

**COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
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**EXAMINATION OF THE UNITED STATES 7TH, 8TH AND 9TH PERIODIC REPORTS
OF JUNE 2013**

**ALTERNATIVE REPORT REGARDING LACK OF IMPLEMENTATION OF CERD
CONCLUDING RECOMMENDATION 30 [CERD/C/USA/CO/6] REGARDING THE
UNITED STATES IN FEBRUARY 2008 AND IMPACTS OF THE CONTINUED
PRODUCTION AND EXPORT OF UNREGISTERED PESTICIDES**

Jointly Submitted by the International Indian Treaty Council, Advocates for Environmental
Human Rights, Alaska Community Action on Toxics, Native Village of Savoonga, Native
Village of Gambell, North-South Indigenous Network Against Pesticides and International
Indigenous Women's Initiative for Environmental and Reproductive Health*

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I. EXECUTIVE SUMMARY

The 2008 Indigenous Peoples Consolidated Report, submitted in January 2008 for the review of the United States (US) by the UN Committee on the Elimination of Racial Discrimination (CERD) 72nd session, presented detailed information about the discriminatory practices and resulting adverse effects on human rights for Indigenous communities outside the US as a result of the US proactive of the manufacture and export of toxic pesticides which have been banned for use in the US. The CERD 2008 Concluding Observations regarding the US included this following very important recommendation:

30. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to land, health, living environment and the way of life on indigenous peoples living in these regions. (Articles 2 (1) (d) and 5 (e))

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.¹ (*Emphasis added*)

The US periodic reports submitted to the CERD in June 2013 ignored the impacts on Indigenous Peoples in other countries as a result of its failure to regulate the behavior of the corporations it registers in the US. The US also failed to provide information as requested by the CERD regarding any specific measures it has undertaken to either prevent adverse effects on the human rights of Indigenous Peoples from activities of the transnational corporations it registers or to hold them accountable for these activities.

Nevertheless, with callous disregard for human rights, including right to health, right to life and the commitment to non-discrimination it accepted as a State party to ICERD, the US continues to allow the manufacture and export to other countries of such pesticides. They are mainly

¹ CERD/C/USA/CO/6... February 2008, Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination, Advance Unedited Version, Paragraph 30.

exported to developing countries for agricultural use for the financial profit of chemical companies and agri-business.

Extensive documentation received by the IITC and the other Co-submitters since the last review of the US by CERD in 2008 confirm the US failure to comply with CERD Recommendation 30. This includes both community testimonies and scientific studies documenting extensive human rights violations suffered by Indigenous Peoples outside the as well as within the US. It also includes information and data received from government sources which, although very difficult to obtain, document the shocking extent of this practice.

The resulting severe effects on the human rights of Indigenous Peoples, in particular for Yaqui Indigenous Peoples in Northern Mexico as a case study, are extensively documented in the body of this report. The report also presents information received documenting the widespread extent of this practice as well detrimental impacts on Indigenous Peoples within the US, specifically in the Alaskan Arctic where these toxic chemicals bio-accumulate, as well as on US minority communities located at the point of manufacture. This constitutes environmental racism and discrimination in violation of, in particular, Articles 1 and 5 (i) and (iv) of the ICERD.

Suggested Questions for the United States

- 1) Does the US intend to implement recommendation in paragraph 30 from the CERD's 2008 Concluding Observations? What measures has it taken in that regard, in particular in relation to the continued manufacture and export of pesticides that are unregistered or severely restricted for use in the US?
- 2) How does the US justify the discriminatory impacts on human rights resulting from its laws which allow the production and export pesticides to other, primarily developing, countries that it does not permit to be used in its own country specifically because of their well-known detrimental and often deadly impacts on human life and reproductive health?

Proposed Recommendations:

- 1) The CERD reiterates its concerns and recommendations previously stated in paragraph 30 of the 2008 Concluding Observations regarding the US and once again requests that the US implement and report on measures it has taken in this regard;
- 2) The CERD also expresses its concern regarding the human rights impacts of the manufacture and export of banned and severely restricted pesticides as permitted by US laws, on Indigenous Peoples and communities of color (minorities) inside the US due to exposure through global transport as well as proximity to production sites.

II. THE UNITED STATES' FAILURE TO PREVENT HUMAN RIGHTS IMPACTS BY CORPORATIONS IT REGISTERS

A. Summary of 2008 Submission

On January 6, 2008 the Consolidated Indigenous Report titled “Racial Discrimination against Indigenous Peoples in the United States”² was submitted by the International Indian Treaty Council (IITC) and 30 other Indigenous Peoples and organizations for the review of the United States by the 72nd Session of the UN Committee on the Elimination of Racial Discrimination (CERD). It included a section in pages 77-72 titled “United States Complicity: the Manufacture and Exportation of Banned Pesticides”. The Report highlighted the complicity of the United States (US) in violations of human rights protected under the International Convention on the Eliminations of All Forms of Racial Discrimination (ICERD) by allowing the manufacture and export of banned pesticides (often referred to as pesticides “unregistered” for use in the US).

The 2008 Indigenous Peoples Consolidated Report informed the CERD of the visit to the US in 2001 of the Special Rapporteur on adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Ms. Fatma-Zohra Ouhachi-Vesley. According the Special Rapporteur, the US openly admitted that US law allows for the production and export to other countries of pesticides not registered for use in US because they are known to be dangerous to humans.

The Special Rapporteur declared, *“Just because something is not illegal, it may still be immoral. Allowing the export of products recognized to be harmful is immoral.”*³ The Rapporteur also cited a report which found that according to US Customs records, 3.2 billion pounds of pesticide products were exported from US ports from 1997 to 2000. Of those, 65 million pounds were either “forbidden or severely restricted in the United States” and 1.1 billion pounds of pesticides exported from 1996 to 2000 were “identified as known or suspected carcinogens.”⁴

The 2008 Indigenous Peoples Consolidated Report documented the resulting human rights violations suffered by the Yaqui Indigenous People of Sonora, Mexico, just a few hours south of the US-Mexico border. The report referenced testimonies from agricultural workers, parents, midwives and community members who verified the lack of free, prior and informed consent by the Indigenous Peoples exposed to the chemicals. They recounted exposures through aerial spraying of homes and schools in agricultural areas, contact during storage and in the workplace with little or no protective gear, warnings or information about the detrimental health impacts,

² Committee on the Elimination of Racial Discrimination, Examination of the United States 4th, 5th, and 6th Periodic Reports, April, 2007, Consolidated Indigenous Shadow Report, download full text at: http://cdn5.iitc.org/wp-content/uploads/CERD_US_Indigenous_Shadow_Report.pdf?536f4b

³ U.N. Deems Export of Banned Pesticides Immoral, U.S. Newswire, 202-347-2770/ 17 Dec 16:09, U.N. Human Rights Investigator Deems U.S. Export of Banned Pesticides ‘Immoral.’

⁴ Carl Smith, “Pesticide Exports from US ports, 1997-2000”, vol. 7 *International Journal of Occupational and Environmental Health* (2001), 266-274.

particularly on the unborn and young children. The report presented finding from two studies carried in Rio Yaqui communities out by University of Arizona scientist, Dr. Elizabeth Guillette. These studies, which are internationally known and cited, provided extensive data regarding impacts on physical, mental, and behavioral development of Yaqui children exposed to high levels of pesticides as well as abnormal breast development in teenage and preteen girls whose mothers were exposed to high level of toxic agricultural pesticides while pregnant.⁵

The report also underscored the discrimination inherent in this practice. It quoted a Yaqui farm worker from Mexico who asked a representative of the US's Environmental Protection Agency (EPA) at a 2001 meeting Commission for Environmental Cooperation in San Diego, California USA regarding the US's policy of banning pesticides for use in the US but still permitting their production for export, *"Why are the lives of our Yaqui children in Mexico worth less than the lives of your children here in the US?"*

B. CERD Recommendation 30 from the 2008 US Review and the US Response

As a result of the extensive information presented in the 2008 Indigenous Peoples Consolidated report, the CERD 2008 Concluding Observations included a strong recommendation to the US:

30. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to land, health, living environment and the way of life on indigenous peoples living in these regions. (Articles 2 (1) (d) and 5 (e))

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational

⁵ Guillette, E.A., et.al. 1998, An anthropological approach to the evaluation of preschool children exposed to pesticides in Mexico, *Environmental Health Perspectives*, 106(6):347-53; and Guillette, et al., Altered Breast Development in Young Girls from an Agricultural Environment, 2006, *Environmental Health Perspectives*, 114(3): 471-74.

corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.⁶ (*emphasis added*)

CERD's Recommendation 30 has made a significant contribution to the continuing evolution of international standards affirming the obligations of States to prevent activities by corporations which negatively impact human rights and to hold these corporations accountable for such actions. In June 2011 the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights⁷ affirming States' duty to provide protection against human rights abuses by businesses and corporations through "taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication."⁸

C. The US Response

The US responded in its 2013 Report to the CERD that "the United States strongly supports accountability for corporate wrongdoing regardless of who is affected and implements that commitment through its domestic legal and regulatory regime" (*emphasis added*).⁹ This claim stands in stark contrast to the US continued policies which permit US-based corporations to manufacture and export chemicals that are banned for use in the United States to other, primarily developing, countries.

In its 2013 Report the US identifies itself as "a strong supporter of the business and human rights agenda,"¹⁰ citing its support of multi-stakeholder initiatives such as the Voluntary Principles on Security and Human Rights Initiative (VPI) as evidence of its commitment to hold corporations accountable, in particular regarding extractive industries.¹¹ However, the US fails to acknowledge *its own responsibility* to holding the corporations it licenses accountable to international human rights standards through its own legislative and administrative measures.

In paragraph 136 of its June 2013 report to the CERD, the US recognizes that "Environmental hazards, such as inadequate and unhealthy housing and unhealthy air quality, likewise affect health outcomes." The US cites several efforts to address health disparities, including the *Action Plan to Reduce Racial and Ethnic Disparities*, *National Stakeholder Strategy for Achieving Health Equity* and *Action Plan to Reduce Ethnic Asthma Disparities*.¹² However, none of these

⁶ CERD/C/USA/CO/6... February 2008, Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination, Advance Unedited Version, Paragraph 30.

⁷ US Human Rights Council resolution 17/4, June 16 2011.

⁸ "Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Office of the High Commissioner on Human Rights, 2011.

⁹ Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, June 12, 2013, Paragraph 177.

¹⁰ Ibid.

¹¹ Ibid.

