Springs, Florida.¹³
- 2005 - Mississippi Phosphates phosphogypsum stack discharge of **17 million gallons** of process wastewater into Bayou Cosette.¹⁴
- 2004 - Riverview phosphogypsum stack discharge of **65 million gallons** of process wastewater into Hillsborough Bay, Florida.¹⁵
- 2003 - Piney Point phosphogypsum stack discharge of **248 million gallons** into the Gulf of Mexico.¹⁶
- 2001 - Piney Point phosphogypsum stack discharge of **50 million gallons** in Tampa Bay, Florida.¹⁷

⁵ Complaint, United States of America v. J.R. Simplot Company and Simplot Phosphates, LLC, 20-CV-125-F (July 9, 2020), <https://www.justice.gov/enrd/consent-decree/file/1293116/download>.

⁶ Louisiana DEQ, Uncle Sam Facility, Government Review of Root Cause Analysis (March 2, 2020).

⁷ EPA, Mississippi Phosphates Corporation Site Pascagoula, Mississippi Factsheet (March 2017), https://www.epa.gov/sites/production/files/2017-03/documents/mpc_fact_sheet_1_finalv2.pdf.

⁸ Marshall, James, Mountains of Waste Menace Florida’s ‘Swiss Cheese’ Aquifers, E&E NEWS (Apr. 9, 2020), <https://www.eenews.net/stories/1062576963>.

⁹ Complaint, United States of America v. J.R. Simplot Company and Simplot Phosphates, LLC, 20-CV-125-F (July 9, 2020), <https://www.justice.gov/enrd/consent-decree/file/1293116/download>.

¹⁰ Felony Information, United States of America v. Mississippi Phosphates Corporation, Case No.: 1:15-cr-00058-LG-RHW (2015).

¹¹ Beck, Marcus et al. 2018. Water Quality Trends Following Anomalous Phosphorus Inputs to Grand Bay, Mississippi, USA. Gulf and Caribbean Research, 29:1. http://ftp.sccwrp.org/pub/download/DOCUMENTS/WorkPlan/RestrictedJournalArticles/1018_GrandBayPhosphorousInputs.pdf.

¹² Salman, John. *HRK knew of tearing problems before Piney Point spill*, THE BRADENTON HERALD (July 6, 2012), <https://www.bradenton.com/news/business/article34551327.html>.

¹³ Marshall, James, Mountains of Waste Menace Florida’s ‘Swiss Cheese’ Aquifers, E&E NEWS (Apr. 9, 2020), <https://www.eenews.net/stories/1062576963>.

¹⁴ Beck, Marcus et al. 2018. Water Quality Trends Following Anomalous Phosphorus Inputs to Grand Bay, Mississippi, USA. Gulf and Caribbean Research, 29:1. http://ftp.sccwrp.org/pub/download/DOCUMENTS/WorkPlan/RestrictedJournalArticles/1018_GrandBayPhosphorousInputs.pdf.

¹⁵ Complaint for Natural Resource Damages, United States of America et al. v. Mosaic Fertilizer, LLC, Case No.:13-cv-00386-RAL-TGW (2013).

¹⁶ Hu, Chuanmin et al. 2003. Satellite monitoring of the FDEP Gulf dispersal of the Piney Point treated wastewater. University of South Florida at 2.

¹⁷ Henderson, Carl. 2004. Piney Point Phosphate Plant: An Environmental Analysis at 40, UNIVERSITY OF SOUTH FLORIDA ST. PETERSBURG, <https://digital.stpetersburg.usf.edu/cgi/viewcontent.cgi?article=1062&context=honorstheses>.