¹² Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, June 12, 2013, Paragraphs 140 and 144.

examples acknowledge the corporate role in creating health disparities nor do they address the role of US law in allowing them to continue. Even the *Action Plan to Reduce Ethnic Asthma Disparities*, which is cited in the US report under Environmental Justice, glosses over air pollution and completely ignores the responsibility of the State in regulating corporate action that contribute to health disparities, restricting its focus instead on environmental exposures to allergens and pollutants in the home, childcare facilities, and school settings as well as maternal smoking and environmental tobacco smoke.¹³

The US cites, as examples of its efforts to promote environmental justice, the Environmental Protection Agency (EPA) Plan Environmental Justice (“EJ”) 2014 and the Federal Interagency Working Group on Environmental Justice (EJ IWC).¹⁴ However, the purpose of these government programs is restricted to the promotion of environmental justice through the implementation of existing statutes and regulations. Legislative action to outlaw the production of the most noxious contaminants as a strategy for addressing an important root cause of health disparities including cancer, birth defects and reproductive health impacts for Indigenous Peoples both in and outside the US is not addressed in the US report. By ignoring the toxic chemicals that its own laws permit corporations to produce and release into the environment as the source of environmental exposures, the US continues to skirt its responsibility to hold the corporations it licenses accountable for respecting human rights to health, life, rights of the child and free prior and informed consent among others.

In its 2008 Concluding Observations, the Committee requested the that US include in its next periodic report “information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.” The US report completely ignores the impacts on Indigenous Peoples in other countries as a result of its failure to regulate the behavior of the corporations it licenses, which was specifically the subject of the CERD’s Recommendation 30.

The US continues to evade the question about specific actions taken to address this issue. In fact, in a conversation between the IITC Executive Director and a representative of the US State Department, when asked what measures the United States was taking to address its responsibility for holding the corporations it licenses accountable to human rights standards, the representative responded, “It depends on what you mean by measures.”

The United States has failed to provide the specific information requested by the CERD regarding specific measures it has undertaken in this regard, if any. The resulting human rights violations for Indigenous Peoples outside the US is documented below. Also presented are the impacts on Indigenous Peoples within the US, specifically in the Alaskan Arctic, as well as on US minority communities located at the point of manufacture. This constitutes environmental

¹³ Ibid, paragraph 144.

¹⁴ Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, June 12, 2013, paragraph 144.

racism and discrimination in violation of, in particular, Articles 1 and 5 (i) and (iv) of the ICERD.

The Co-submitters request that the Committee reiterate Recommendation 30 from its 2008 Concluding Observations to the US, and strongly recommend that the US take specific measures to hold the corporations it registers accountable for practices that cause severe, and in many cases deadly, impacts to Indigenous Peoples outside the US. The Co-submitters also request that the Committee consider the discriminatory impacts on Indigenous and local communities of color within the US in its recommendations at this session.

D. US Continued Failure to Comply with CERD Recommendation 30 from its 2008 Concluding Observations regarding the US

The US has failed to implement the CERD recommendation in paragraph 30 of its Concluding Observations regarding the US. It has **continued to allow the production and export of banned (or “unregistered”) pesticides**, despite the Committee’s recommendation and despite extensive knowledge about the detrimental impacts on the enjoyment of human rights of this policy on Indigenous Peoples in other countries. There has been no change or amendment made to US law, specifically the “Federal Insecticide, Fungicide and Rodenticide Act” (FIFRA, amended in 1996) Section 17(a)¹⁵ which permits this practice, in response to recommendation 30 in CERD’s 2008 Concluding Observations addressing the US. In fact, the US Environmental Protection Agency (EPA) explains that, under this law, “[p]esticides that are not approved — or registered — for use in the U.S. may be manufactured in the U.S. and exported.”¹⁶

Scientific studies and reports continue to be carried out in the US, including by the US government itself, confirming the persistent reproductive health impacts of toxic pesticides banned for use in the US. These impacts are well-known and well-documented¹⁷ resulting in the US government’s decision to not allow the worst offenders to be registered for use within the United States.

Nevertheless, the United States continues to demonstrate disregard for human rights, including right to health, right to life and the commitment to non-discrimination that it accepted as a State party to ICERD, by continuing to allow the manufacture and export to other countries of such pesticides.

Extensive documentation received by the IITC and the other Co-submitters since the last review of the US by CERD in 2008 confirm the US failure to comply with CERD Recommendation 30. This includes both community testimonies and scientific studies documenting extensive human

¹⁵ Federal Insecticide, Fungicide and Rodenticide Act, <http://www.epa.gov/opp00001/regulating/fifra.pdf>

¹⁶ US Environmental Protection Agency, *Pesticides: International Activities*, <http://www.epa.gov/oppfead1/international/trade/> (last updated 3/25/2014).

¹⁷ For example, see U. Kristen, et al. 2013, Organochlorine Pesticides and Risk for Endometriosis: Findings from a Population-Based Case-Control Study, *Environmental Health Perspectives*, 121:1319–1324.

rights violations suffered by Indigenous Peoples outside the as well as within the US. It also includes information received from US government sources under the Freedom of Information Act (FOIA)¹⁸ a US law that allows for public disclosure of governmental information. This data received by IITC and the Advocates for Environmental Human Rights (AEHR) law firm in 2012, provides clear evidence of US complicity with the practice by US-based corporations of production and export of pesticides banned for use in the US.

Information gathered directly from impacted communities since the 2008 submission reveals that Indigenous Peoples as well as other communities of color within the US, both at the points of manufacture and where these chemicals travel through a process known as “global transport” to the Arctic, are also disproportionately affected by this practice. The ongoing practice by the US of allowing the production and export of toxic chemicals well known to have severe health effects, to the extent that they are banned for use in the US itself, constitutes environmental racism. Human rights violations, including many deaths in Indigenous communities which are exposed as a result, have increased since 2008.

E. Challenges in Obtaining Data on US Production and Export of Banned Pesticides

The Co-submitters inform the CERD of the almost insurmountable challenges of securing US government cooperation in order to obtain up-to-date and comprehensive information and data on the production and export of “unregistered” chemicals. In an effort to obtain this information, the IITC enlisted the help of Advocates for Environmental Human Rights (AEHR), a public interest law firm that works with highly contaminated African American communities located at the point of manufacture of many toxic chemicals, such as Mossville in Louisiana.

The IITC and AEHR submitted written requests to the US Customs and Border Protection Agency, US Department of Commerce, and the US Environmental Protection Agency (EPA) on March 13, 2012, requesting records pertaining to the production and export of pesticides, active ingredients and products that are banned or severely restricted for use in the US. The Customs and Border Protection Agency responded on April 23, 2012 that it did not have the requested records. The US Department of Commerce acknowledged receipt of the FOIA request letter in writing on March 26, 2012 but never respond to the actual request for information. The EPA produced some of the requested information on July 25, 21012 (Attached). The EPA promised to send additional documents, which it has failed to do. (*See Appendix A, FOIA Correspondence & Information*).

The US Government’s response to the FOIA request is incomplete, indicating resistance to establishing a transparent governmental process to provide Indigenous Peoples and civil society with information relevant to their human rights to health, life, free prior and informed consent and freedom from racial discrimination.

¹⁸ Freedom of Information Act (FOIA), 5 U.S.C. § 552, enacted in 1966, Amended By Public Law No. 104-231, 110 Stat. 3048.

Even the partial information provided by the US EPA in response to the FOIA request by IITC and AEHR on July 25, 2012 was shocking. The EPA reported that as of 2010, ten banned/severely restricted pesticides were being manufactured at 28 facilities in 23 states across the US, owned by 25 companies, including multinational giants like Monsanto and Bayer CropScience. This information comes from a computer database maintained by the EPA that the agency says was last updated in 2010. Repeated requests for more up to date production information, i.e. through 2012 or 2013 has been ignored, in violation of their obligation in accordance with the UN Declaration on the Rights of Indigenous Peoples, Article 29, paragraph 2 as follows:

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

In this regard paragraph 29 of the CERD's 2008 Concluding Observations regarding the US is of direct relevance: ***“the Committee finally recommends that the [UN] declaration [on the Rights of Indigenous Peoples] be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.”*** The US’ failure to implement that recommendation is presented in detail in another joint Alternative Report submitted on that issue to this session by Indigenous Peoples.¹⁹ Failure to comply with that recommendation can be confirmed specifically with regards to the matter in this Report as well.

The EPA information provided a delayed and partial response to information requested under a US law, identifying corporations and production locations as of 2010. It later provided a list of countries where **four of the ten banned/severely restricted pesticides** on the 2010 list were exported in 2011, 2012 and 2013.²⁰ This information is compiled below:

US Production of Banned & Restricted Pesticides and Import Countries
(prepared by Advocates for Environmental Human Rights)

Banned/Restricted Pesticides	Production Companies and locations in the United States *	Importing Countries **
Alachlor	Clevenger Farm Products – Nebraska Monsanto – Iowa Retail Agronomy Solutions – Louisiana	No data provided
Aldicarb	Bayer CropScience – Georgia	No data provided
Carbofuran	Bayer CropScience – West Virginia	Algeria, Argentina,

¹⁹ Alternative Report Regarding Lack of Implementation by the United States of Recommendation 29 of the Committee’s 2008 Concluding Observations, Submitted jointly by The International Indian Treaty Council (IITC), Oglala Lakota Nation, Western Shoshone Defense Project & the Indigenous World Association (IWA) July 8, 2014.

²⁰ *US Production of Banned & Restricted Pesticides and Import Countries*, prepared by Advocates for Environmental Human Rights, 2014 from information provided under the FOIA process by the US Environmental Protection Agency.

	FMC Corporation – Illinois FMC Corporation – New York	Bangladesh, Brazil, Cameroon, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, European Union, Guatemala, Honduras, India, Indonesia, Iraq, Ivory Coast, Kenya, Lebanon, Mali, Mexico, Morocco, Nicaragua, Peru, Russia, , Saudi Arabia, Senegal, Serbia, South Korea, Sri Lanka, Switzerland, Taiwan, Thailand, Turkey, Ukraine, Uruguay
Endosulfan	Gowan Milling – Arizona KMG-Bernuth – Kansas	Dominican Republic
Ethylene oxide	Arc Specialty Products – Missouri GT&S – Pennsylvania Honeywell – Kingman, Arizona	No data provided to date
Methyl-parathion	Cheminova A/S – unspecified location Schirm USA – Texas	No data provided to date
Parathion	Loveland Products – Montana	No data provided to date
Pentachloro-phenol	KMG Bernuth – Alabama KMG de Mexico – unspecified location	No data provided to date
Thiram	Amvac Chemical – Idaho Bayer CropScience – Missouri Gowan Milling – Arizona Great Oak – Connecticut Taminco NV – unspecified location	Canada
Tributyltin oxide	Akros Chemicals – New Jersey Bradford Soap Works – Rhode Island Canberra – Ohio Goodrich – Florida Haviland Products – Michigan Key Polymer – Massachusetts Sea-Bird Electronics – Washington Sherwin Williams – Texas Southwest Engineers – Louisiana Spraying Services – Texas	Brazil, Canada, China, Colombia, Ecuador, Egypt, El Salvador, Honduras, Indonesia, Israel, Jordan, Malaysia, Mexico, Panama, United Arab Emirates, Uruguay

* EPA Reporting year 2010

** EPA Reporting year 2012

Of the 33 different countries listed as recipients of these highly-toxic exports (partial list due to the continuing omissions in the information provided by the EPA), 33 or 73.3 % are considered

to be “developing” countries.²¹ The export by the US of pesticides either banned or severely restricted for use in the US is disproportionately slanted towards developing countries. Although the US is required under international law²² to inform the importing countries of the legal status of these pesticides in the exporting country, little to no effort is made by the exporting State to ensure that Indigenous Peoples “on the ground” where they are applied are also afforded their right to free prior and informed consent in this regard.

F. Human Rights Impacts Continue for Yaqui Indigenous Peoples of Sonora Mexico

A few hours south of the US-Mexico border, Yaqui Indigenous communities are exposed to the industrial agricultural pesticides including those produced for export only in the US. Planes still regularly spray pesticides on homes and schools located near the fields. Pesticide-drenched crops are regularly burned further distributing these toxics through the air. The smell of noxious chemicals permeates Yaqui communities when spraying is taking place. For some communities, their only source of water is pesticide-contaminated irrigation canals. Animals used for food production such as goats used for meat and milk regularly drink from these same canals. In addition, Yaqui agricultural workers are not provided with protective gear or even water to wash their hands. They unintentionally carry poisons home on their skin and clothing, spreading the contamination to their families including babies and pregnant women.

As noted above, scientific studies carried out in Yaqui communities have shown high levels of pesticides found in the cord blood of newborns and mothers’ breast milk, dramatic developmental differences in children depending on level of exposure to pesticides, and abnormal breast development in young girls with potential effects on future lactation and increased risk of breast cancer including pre-cancerous conditions.

Since the Consolidated Indigenous Peoples Report was submitted to the CERD in January 2008, IITC affiliate Jittoa Bat Natika Weria (“Ancestral Medicine”) based in Vicam, Rio Yaqui, Sonora Mexico has continued to document the increasingly severe and, in many cases, deadly impacts. Community members, farmworkers, families, traditional healers (curanderas) and midwives (parteras) confirm that the conditions described in the January 2008 report to CERD have in fact worsened. They have collected and submitted 57 additional testimonies from Yaqui Indigenous Community members including parents, community midwives and traditional healers.

²¹ International Statistical Institute (ISI) list of Developing Countries, effective from 1 January till 31 December 2014. Developing countries are defined according to their Gross National Income (GNI) per capita per year. Countries with a GNI of US\$ 11,905 and less are defined as developing (specified by the [World Bank](#), 2012).

²² Specifically the UN Rotterdam Convention, formerly the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

These testimonies document increasing numbers of severe, disabling and often fatal birth defects, stillbirths, leukemia, liver and other cancers among adults and children. This exposure has caused many painful deaths and untold levels of human physical, emotional and spiritual suffering. Yaqui families have few economic resources for treatment, transplants, surgeries or even pain medications or wheelchairs for children unable to walk due to birth defects such as spinal bifida resulting in paralysis.

The 57 testimonies collected from Yaqui community members since 2008 and submitted to IITC have documented 25 deaths resulting directly from exposure to the highly toxic pesticides, including the deaths of 17 children. They include 20 cases of leukemia and cancer in community members less than 25 years of age including children. Several more are currently suffering fatal illnesses, and several children are permanently disabled due to birth defects.

The actual number of cases is likely much higher given that data collection is restricted by limited resources. Some grieving families are also reluctant to share the trauma they have experienced. But many others state that they want to share their experience so that the deaths of their children and other family members will not be forgotten or be in vain.

A tragic case is that of Cristian Molina, born with multiple birth defects after his mother was exposed to toxic pesticides working without protection while a 17 year-old pregnant field worker. Cristian was never able to walk and his growth was permanently stunted. His severe birth defects as a result of his mother's exposure to toxic pesticides were included in the previous report to the CERD on this issue. Sadly, he passed away as a result of his birth defects at age 13 on March 15, 2008 a month after the last CERD Concluding Observations addressing the US were released.

The following excerpts of testimonies collected in December 2011, September 2013 and January 2014 are a few among many other tragic and heartbreaking examples of the death of Yaqui children due to extreme levels of pesticides exposure. The below testimonies are examples and have been translated from Yaqui into Spanish and then into English. They are tragically typical in the highly-impacted Yaqui Indigenous families and communities of Sonora Mexico.

DECEMBER 15, 2011

Mrs. Flor Reyna Osuna, (mother of the young woman)

Young woman, Flor Osuna García.

Jesús Gonzales, (midwife)

Interviewer: Francisco Villegas Paredes

Mrs. Flor Reyna, the mother of a young woman who was born with deformities.

Currently the young woman is 30 years old and is 1.20 meters [3'11"] tall. She says

that when her daughter was born, the child's body was WATERY and JELLY-LIKE. The girl, due to her scant growth, is unable to move her legs. She can only move her arms. Her vital organs are atrophied. Studies conducted on her reveal that the girl developed deformities while in her mother's womb.

The physicians, as an important conclusion of the studies conducted, consider that the young woman's housing location, on the periphery of agricultural lands and exposed to spraying with agrochemicals, quickly leads to CONGENITAL DISEASES. Also, some biochemists specializing in clinical analysis have analyzed certain products. As a result they have reached important conclusions: mixtures of two or more chemicals applied in inhabited areas also lead to CANCERS.

The midwife, Jesús made the following comments: These deformities are the product of tumors produced by chemicals when young women are exposed to their application while working in the field without personal safety measures or other similar protection.

DECEMBER 20, 2011

Mrs. Xóchitl Valdés, (mother of the girl)

Girl: Mariana López Valdés

Interviewer: Francisco Villegas Paredes

The girl's mother, Mrs. Mariana López Valdés stated that her pregnancy was very delicate. She was constantly going to the doctor. Even some midwives told her that her girl was not developing well. When the girl was born, she had deformities on her face, principally to her lips. She also stated that the girl's grandfather, Mr. Manuel Valdés works in agriculture and would generally leave chemical residues behind at his house. Some doctors told him, based on studies conducted on the girl that the agro-chemicals are having a direct effect.

The contact she had with the residues while still young caused deformations to some parts of her body when she was a fetus. The girl is alive. She is 1 year 6 months old and her deformities are growing.

SEPTEMBER 15, 2013

Aunt of the young boy Felix Luis Alberto Clemente

Interviewer: Francisco Villegas Paredes

*The aunt of **FELIX LUIS ALBERTO CLEMENTE** whose father works in the farmland **LOS VENADOS** where a variety of vegetables are grown, reported that Felix was born with spots on his body and by age 2, was in a struggle against death. At that time he was diagnosed with liver cancer, his stomach began growing gradually, the fingernails began to change color. He was an invalid as a result of the cancer and when his fingernails began to burst the final diagnosis of the doctors was terminal stage*

leukemia. He died at age 4. His father, who currently works in the fields, says his son is gone due to the chemicals he handled and his aunt reports a large number of patients in the community with leukemia and cancers as a result of open-air pesticide applications.

SEPTEMBER 15, 2013

Traditional Healer Mr. Hermenejildo

Mother: Sra. Francisca Gotopicio

Interviewer: Francisco Villegas Paredes

*Testimony was provided by Mr. Hermenejildo, a community traditional healer who visited **SRA. FRANCISCA GOTOPICIO** in the community of Huamuchil, Cocorit Rio Yaqui. She is the mother of a baby girl born with birth defects who lived merely four hours. Mr. Hermenejildo reported that the baby's body was completely amorphous, gelatinous, the body slightly elongated and the upper and lower extremities slightly short. He also tells us that the family of the baby girl have jobs related to pesticides.*

JANUARY 6, 2014

Ramon Valenzuela, Cousin of the child

Deceased Child: Efrain Valenzuela Amarillas

Interviewer: Francisco Villegas Paredes

*Mr. Ramon Valencia, cousin of the late **EFRAIN VALENZUELA AMARILLAS**, reported on January 9th of this year that after giving birth the mother had struggled to care for the child, since the baby was very susceptible to contacting illnesses, was very weak, had a frail little body, and was thin. Thank God, he says, he was unable to recover without any medical treatment, but the child grew to the age of 6 with major respiratory problems, fatigue, and then he was treated medically and diagnosed with **LEUKEMIA**. After a long and painful struggle, in which like many others, the family was unable to afford medications or even medicine to reduce pain, Efrain died at age 13. Mr. RAMON tells us that the child lived in a heavily polluted area named **BARRIO LA NOPALERA**, it also adjoins agricultural plots and the established **PESTICIDE APPLICATION AIRCRAFT FIELD**. The child's family tells us they are ready to struggle against anyone to put a stop to the deaths being **CAUSED BY THE AIRCRAFTS**.*

One of the most difficult cases to report is the death of two-year old Juan Antonio Rodriguez Coronado on April 11, 2013. His family's home is on the flight path of airplanes spraying pesticides overhead, including in the residential areas where he lived. The child was born with cirrhosis of the liver. The testimony was presented by his grandmother to IITC in January 2013,

including his dismal medical prognosis that if a liver transplant could not be obtained almost immediately, which was not possible for this family with few resources, his case was terminal. Antonio's case was documented in the film "Toxic Profits" currently in the final stage of completion which was developed in conjunction with the Pesticides Action Network featuring the human rights impacts of pesticides in 6 countries. A brief clip of Antonio in an interview with his grandmother can be down loaded from the follow link:

<http://www.youtube.com/watch?v=e8MU9enE8jo>. His medical diagnosis as well as his photo are attached to this report.

These and many other tragic and heartbreaking examples provide ample evidence that this practice permitted by US law is killing Indigenous babies and undermining the reproductive capacity of Indigenous women in Rio Yaqui, Sonora Mexico. Similar information has been received from Indigenous Peoples in Ecuador, Guatemala and Argentina, countries that area also on the list of those receiving US exports of banned and severely restricted pesticides included in this report. Impacted Indigenous community members and Indigenous women from many countries consider this practice to be an extreme example of environmental racism, even calling it environmental violence or environmental genocide due to the deliberate nature of this policy, the failure to uphold their rights to health and free prior and informed consent, and the level of human suffering and intergenerational impacts it causes in Indigenous communities.

G. Impacts of Toxic Policies on Indigenous Peoples of the Arctic

Once they are released into the environment, these harmful chemicals are carried north through the environment in a well-known process called "global distillation", also causing disproportionate harm for Indigenous Peoples the Arctic region. Persistent Organic Pollutants (POPs) are long-lasting chemicals which included many pesticides. They bio-magnify and accumulate in the food web, are capable of long-range transport and are toxic to humans and wildlife. They are found in fish, wildlife, and in human breast milk in the Arctic, including in Indigenous communities in Alaska which was made a state of the US in 1959.