- 1997 - Mulberry phosphogypsum stack discharge of **54 million gallons** into the Alafia River, Florida.¹⁸
- 1994 - New Wales phosphogypsum stack sinkhole release of **80 million gallons** of process wastewater in Mulberry, Florida.¹⁹
- 1992 - Mobil Mining and Minerals phosphogypsum stack discharge of **45 million gallons** of phosphogypsum and process wastewater into Cotton Patch Bayou, Houston, Texas.²⁰

In October 2020, without public notice or comment, the Trump administration reversed its long-standing scientific determination that the use of phosphogypsum in road construction presents an unacceptable risk to public health and approved the use of phosphogypsum in roads.²¹

Additionally, in response to the Piney Point crisis, local and state regulators have proposed an industry-supported, fast-tracked “solution” to inject the remaining hundreds of millions of gallons of toxic, acidic wastewater stored at this phosphogypsum stack underground into Florida’s vulnerable karst geological formations, an unsafe, precedent-setting, out-of-sight and out-of-mind approach with potential migration concerns about contamination of groundwater used for drinking water and crop irrigation.²²

This most recent, entirely predictable phosphogypsum stack failure at Piney Point and the troubling response is a stark reminder that millions of people around the nation are living close to these ticking time bombs, and that state and local officials are ill-equipped or unwilling to adequately manage their risks. We hope your Committees can help address this growing and urgent problem to help better safeguard our water and environment from future catastrophes like Piney Point. Please do not hesitate to contact me at jlopez@biologicaldiversity.org or (727) 490-9190.

Thank you for your consideration and look forward to your reply.

Sincerely,



Jaelyn Lopez, Florida Director
Center for Biological Diversity

On behalf of the following organizations:

¹⁸ Amundsen & Moore, Summary Report of Determination of Cause of Process Water Discharge From South Gypsum Stack Expansion Area, Mulberry Phosphates, Inc., Mulberry, Polk County, Florida at 1, FDEP Permit # MMR_FL0334944 (Jan 20, 1998).

¹⁹ Marshall, James. Mountains of Waste Menace Florida’s ‘Swiss Cheese’ Aquifers, E&E NEWS (Apr. 9, 2020), <https://www.eenews.net/stories/1062576963>.

²⁰ Consent Decree for Natural Resource Damages, United States of America v. Mobil Mining and Minerals Co., United States District Court for the Southern District of Texas, Case No.: H96-0695 (1996).

²¹ <https://biologicaldiversity.org/w/news/press-releases/lawsuit-challenges-trump-epas-approval-of-radioactive-roads-2020-12-18/>.

²² Pittman, Craig. As danger of major breach recedes, Florida seeks long-term solution for troubled plant (April 6, 2019), https://www.washingtonpost.com/climate-environment/as-danger-of-major-breach-recedes-florida-seeks-long-term-solution-for-troubled-plant/2021/04/06/f0c00748-96f8-11eb-b28d-bfa7bb5cb2a5_story.html.

Debra Campbell
A Community Voice – Louisiana

Dean A. Wilson, Executive Director
Atchafalaya Basinkeeper

Kristen Schlemmer, Legal Director
Bayou City Waterkeeper

Cat Chase
Cat Chase Media

John Cassani, Waterkeeper
Calusa Waterkeeper

Barbara Weckesser
Cherokee Concerned Citizens

Rev. Manning
Coalition Against Death Alley

Aaron Mintzes, Senior Policy Counsel
Earthworks

Aliki Moncrief, Executive Director
Florida Conservation Voters

Cynthia Sarthou, Executive Director
Healthy Gulf

Jennifer Walling, Executive Director
Illinois Environmental Council

Gail LeBoeuf
Inclusive Louisiana

John Capece, Waterkeeper
Kissimmee Waterkeeper

Lt General Russel Honore' (Ret)
Louisiana Green Army

Glenn Compton, Chairman
ManaSota-88, Inc.

Carrie Clark, Executive Director
North Carolina League of Conservation
Voters

Michael Roth, President
Our Santa Fe River, Inc.

Andy Mele, Waterkeeper
Peace+Myakka Waterkeeper

Brooks Armstrong, President
People for Protecting Peace River, Inc.

Sharon Lavigne, Executive Director
RISE St. James

Dalal Anne Aboulhosn, Acting Deputy
Director of Policy, Advocacy and Legal
Sierra Club

Joe McClash, Board Chair
Suncoast Waterkeeper

Megan Eakins, Board Chair
Tampa Bay Waterkeeper

John S. Quarterman, Suwannee
Riverkeeper
WWALS Watershed Coalition, Inc.

Jen Lomberk, Matanzas Riverkeeper, Chair
Waterkeepers Florida