The UN Stockholm Convention on Persistent Organic Pollutants, which went into force in May 2004, banned and/or mandated a rapid phase-out of the 12 most hazardous POPs, 9 of which were pesticides. Several more chemicals including additional pesticides have been added to the banned list since its adoption. The Stockholm Convention, which has not yet been ratified by the US, affirmed the global recognition of the reproductive health impacts of these chemicals on women and future generations in developing countries where they are primarily applied, and the health and subsistence impacts in Arctic communities where they travel:

Aware of the health concerns, especially in developing countries, resulting from local exposure to persistent organic pollutants, in particular impacts upon women and, through them, upon future generations,

*Acknowledging that the Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of persistent organic pollutants and that contamination of their traditional foods is a public health issue,*²³

The Arctic is home to approximately half a million Indigenous Peoples, who face significant cultural, food security/subsistence and human health threats from global distillation and resulting accumulation of environmental contaminants including banned pesticides. Indigenous communities of the north are reliant on a traditional diet of foods from the land and ocean for their physical, cultural, and spiritual sustenance. Some Arctic Indigenous populations have shown “levels of contaminants in blood and breast milk higher than those found anywhere else on the Earth.”²⁴

Levels of pesticides such as DDT, chlordane and endosulfan have been increasing in the Arctic. DDT is found at high levels in humans in the Arctic than in the rest of the world although they have seldom been used there. These chemicals cause multi-generational harm because they are transferred from mother to child across the placenta and through breast milk, contributing to diseases, reproductive impacts and birth defects across at least three generations.

St. Lawrence Island is in the Bering Sea close to the Arctic Circle, approximately 100 by 40 miles in size. It is inhabited by 1600 Indigenous Yupik (Inuit) in two tribal villages, Savoonga and Gambell. It is only 45 miles from Russia but it is part of the state of Alaska in the US.

In a recent statement to the US EPA, St. Lawrence Island tribal leaders asserted:

“The Indigenous Arctic peoples are suffering the most from these chemicals because the chemicals – DDT, endosulfan, lindane, perfluorinated compounds and toxic flame retardants, to name a few—are long lasting, and drift North on wind and water currents from where they are applied in the Southern latitudes. That means these chemicals are also in our traditional foods and affecting our health and the health of our children. Health disparities include high numbers of people who are diagnosed and die of cancers, as well as learning and developmental disabilities, birth defects, and endocrine disorders.”

Vi Waghiyi a Yupik mother and grandmother from the Native Village of Savoonga stated for this Report,

“My Yupik people are facing an urgent health crisis as a result of disproportionate chemical exposures. We are contaminated without our consent by chemical corporations that manufacture chemicals that are carried into and accumulate in our

²³ Preamble, United Nations Stockholm Convention on Persistent Organic Pollutants.

²⁴ Arctic Monitoring and Assessment Programme Report, 2009.

region. We are highly exposed and as a small population of Yupik people, we are experiencing genocide as an extreme form of environmental racism.”

Community health researchers on the island as well as scientific studies have documented health outcomes of concern including cancers, thyroid disease, learning and developmental problems, diabetes, heart disease, and reproductive health problems including low birth weight babies, neonatal deaths premature births and other reproductive health impacts.

Biologist Pamela Miller, Executive Director of Alaska Community Action on Toxics in Anchorage Alaska, has carried out several studies and written extensively²⁵ about the impacts of human, plant and animal exposure to toxic contaminants in the Arctic and most specifically on St. Lawrence Island over several years. Miller recently affirmed that *“the travel of pesticides and other POPs to the Arctic creates multiple exposures for Arctic Indigenous Peoples. Pesticides that are POPs persist and travel thousands of miles through the environment to the North, building up in the food chain and in the human body. On St. Lawrence Island, they combine with the pollutants left behind when the US military closed its base in the early 1970’s, exponentially increasing the rates of birth defects cancers and other serious health impacts.”*

In fact, the US military dumped highly toxic waste onto the lands and waters of St. Lawrence Island Yupik Indigenous Peoples, contaminating drinking water sources, fish and wildlife used traditionally for food, and the bodies of the people. The US has never adequately cleaned up this highly toxic waste site. Members of the Indigenous communities that continue to live on the island have stated many times that in their view this constitutes environmental racism and extreme injustice, representing fundamental violations of their human rights.

Disparities of health problems in the Alaskan Arctic include high rates of birth defects and neonatal deaths among Alaska Native infants that cannot be explained by the usual risk factors of maternal use of tobacco or alcohol. Data from the Alaska Birth Defects registry show that the prevalence of birth defects in Alaska is twice as high as in the United States as a whole and that Alaska Native infants have twice the risk of birth defects as white infants born in Alaska. Mothers residing in villages with high hazard ranking are 43% more likely to have a low birth weight baby, 45% more likely to give birth prematurely and more likely to have babies afflicted with intrauterine growth retardation.²⁶

The particular vulnerability of Alaska Native children and dire consequences of the buildup in the Arctic of POPs, which include many banned pesticides, was presented by Tiffany Immingan (whose Yupik name is Akaay), a young Yupik woman from Savoonga. Akaay told the 1,000

²⁵ For example see “Environmental contamination of the Yupik people of St. Lawrence Island, Alaska” by David O. Carpenter, University at Albany and Pamela K. Miller, Alaska Community Action on Toxics, Journal of Indigenous Research, March 1, 2011.

²⁶ Gilbreath, S. and Philip Kass. 2006. Adverse birth outcomes associated with open dumpsites in Alaska Native villages. American Journal of Epidemiology 164(6): 518-528.

delegates and observers attending the Conference of the Parties of the UN Stockholm Convention on Persistent Organic Pollutants in Geneva in May 2013:

“I am making this statement as an Indigenous Youth from the Arctic. In the Arctic, the level of chemicals contamination in breast milk is amongst the highest of any population on earth. Indigenous children are harmed by persistent chemicals from conception onwards. Our communities are suffering from high rates of cancers, birth defects, learning and developmental disorders. The chemicals present in our bodies are passed on to Indigenous children and harm their ability to learn our languages, songs, stories, and knowledge.”

H. Environmental Racism: Impact of Banned Pesticide Production and Export on Indigenous Peoples and Communities of Color in and outside the US

The US classifies these chemicals as “unregistered” precisely because their severe health impacts are well-known and documented by the State Party. The US refusal to outlaw the production and export of these toxics therefore constitutes an act of environmental racism, and some would say environmental violence, rather than simple neglect, since its participation in the practice of the export of banned chemicals is conscious and deliberate. By legally sanctioning the production of these deadly chemicals the US is directly abetting the corporations that benefit from the sickness and death of Indigenous Peoples where the pesticides are used and communities of color where the pesticides are produced. The US is therefore complicit in environmental racism against these Peoples and communities.

In addition to the impact on Indigenous Peoples abroad, the US practice of permitting the production of banned pesticides for export disproportionately affects the health and wellbeing of communities of color within the US. The concentration of people of color in poor residential areas, as noted by the CERD in Concluding Observation 16 of its 2008 Review of the United States, forms part of the structural racial discrimination that contributes to creating health disparities for communities of color as well as for Indigenous Peoples.

The US Government’s significant role as an exporter of these pesticides demonstrates its disregard for global reproductive health. The human right to health is undermined by the US Government’s support for chemical companies and the agri-business industry that profit from the manufacture and sale of banned/restricted pesticides. The victims of this US policy are predominantly Indigenous women and babies in developing countries, who live in areas where they are exposed to these dangerous pesticides. The US export of these pesticides is killing Indigenous children and babies and is damaging the reproductive ability of Indigenous women.

US law and policy allowing for the production and export of banned/severely restricted pesticides raise human rights issues for both the people in the United States who live in areas where these pesticides are manufactured, stored, disposed, and released to the air, water, and

land and the people in the import countries who live in areas where these pesticides are applied, stored, disposed, and released to the environment.

US governmental regulations addressing human health and the environment provide inadequate and insufficient protections that consistently give rise to human rights abuses and violations. The US environmental regulatory system neither acknowledges nor protects basic human rights. The sobering fact is that businesses are routinely permitted by US environmental laws and regulations to operate without precautions or safeguards for human health.

Pursuant to the US environmental regulatory system, Indigenous Peoples, people of color, and poor communities are subjected to toxic and hazardous industrial operations which include exposure to:

- the daily release into the air, water, and land of industrial toxic chemicals disproportionately produced near in poor communities and communities of color, the amount and effects of which are ineffectively quantified, monitored and largely disregarded pursuant to environmental laws and regulations;
- the production of banned and severely restricted pesticides that are illegal for use in the United States but are exported to primarily developing countries by 25 companies operating 28 facilities in 23 states (as of 2010) pursuant to environmental laws and regulations;²⁷ and
- the ever-present risk of lethal and injurious workplace exposures in industrial facility accidents occurring in close proximity to homes, schools, recreational areas, and places of worship.

Compounding the failure of the US environmental regulatory system to protect human rights is the fact that the US legal system provides no remedy for human rights violations. In March 2010, the Inter-American Commission on Human Rights (“IACHR”) of the Organization of American States ruled that the US legal system does not afford a legal remedy for the violation of the human rights to racial equality and privacy arising from governmental permitting decisions that create discriminatory pollution burdens on an African American community.²⁸ This ruling was pivotal to the IACHR taking jurisdiction over its first case of environmental racism in the United States brought by African American residents of the historic community of Mossville, Louisiana, which is captioned as *Mossville Environmental Action Now v. United States of America*, Case No. 12.255.

²⁷ IITC submitted a *Freedom of Information Act* Request with Advocates for Environmental Human Rights in March of 2012 and received a response from the US Environmental Protection Agency in July of 2012 that included this information. This includes the production and export of Endosulfan, which was added to the *Stockholm Convention on Persistent Organic Pollutants* list in 2011.

²⁸ Inter-American Commission, Report No. 43/10, Petition No. P-242-05, *Mossville Environmental Action Now* (United States) paragraphs 33 and 34.

Although the US Government has long recognized disproportionate toxic pollution burdens on Indigenous Peoples, African Americans, Latinos, Asian Americans, Pacific Islanders and the poor, it has not viewed these burdens as a violation of the legal duty of government to protect human rights including those affirmed in the ICERD.²⁹ Diverse members of civil society and Indigenous Peoples have termed racially disproportionate toxic pollution burdens and the depletion of natural resources as environmental racism and environmental injustice, and define such injustice as a violation of fundamental human rights.³⁰ In addition, the international legal community of human rights jurists recognizes that what constitutes environmental injustice and environmental racism also violates human rights.³¹

I. The International Indigenous Women's Environmental and Reproductive Health Symposiums and other Statements by Indigenous Peoples since 2008

In response the clear and growing need to address the specific, disproportionate impacts of toxics pesticides and other environmental toxics on reproductive health, the Indigenous Women's Environmental and Reproductive Health Initiative was established in 2009.

Two International Indigenous Women's Environmental and Reproductive Health Symposiums have taken place in 2010, in Alamo, California and in Chickaloon Village Alaska in 2012 with participation from over 90 women and girls from the Arctic, North, Central and South America, the Caribbean and Pacific regions. At both Symposiums the participants made a strong call to change government policies and practices exposing Indigenous women, girls and unborn children to environmental contaminants that cause disease, birth defects and deaths and have several impacts on reproductive health. As stated in the "*Declaration for Health, Life and Defense of Our Land, Rights and Future Generations*"³² from the 2nd Indigenous Symposium in 2012 noted that "*States and corporations deny 'provable' impacts despite the clear evidence that they cause a range of serious health and reproductive impacts which disproportionately affect Indigenous women and children. This constitutes "environmental violence" by States and corporations and must be identified as such by Indigenous Peoples and human rights bodies.*"

Recommendations included to:

Fully implement and uphold, without qualification, the UN Declaration on the Rights of Indigenous Peoples³³, including Article 29 regarding the right of Indigenous Peoples to

²⁹ See Presidential Executive Order No. 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994.

³⁰ See First National People of Color Environmental Leadership Summit, *Principles of Environmental Justice*, Principle 10.

³¹ See *Mossville Environmental Action Now, Inc. et al, Amended Petition*, Petition No. P-242-05 June 23, 2008, pp. 85-88 (analyzing the observations and decisions rendered by UN treaty monitoring bodies and regional human rights systems pertaining to environmental racism).

³² Available at: <http://cdn5.iite.org/wp-content/uploads/FINALREPORTOF2nd-INTERNATIONAL-INDIGENOUSWOMENSYPMPwith-namesFIN.pdf?536f4b>

³³ Available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

the protection of their environments and the State obligation to ensure free prior and informed consent regarding hazardous materials. We also call for the full and unqualified implementation of Articles 23 and 24 affirming our collective rights to health and use of traditional medicines.

Eliminate the production and use of pesticides, industrial chemicals and toxic by-products that disrupt the endocrine system, affect learning and neurological development, cause cancers and other illnesses, undermine women's reproductive and maternal health, contaminate lands, waters and traditional food sources and affect any aspect of the health and development of our future generations.

Immediately cease the practice of exporting and importing banned pesticides, toxic wastes and other chemicals in particular from the United States.

We call in particular upon Canada and the United States to implement the recommendations made in 2007, 2008 and 2012 by the UN Committee on the Elimination of Racial Discrimination (CERD) calling upon them to take appropriate legislative measures to prevent the transnational corporations they license from negatively impacting the rights of Indigenous outside Canada and the United States.

The urgent need to bring US toxics laws and environmental policies and practices in line with US human rights obligations to Indigenous Peoples was also the basis of a resolution adopted by the National Congress of American Indians (NCAI) in June 2014 at its midyear conference in Anchorage Alaska (enclosed). NCAI is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of up to 566 federally recognized Tribal governments and communities. NCAI's resolution urged the US Congress to pass meaningful Federal chemical policy reform including to “*amend, strengthen and clarify Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act*” by including provisions that “*are consistent with the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples to subsistence, health and free prior and informed consent, and other relevant provisions;*”³⁴

J. Responses of UN and International Bodies

These concerns were addressed at the United Nations Permanent Forum on Indigenous Issues (UNPFII) Expert Group Meeting (EGM) on Sexual Health and Reproductive Rights with the special theme “*Combatting Violence Against Indigenous Women and Girls*” in January 2012 and also at the EGM on “*Sexual health and reproductive rights: articles 21, 22 (1), 23 and 24 of the United Nations Declaration on the Rights of Indigenous Peoples*” January 15 – 17, 2014. IITC together with the Native Village of Savoonga first introduced the term “Environmental

³⁴ National Congress of American Indians Resolution #ANC-14-005, TITLE: Urge Congress to Pass Meaningful Federal Chemicals Policy Reform to Protect Our Present and Future Generations, Mid-year conference June 8 – 11, 2014, Anchorage Alaska

Violence” at the 2012 EGM and the term was included in the EGM’s final report to the UNPFII 11th session in May 2012.³⁵ The US practice of producing and exporting pesticides banned for use in its own country was presented by IITC at both EGM’s.

IITC’s and Savoonga’s paper titled “*Indigenous Women and Environmental Violence, A Rights-based approach addressing impacts of Environmental Contamination on Indigenous Women, Girls and Future Generations*”³⁶ provided information and updates including testimonies and studies from Rio Yaqui and St. Lawrence island on the impacts of environmental toxics on women’s reproductive health. The paper presented to the EGM by IITC in January 2014³⁷ included updates including information received through the 2012 FOIA request as presented above as well as additional testimonies from Rio Yaqui documenting the increasingly severe reproductive health impacts of this practice.

The term "Environmental Violence" to describe this practice was used by IITC and Savoonga specifically because the human rights impacts, in particular on the human rights to health and life, are well known and well documented and because their continued use is deliberate, intentional and motivated by economic factors.

As a direct result of the submission by IITC and affiliates, strong recommendations by the UNPFII were included in the EGM final report to the UNPFII 13th session in May 2014 with specific language further affirming the terms “Environmental Racism” and “Environmental Violence” referring to the practice of export of banned pesticides:³⁸

States must halt the export and import of banned and unregistered pesticides from countries that prohibit their use in their own country as a case of environmental racism and environmental violence with proven and devastating impacts on reproductive and sexual health, in particular maternal and child health.

Considering the issue of violations to health, life and a healthy environment by transnational agrochemical corporations, the Permanent Peoples Tribunal, convened in Bangalore, India by non-governmental organizations in December 2011 also found egregious, preventable and systemic violations by the States that license the violating corporations, determining that the States had failed in their own responsibilities to promote and protect human rights. The Permanent Peoples Tribunal findings identified the US along with two others (Switzerland and Germany) for failing to “adequately regulate, monitor and discipline these entities by national laws and policy.” They also found that Indigenous Peoples were particularly impacted by

³⁵ Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples, Report of the international expert group meeting E/C.19/2012/6, para.20

³⁶ This paper can be downloaded in its entirety from the UN Permanent Web Site under documents submitted for the Expert Group Meeting via http://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf

³⁷ This paper can be downloaded in its entirety at: <http://cdn5.iitc.org/wp-content/uploads/EGM-presentation-by-IITC-Janaury-13-17-2014-LHfinal2web.pdf?536f4b>

³⁸ UN Document: E/C.19/2014/8, Paragraph 63, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/251/85/PDF/N1425185.pdf?OpenElement>

persistent toxic agrichemicals due to the accumulation in the environment and the food chain “with devastating effects on health and the way of life of indigenous peoples.”³⁹

III. Conclusions and Recommendations

The US knowingly permits the production, storing, and transport and export of hazardous chemicals that impair the endocrine and immune systems, adversely affect neurodevelopment and reproduction, and cause disease including all forms of cancer. The US and the corporations it licenses deny “provable” impacts despite the clear evidence that these environmental toxics cause a range of serious, well documented impacts on the rights to health including harm to reproductive, health and fetal development which disproportionately affect Indigenous women, babies, children and the unborn.

Multiple studies confirm that alarmingly high levels of toxics are found in Indigenous women’s breast milk, placental cord blood, blood serum and body fat both outside the US where they are used (as in the Yaqui case) and in Indigenous communities where they travel within the US States (as in the St Lawrence Island, Alaska case). Devastating impacts on maternal health include sterility, reproductive system cancers, decreased lactation and the ability to produce healthy children. Research also demonstrates the link between chemical exposures and intellectual and neurological development of children, with intergeneration and ongoing impacts on the cultural practices of Indigenous Peoples through limiting their continued ability to retain and pass on culture, ceremonies, stories, language, and songs to new generations.

This constitutes a clear and ongoing lack of accountability by the US to uphold its human rights obligations under the ICERD through failure to take measures to prevent acts by corporations it registers from negatively impacting the human rights of Indigenous Peoples in and outside the US. The activities of these corporations addressing in this Report are allowed and sanctioned by US laws and policies with devastating effects on the human rights of Indigenous women, children, and unborn generations.

The Co-submitters respectfully present the following Questions and Recommendations for the consideration of the CERD in its review of the United States during its 85th session:

Suggested Questions for the United States

- 1) Does the US intend to implement recommendation in paragraph 30 from the CERD’s 2008 Concluding Observations? What measures has it taken in that regard, in particular in relation to the continued manufacture and export of pesticides that are unregistered or severely restricted for use in the US?
- 2) How does the US justify the discriminatory impacts on human rights resulting from its laws which allow the production and export pesticides to other primarily developing

³⁹ Permanent Peoples’ Tribunal Session on Agrochemical Transnational Corporations Final Verdict, Bangalore, 3-6 December 2011.

countries that it does not permit to be used in its own country specifically because of their well-known detrimental and often deadly impacts on human life and reproductive health?

Proposed Recommendations:

- 1) The CERD reiterates its concerns and recommendations previously stated in paragraph 30 of the 2008 Concluding Observations regarding the US and once again requests that the US implement and report on measures it has taken in this regard;
- 2) The CERD also expresses its concern regarding the human rights impacts of the manufacture and export of banned and severely restricted pesticides as permitted by US laws, on Indigenous Peoples and communities of color (minorities) inside the US due to exposure through global transport as well as proximity to production sites.

IV. Acknowledgements:

The Co-submitters gratefully acknowledge all the testimonies provided by Indigenous Peoples, Nations, organizations, and individuals from the impacted communities and families that, in their own words, make up the substance of this Shadow Report. We also recognize and honor their suffering and sacrifice as a result of the situations and actions presented here. Although not all could be included or quoted in this report, all contributed to whatever richness and scope it may have. Contributions and testimonies are cited in the body of the report.

V. International Indian Treaty Council (IITC) Affiliates in Lands and Territories currently considered part of or under the jurisdiction of the United States:

Indigenous Tribal and Traditional Nation Governments: Pit River Tribe (California), Wintu Nation of California, Redding Rancheria (California), Tule River Nation (California), Muwekma Ohlone Nation (California), Coyote Valley Pomo Nation (California), Round Valley Pomo Nation (California), Independent Seminole Nation of Florida (Florida), Native Village of Venetie Tribal Government/Arctic Village Traditional Council (Alaska), Chickaloon Village Traditional Council/Chickaloon Native Village (Alaska), Stevens Village Traditional Council (Alaska), Native Village of Eklutna (Alaska).

Indigenous Organizations, Networks, Communities and Societies: National Native American Prisoners' Rights Coalition, White Clay Society/Blackfoot Confederacy (Montana), Indigenous Environmental Network (National), Columbia River Traditional Peoples (Washington/Oregon), Rural Coalition Native American Task Force (Minnesota), Yoemem Tekia Foundation, Pascua Yaqui Nation (Arizona), Tohono O'odham Nation Traditional community (Arizona), Oklahoma Region Indigenous Environmental Network (Oklahoma), Wanblee Wakpeh Oyate (South Dakota), IEN Youth Council, Cactus Valley/Red Willow Springs Big Mountain Sovereign Dineh Community (Arizona), Leonard Peltier Defense Committee, Eagle and Condor Indigenous Peoples' Alliance (Oklahoma), Seminole Sovereignty Protection Initiative (Oklahoma) Mundo Maya (California), Los Angeles Indigenous Peoples Alliance (California)

American Indian Treaty Council Information Center (Minnesota), Vallejo Inter-Tribal Council (California), Three Fires Ojibwe Cultural and Education Society (Minnesota), California Indian Environmental Alliance (CIEA), Wicapi Koyaka Tiospaye (South Dakota), Indigenous Peoples Working Group on Toxics (National), North-South Indigenous Network Against Pesticides (multi-regional based in US), the International Indian Women's Environmental and Reproductive Health Network (multi-regional based in US) and United Confederation of Taino People: Borikén (Puerto Rico/United States), Kiskeia, (Dominican Republic), Barbados, Guyana (Arawaks), Bimini (United States), Jittoa Bat Natika Weria (Yaqui Nation, US and Mexico).

VI. Attachments

The following attachments were so noted in the body of this Report:



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ANC-14-005

TITLE: Urge Congress to Pass Meaningful Federal Chemicals Policy Reform to Protect Our Present and Future Generations

EXECUTIVE COMMITTEE

PRESIDENT

Brian Cladoosby

Swinomish Indian Tribal Community

FIRST VICE-PRESIDENT

Michael O. Finley

Congal Tribes of Colville Reservation

RECORDING SECRETARY

Robert Shepherd

Sisseton Wahpeton Oyate

TREASURER

Dennis Welsh

Colorado River Indian Tribes

REGIONAL VICE-PRESIDENTS

ALASKA

Jerry Isaac

Tanana Chiefs Conference

EASTERN OKLAHOMA

S. Joe Crittenden

Cherokee Nation

GREAT PLAINS

Leander McDonald

Spirit Lake Tribe

MIDWEST

Aaron Payment

Sault Ste. Marie Tribe of Chippewa Indians

NORTHEAST

Randy Noka

Narragansett Tribe

NORTHWEST

Fawn Sharp

Quinault Indian Nation

PACIFIC

Rosemary Morillo

Soboba Band of Mission Indians

ROCKY MOUNTAIN

Ivan Posey

Eastern Shoshone Tribe

SOUTHEAST

Ron Richardson

Haliwa-Saponi Indian Tribe

SOUTHERN PLAINS

Stephen Smith

Kiowa Tribe of Oklahoma

SOUTHWEST

Manuel Heart

Ute Mountain Ute Tribe

WESTERN

Arian Melendez

Reno Sparks Indian Colony

EXECUTIVE DIRECTOR

Jacqueline Johnson Pata

Tlingit

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the conservation of tribal resources and promotion and preservation of tribal members' health and welfare is a priority for all tribes; and

WHEREAS, the NCAI membership continues to support implementation of NCAI Resolution #PSP-09-02 — *Protection of Health and Human Rights of Present and Future Generations through Ratification and Implementation by the United States of the Stockholm Convention on Persistent Organic Pollutants*; and

WHEREAS, toxic exposures continue to threaten our health and well-being due to ineffective and outdated federal law—the Toxic Substances Control Act of 1976 (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act of 1972 (FIFRA), which regulates chemicals used in commerce; and

WHEREAS, FIFRA allows the production and export of pesticides that are banned for use in the United States, harming communities where they are produced as well as where they are used and where they travel due to global transport through the environment—particularly in the arctic; and

WHEREAS, today there are more than 80,000 chemicals on the market, most of which have never been tested for safety for human health and the environment; and

WHEREAS, many of these chemicals contaminate our traditional foods, environment, bodies, and homes and negatively impact our reproductive health; and

WHEREAS, research has demonstrated that American Indian and Alaska Native Peoples are at higher health risk from certain substances that are toxic, persistent, and bioaccumulate in the environment, the food web, and in the human body; and

WHEREAS, studies show that developing children, youth, elders, and those with chronic illnesses are particularly vulnerable to health-harms caused by exposure to persistent and toxic chemicals; and

WHEREAS, Indigenous Peoples are exposed to these chemicals without our free prior and informed consent, resulting in a number of violations of our human rights and treaty rights including our rights to health and subsistence; and that can cause harm current and future generations; and

WHEREAS, American Indian and Alaska Native peoples are concerned about a greater exposure to health risks due to our reliance on traditional, subsistence foods integral to our physical, spiritual, and cultural sustenance.

NOW BE IT THEREFORE RESOLVED, NCAI calls upon Congress to amend, strengthen and clarify Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act by including provisions that:

1. require expedited action to eliminate the worst chemicals;
2. ensure the protection of Indigenous Peoples and our most vulnerable members and require swift action to address “hotspot” communities that are disproportionately exposed to toxic chemicals through air, water, and land contamination, as well as through our traditional foods;
3. require that chemical manufacturers prove the safety of their products before they are introduced into the environment and require substitution of safe alternatives to replace harmful chemicals;
4. recognize tribal authority, same as state authority, to regulate protection from toxic exposures to chemicals that endanger human health and well-being, and the human rights of tribal citizens and future generations;
5. allow tribes and states to adopt and enforce their own chemical laws, and protect the ability of tribes and states to enact stricter standards where local conditions warrant; and
6. are consistent with the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples to subsistence, health and free prior and informed consent, and other relevant provisions; and

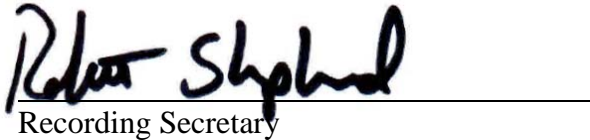
BE IT FURTHER RESOLVED that this resolution shall be the policy of the National Congress of American Indians until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.


President

ATTEST:


Recording Secretary

Appendix A

Freedom of Information Act (FOIA) Correspondence and Information

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International Indian Treaty Council
CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Information Office
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San Francisco, CA 94103-3664
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Phone 504-799-3060
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March 13, 2012

Mr. Larry Gottesman, National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Ms. Dorothy R. Pullo, Freedom of Information Act Officer
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Mint Annex
Washington, DC 20229-1181

Ms. Brenda Dolan, Freedom of Information Act Officer
U.S. Department of Commerce
Office of Management and Organization
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Mr. Gottesman, Ms. Pullo, and Ms. Dolan:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, the Environmental Protection Agency implementing regulations, 40 C.F.R. § 2.100 *et seq.*, the Department of Homeland Security implementing regulations applicable to U.S. Customs and Border Protection, 6 C.F.R. § 5.1 *et seq.*, the Department of Commerce implementing regulations, 15 C.F.R. § 4.1 *et seq.*, the President's Memorandum of January 21, 2009, 74 Fed. Reg. 4683 (Jan. 26, 2009), and the Attorney General's Memorandum of March 19, 2009, 74 Fed. Reg. 49,892 (Sep. 29, 2009). This Request is submitted by the International Indian Treaty Council ("IITC") and Advocates for Environmental Human Rights ("AEHR").

This Request seeks records pertaining to the production and export of pesticide active ingredients and products that are banned or severely restricted in the United States. Such pesticides are also referred to as "unregistered pesticides" by the Environmental Protection Agency ("EPA").

There is significant national and international concern regarding the production and export of pesticide active ingredients and products that are banned and severely restricted in the United States. For years, the impacts on people in the United States where facilities produce banned or severely restricted pesticides and the impacts on people in foreign countries where these pesticides are exported have been the focus of extensive media coverage and policy debates.

Testimonies presented by Indigenous communities in the United States, Mexico, Guatemala, Columbia, Ecuador, and other countries document the use of banned pesticides without precautionary measures or protective gear, including aerial spraying of fields with workers and families present, as well as communities, homes, and schools. Severe birth defects, childhood leukemia, and children born with tumors are among the most severe and rapidly increasing effects reported.

Furthermore, the United Nations Special Rapporteur on Toxics declared the legal authorization of exporting banned and severely restricted pesticides to foreign countries to be “immoral” because of the disregard shown for the harmful consequences on human health and the environment. David Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice*, p. 156 (2007). IITC joined more than 20 Indigenous Peoples organizations to formally petition the United Nations Working Group on Indigenous Populations to investigate the human rights impacts of such exports. Joint Statement by the International Indian Treaty Council *et alia* to the United Nations Working Group on Indigenous Populations, July – August 2006. The International Journal of Occupational and Environmental Health noted that between 1996 and 2000, the United States exported nearly 1.1 billion pounds of pesticides that have been identified as known or suspected carcinogens, an average rate of almost 16 tons per hour. Carl Smith, *Pesticide Exports from U.S. Ports, 1997-2000*, INTERNATIONAL JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH, Oct.-Dec. 2001, p. 270. Most of these exports are sent to the developing world and used in agriculture. *Id.* According to the International Labor Organization, 65 to 90 percent of the children estimated to be working in Africa (80 million), Asia (152 million) and Latin America (17 million) are working in agriculture. *Id.* These children are often continuously exposed to pesticides sprayed in fields, drift into water, penetrate their clothing, and contaminate their homes. More recently, the Pesticide Action Network analyzed the wide-ranging health impacts of pesticide use on a global scale in the report *Communities in Peril: Global Report on Health Impacts of Pesticide Use in Agriculture* (2010).

Notwithstanding this significant public concern, there is no publicly available and accessible information regarding the environmental justice and human health impacts of the production of banned and severely restricted pesticide active ingredients and products for export from the United States. The purpose of this Request is to obtain information that will be used to raise public awareness about these impacts in relation to the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce pertaining to the production and export of banned and severely restricted pesticide active ingredients and products.

Specifically, we seek information regarding the:

- identities of the producers and the locations of their facilities in the United States that produce for export any banned or severely restricted pesticide active ingredient or product;

- quantities of banned or severely restricted pesticide active ingredients and products that are produced for export by facilities in the United States and the period of time during which the production took place;
- chemical names or CAS registry numbers of banned or severely restricted pesticide active ingredients and products that are produced for export by facilities in the United States;
- environmental releases to the air, water, and land by facilities in the United States that produce for export banned or severely restricted pesticide active ingredients and products;
- notifications provided by the Environmental Protection Agency to Designated National Authorities in foreign countries receiving exported pesticide active ingredients and products that are banned or severely restricted in the United States, which identify the foreign purchaser of the unregistered pesticide, the particular unregistered pesticide product, and the exporter; and
- human health, environmental, and/or occupational safety studies considered in the promulgation of laws, regulations, and policies that govern the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce pertaining to the export of banned and severely restricted pesticide active ingredients and products.

This Request does not seek information that is restricted from disclosure pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136h.

We request a waiver of search, review, and duplication fees on the grounds that the disclosure of the requested records is in the public interest because it “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread public attention to this issue, the records sought in this Request will contribute significantly to public understanding of the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce. Moreover, disclosure is not in the commercial interest of the IITC or AEHR. Any information disclosed by the IITC and AEHR as a result of this Request will be available to the public at no cost. Both IITC and AEHR have a demonstrable record of providing to the public at no cost a wide range of information regarding environmental justice and environmental health issues. For several years, IITC has prepared reports, newsletters, and news releases, as well as participated in media interviews that raise public awareness about specific aspects of the environmental justice and human health issues pertaining to pesticide production, export, and use. Thus, a fee waiver would fulfill the legislative intent of Congress in amending the Freedom of Information Act. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation omitted)).

The requested information will be analyzed and disseminated by the IITC and AEHR for the public benefit of raising public awareness and knowledge of the environmental justice and human health impacts of producing banned and severely restricted pesticide active ingredients

and products for export to foreign countries vis-à-vis the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department of Commerce.

If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the release of segregable portions of otherwise exempt materials. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Mark Anquoe, Administrative Coordinator
International Indian Treaty Council
2940 16th Street, Suite 305
San Francisco, CA 94103-3688

Sincerely,



Andrea Carmen, Executive Director
International Indian Treaty Council



Monique Harden, Co-Director/Attorney
Advocates for Environmental Human Rights



**U.S. Customs and
Border Protection**

April 23, 2012

DIS-2-OT:FD MT
2012F19049

Mark Anquoe
Administrative Coordinator
International Indian Treaty Council
2940 16th Street, Suite 305
San Francisco, CA 94103-3688

Dear Mr. Anquoe:

This is the final response to your March 13, 2012 Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP), requesting records pertaining to the production and export of pesticide active ingredients and products that are banned or severely restricted in the United States. In your request you requested the following information:

Identities of the producers and the locations of their facilities in the United States that produce for export any banned or severely restricted pesticide active ingredient or product;

- Identities of the producers and the locations of their facilities in the United States that produce for export any banned or severely restricted pesticide active ingredient or product;
- Quantities of banned or severely restricted pesticide active ingredients and products that are produced for export by facilities in the United States and the period of time during which the production took place;
- Chemical names or CAS registry numbers of banned or severely restricted pesticide active ingredients and products that are produced for export by facilities in the United States;
- Environmental releases to the air, water, and land by facilities in the United States that produce export banned or severely restricted pesticide active ingredients and products;
- Notifications provided by the Environmental Protection Agency to Designated National Authorities in foreign countries receiving exported pesticide active ingredients and products that are banned or severely restricted in the United States, which identify the foreign purchaser of the unregistered pesticide, the particular unregistered pesticide product, and the exporter; and,
- Human health, environmental, and/or occupational safety studies considered in the promulgation of laws, regulations, and policies that govern the operations of the Environmental Protection Agency, U.S. Customs and Border Protection, and the Department

of Commerce pertaining to the export of banned and severely restricted pesticide active ingredients and products.

We conducted a comprehensive search of files within the CBP databases for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records, based upon the information you provided in your request.

The information you are seeking is primarily concerned with producers and exporters of banned or severely restricted pesticide and active ingredients and products and the environmental and health concerns, studies, and policies related to these products. Such records would not be maintained by CBP, rather, they would be under the purview of the U.S. Department of Commerce and the U.S. Environmental Protection Agency.

You have the right to appeal the above determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 799 Ninth Street, NW, Mint Annex, Washington, DC 20229-1179, following the procedures outlined in the DHS regulations at Title 6 CFR § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call (877) 684-6448.

Please notate file number **2012F19049** on any future correspondence regarding this request. If you have any questions, this office can be reached at (202) 325-0150.

Sincerely,



Millie Gleason
Acting Director, FOIA Division
Office of International Trade



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUL 25 2012

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Mark Anquoe
International Indian Treaty Council
2940 16th Street
Suite 305
San Francisco, CA 94103-3688

Re: Freedom of Information Act Request HQ-FOI-00999-12

Dear Mr. Anquoe:

This is in response to your Freedom of Information Act (FOIA) request which was received on March 21, 2012. You requested information related to the identity of the United States producers and location of their facilities; production quantities; chemical names or CAS registry numbers and environmental releases to the air, water and land of banned or severely restricted pesticides and active ingredients that are produced for export by facilities in the United States. Additional information responsive to your request will be provided separately by EPA's Office of Pesticide Programs.

Enclosed are the releasable documents responsive to your request. In addition, the following describes the electronically available documents that are responsive to your request. The documents are publicly available.

- For the information on the chemical names or CAS registry numbers of banned or severely restricted pesticides and active ingredients that are produced for export by facilities in the United States, please access EPA's web link for International Agreements and Treaties on Pesticides at <http://www.epa.gov/oppead1/international/agreements/index.html>. On that page, click on the link to the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Currently, there are 43 chemicals listed in Annex III of the Convention and subject to the PIC procedure, including 32 pesticides and severely hazardous pesticide formulations, and 11 industrial chemicals. The current substances listed are shown on the Rotterdam Convention web site at <http://www.pic.int/>. Enclosed is a table that lists the 32 pesticides by CAS number and PC code.
- For the information related to the identity and location of the United States producers of banned or severely restricted pesticides and active ingredients that are produced for export by facilities in the United States, we are including information from EPA's Section Seven

Tracking System (SSTS). The SSTS tracks the information on pesticide-producing and device-producing establishments using EPA-registered product registration numbers and PC Codes. We have used the Agency's standard report (Active Ingredient Report) to generate the information. To generate the report, we have applied the equivalent PC Codes to the corresponding CAS numbers which are listed in Annex III of the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The information provided includes: PC code, ingredient name, product registration number, product name, establishment number, name, site address, county (if provided) and active ingredient percentage.

- For the information on environmental releases to the air, water and land of banned or severely restricted pesticides and active ingredients that are produced for export by facilities in the United States, please access EPA's web link for Toxics Release Inventory (TRI) Program at <http://www.epa.gov/tri/>.

We have withheld the production quantities of banned or severely restricted pesticides and active ingredients that are produced for export by facilities in the United States. We have determined this information to be exempt from disclosure under FOIA Exemption 4 – Trade secrets, commercial, or financial information (Confidential Business Information).

If you do not believe we have been responsive to your request, you may appeal this response to the National Freedom of Information Officer, U.S. EPA, Records, FOIA and Privacy Branch, 1200 Pennsylvania Avenue NW (2822T), Washington, D.C. 20460 (U.S. Postal Service Only). You can also fax your appeal to (202) 566-2147 or email at hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand-delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, D.C. 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the HQ-FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

There cost for this information and the total processing fee is \$84.00. If you have any questions regarding this response, please contact Michelle Stevenson at (202) 564-4203.

Sincerely yours,



Ann Pontius, Deputy Director
Monitoring, Assistance, and Media Programs Division
Office of Compliance

Enclosures

Monique Harden
<mharden@ehumanrights.org>

Status Update on Your FOIA Request HQ-FOI-2012-001035/00999

10 messages

Wieczorek, Aaron <Wieczorek.Aaron@epa.gov>

Wed, Feb 19, 2014 at 3:16 PM

To: "mharden@ehumanrights.org" <mharden@ehumanrights.org>

Ms. Harden,

I received word that you were looking for a status update on the section of your FOIA request that OPP is handling. I apologize as I should have been updating you as I consulted with the divisions that have the requested information.

The notifications on the foreign banned and severely restricted pesticides are called Foreign Purchaser Acknowledgement Statement Notifications ("FPAS Notifications"). It looks like we may have been able to compile a list of everything you requested so that I can get it over to you and close out the request for you. There has been a lot of back and forth and meetings to reach a point where we were able both to track down the information and compile it for you. Still, I apologize for everything taking so long.

We should be almost done and I may be able to get that over to you this week. Please let me know if you have any questions in the meantime.

Thank you,

Aaron

Aaron Wieczorek, Attorney-Advisor

Public Information and Records Integrity Branch
Information Technology and
Resources Management Division
Office of Pesticide Programs
Washington, D.C. 20460
Phone: [703-347-0202](tel:703-347-0202)

Monique Harden <mharden@ehumanrights.org> Wed, Feb 19, 2014 at 3:58 PM

To: Aaron Wieczorek <Wieczorek.Aaron@epa.gov>

Hi, Aaron

Your email is appreciated. Given the passage of time since EPA's initial FOIA response and some recent developments in pesticide export policy, please include the most recent "Active Ingredient Report" from EPA's Section Seven Tracking System. We are in receipt of the 2010 report.

Thank you,
Monique

Monique Harden, Co-Director & Attorney

Wieczorek, Aaron <Wieczorek.Aaron@epa.gov>
To: Monique Harden <mharden@ehumanrights.org>

Mon, Feb 24, 2014 at 3:11 PM

Ms. Harden, I have received a FPAS Notifications you requested regarding Banned and Severely Restricted Pesticides. We receive approximately 2,500 of these notifications per year and the ones I am attaching cover all that are banned and severely restricted. The listings on the page contain all information that the database contains (ID#, Exporter, Active Ingredient, CAS, Send Date, and Destination Country). The FPAS database retains documents for two years before those documents are removed from the database. You will see that the list includes listings from 2011, which are the earliest listings of which we have record. Will you take a look over this and let me know if it is the information you were looking for?

Thank you,
Aaron Wieczorek
Public Information and Records Integrity Branch
Information Technology and
Resources Management Division
Office of Pesticide Programs
Washington, D.C. 20460 Phone: [703-347-0202](tel:703-347-0202)

FPAS Notifications.pdf



Monique Harden <mharden@ehumanrights.org>
To: "Wieczorek, Aaron" <Wieczorek.Aaron@epa.gov>
Hi, Aaron

Thu, May 29, 2014 at 4:53 PM

I need clarification regarding the export data that you sent. Does the data represent a portion of the exports of banned and severely restricted pesticides produced in the United States from 2011 - 2013? I ask this question because the data identify a fraction of the banned and severely pesticides produced in the US for foreign export (see the two items below).

- The 2010 "Active Ingredient Report" from EPA's Section Seven Tracking System shows 10 banned and severely restricted pesticides being produced in the US for foreign export. These pesticide active ingredients are as follows:

1. alachlor
2. aldicarb
3. carbofuran
4. endosulfan
5. ethylene oxide
6. methyl parathion
7. parathion
8. pentachlorophenol
9. thiram
10. tributyl tin compounds

- The information that you sent shows the exports of the following banned and severely restricted pesticides produced in the US:

1. carbofuran, 2011-2013
2. endosulfan, 2011
3. thiram, 2011-2013
4. tributyl tin compounds, 2011-2013

Please also clarify whether the information you sent shows all of the exports of a given banned/severely restricted pesticide.

Additionally, please send the most recent "Active Ingredient Report" from EPA's Section Seven Tracking System.

Many thanks!
Monique

Monique Harden, Co-Director & Attorney
Advocates for Environmental Human Rights
832 Topaz Street, New Orleans, LA 70124
Phone
[504.799.306](tel:504.799.306)
Fax
[504.799.306](tel:504.799.306)
www.ehumanrights.org
mharden@ehumanrights.org

RE: FOIA Request HQ-FOI-00999-12 (EPA-HQ-2012-001035)

22 messages

Wieczorek, Aaron <Wieczorek.Aaron@epa.gov>
To: "mharden@ehumanrights.org" <mharden@ehumanrights.org>

Tue, Apr 16, 2013 at 9:20 AM

Ms. Harden,

This request is assigned to me. I called and left you a voice message but am also sending you my contact information via email. I will be able to assist you with anything regarding this request and will be the one sending you the responsive documents to the request as soon as possible.

I did hope to get a clarification from you regarding the first bullet point: What is the timeframe for the notifications you are seeking? Specific dates help narrow down the search a lot.

Thank you,

Aaron Wieczorek, Attorney-Advisor
Public Information and Records Integrity Branch
Information Technology and
Resources Management Division
Office of Pesticide Programs
Washington, D.C.
20460 Phone: [703-
347-0202](tel:703-347-0202)

-

From: Monique Harden [<mailto:mharden@ehumanrights.org>]
Sent: Friday, April 12, 2013 8:56 AM
To: Simpson, Julie
Cc: Andrea Carmen; Nathalie Walker
Subject: FOIA Request HQ-FOI-00999-12

Hello, Julie

Thank you for facilitating follow-up communications regarding the Freedom of Information Act request made by my organization and the International Indian Treaty Council (HQ-FOI00999-12).

In response to your call this morning, I have listed below the following items that we have not yet received from our FOIA request.

- the notifications provided by the EPA to Designated National Authorities in foreign countries receiving exported pesticide active ingredients and products that are banned or severely restricted in the United States, which identify the foreign purchaser of the unregistered pesticide, the particular unregistered pesticide product, and the exporter; and
- the human health, environmental, and/or occupational safety studies considered in the promulgation of laws, regulations, and policies that govern the operations of the EPA, U.S. Customs and Border Protection, and the Department of Commerce pertaining to the export of banned and severely restricted pesticide active ingredients and products.

Additionally, we request clarification of the following EPA responses to our FOIA request:

- whether there is any production in the United States of any unregistered pesticide or pesticide active ingredient that is banned or severely in the United States, which is not listed in the Rotterdam Convention, Annex III; and
- whether there has been any change to the data in the "Active Ingredient Report" since the 2010 reporting year.

I look forward to your prompt response.

Thank you,
Monique

Monique Harden, Co-Director & Attorney
Advocates for Environmental Human Rights
832 Topaz Street, New Orleans, LA 70124
Phone
[504.799.3060](tel:504.799.3060)
Fax
[504.799.3061](tel:504.799.3061)
www.ehumanrights.org
ghs.org
mharden@ehumanrights.org

Upholding our human right to live in a healthy environment

Monique Harden <mharden@ehumanrights.org>
To: "Wieczorek, Aaron" <Wieczorek.Aaron@epa.gov>

Hello, Aaron

When are you available to discuss this by phone?

Thanks,
Monique (cell: [504-919-4590](tel:504-919-4590))

Monique Harden, Co-Director & Attorney
Advocates for Environmental Human Rights 832 Topaz Street, New Orleans, LA 70124 phone:
[504.799.3060](tel:504.799.3060) fax: [504.799.3061](tel:504.799.3061) mharden@ehumanrights.org www.ehumanrights.org

Monique Harden <mharden@ehumanrights.org> Tue, Apr 16, 2013 at 12:25 PM

To: "Wieczorek, Aaron" <Wieczorek.Aaron@epa.gov>

Great. I'll call you now.

Monique Harden, Co-Director & Attorney
Advocates for Environmental Human Rights
832 Topaz Street, New Orleans, LA 70124
Phone [504.799.3060](tel:504.799.3060) Fax [504.799.3061](tel:504.799.3061) www.ehumanrights.org mharden@ehumanrights.org

Monique Harden <mharden@ehumanrights.org> Tue, Apr 16, 2013 at 1:16 PM
Hello, All

I just talked to Aaron Wieczorek, EPA Attorney-Advisory in the Office of Pesticide Programs. He agreed to find out and provide me with the follow-up information we requested. See details below.

1. Notifications Aaron will be meeting with EPA staff tomorrow morning to find out how many notifications have been sent by the EPA to importing countries. He will let me know what he finds out. If it turns out that there are thousands of notifications, he would like us to consider providing him with a specific time range. I told him that we have a time range in mind, but would rather know the volume of notifications before limiting our request to a time range.
2. Health studies Aaron will provide information on how to access any health studies considered in the promulgation of a regulation authorizing the production and export of a pesticide or active ingredient that is illegal to use in the US.
3. Publicly available documents? Aaron will get an explanation as to why the EPA stated that the documents enclosed in the FOIA response are "publicly available" when the "Section Seven Tracking System" which generated the responsive data does not appear to be available to the public.
4. Is the Rotterdam list comprehensive? Aaron will find out if the Rotterdam list is comprehensive of all unregistered pesticides, banned or severely restricted pesticides and active ingredients produced in the US for foreign export.

5. Is 2010 the most current year for unregistered pesticide and active ingredient production data? Aaron will find out the cycle of reporting periods for data compiled in the "Section Sevent Tracking System" and whether there are any reports more recent than 2010.

Monique Harden, Co-Director & Attorney
Advocates for Environmental Human Rights
832 Topaz Street, New Orleans, LA 70124

Wieczorek, Aaron <Wieczorek.Aaron@epa.gov>
To: Monique Harden <mharden@ehumanrights.org>

Wed, Apr 17, 2013 at 9:57 AM

Ms. Harden,

Would you send over to me the attachment to the response that you received from EPA? I have the initial letter that we were discussing already so I am interested specifically in those attachments you referenced. I'm having trouble accessing them on our system.

I have a few answers for you so far:

First, the list of pesticides on the Rotterdam Convention website is comprehensive. Thus, there is no production of banned or severely restricted pesticides in the United States that does not appear on the Rotterdam list.

Second, regarding the FIFRA Section 17 notifications that you seek. The records retention schedule that applies to those notification goes three years back. Thus, I will be able to return at least three years of records; more if the records are not already gone from longer than three years ago. A notification of this sort is referred to as a Foreign Purchaser Acknowledgement Statement (FPAS).

EPA receives approximately 2,500 of these FPASs per year for the entire system. However, only a small amount of those concern banned or severely restricted pesticides. I'm not sure about how many that is yet, but it should be few enough where returning all responsive records from the last three years will not be burdensome. Because of this limited number of responsive FPASs, I do not need you to specify a date range for the search.

I'm still working on the rest. However, I don't think it will take long to get the FPAS notifications that exist for the banned or severely restricted pesticides.

Thank you,

Aaron Wieczorek, Attorney-Advisor
Public Information and Records Integrity Branch
Information Technology and
Resources Management Division
Office of Pesticide Programs

Washington, D.C.
20460 Phone:
[703-347-0202](tel:703-347-0202)

From: Monique Harden [mailto:mharden@ehumanrights.org]
Sent: Tuesday, April 16, 2013 1:26 PM
To: Wieczorek, Aaron
Subject: Re: FOIA Request HQ-FOI-00999-12 (EPA-HQ-[2012-001035](#))

Monique Harden <mharden@ehumanrights.org> Wed, Apr 17, 2013 at 3:48 PM
To: "Wieczorek, Aaron" <Wieczorek.Aaron@epa.gov>
Hello, Aaron
I very much appreciate your prompt response!

Please see the attached July 25, 2012 EPA response to the FOIA request.
If you find that notifications dated prior to the last three have been retained, please let me know.
Thank you,
Monique

Monique Harden, Co-Director & Attorney
Advocates for Environmental Human Rights
832 Topaz Street, New Orleans, LA 70124

Upholding our human right to live in a healthy environment

Wieczorek, Aaron <Wieczorek.Aaron@epa.gov>
To: Monique Harden <mharden@ehumanrights.org>

Thu, Apr 18, 2013 at 7:43 AM

Thanks a lot for sending that over.

The Field and External Affairs Division (FEAD), the division that handles FPAS Notifications, is running the list of banned or severely restricted pesticides against the FPAS notifications that they have. I will get you that data as soon as possible. Based on what FEAD tells me, I'm optimistic that I will have that data to send over by midweek next week, if not sooner.

In answer to another question that you had, it appears that the Section Seven Tracking System is NOT directly publically-accessible because a lot of the information in it is Confidential Business Information. This CBI may include such things as quantities of ingredients shipped and inert ingredients present in the products. Thus, while the SSTS is not directly publically-accessible, the non-CBI information contained in it is publically accessible via FOIA Request. In the initial response to your request, the SSTS information would have been the printouts on pages 6-10 and any further requests for SSTS information would be in that form.

I'm still working n your other questions and getting you the FPAS data.

APPENDIX A, PAGE 16

Thanks,

Aaron

Aaron Wieczorek, Attorney-Advisor

Public Information and Records Integrity Branch
Information Technology and
Resources Management Division
Office of Pesticide Programs
Washington, D.C.
20460 Phone:
[703-347-0202](tel:703-347-0202)

From: Monique Harden [mailto:mharden@ehumanrights.org]

Sent: Wednesday, April 17, 2013 4:48

Monique Harden <mharden@ehumanrights.org> Wed, Apr 17, 2013 at 3:48 PM To: "Wieczorek, Aaron" <Wieczorek.Aaron@epa.gov>

Hello, Aaron

I very much appreciate your prompt response!

Please see the attached July 25, 2012 EPA response to the FOIA request.

If you find that notifications dated prior to the last three have been retained, please let me know.

Thank you, Monique

Monique Harden <mharden@ehumanrights.org>
To: "Wieczorek, Aaron"

Thu, Apr 18, 2013 at 9:25 AM

<Wieczorek.Aaron@epa.gov> Thanks for the
update and clarification.

Monique Harden, Co-Director & Attorney
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Human Rights 832 Topaz
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70124 phone: [504.799.3060](tel:504.799.3060)
fax: [504.799.3061](tel:504.799.3061)
mharden@ehumanrights.org
www.ehumanrights.org

Monique Harden <mharden@ehumanrights.org>
To: "Wieczorek, Aaron" <Wieczorek.Aaron@epa.gov>

Wed, May 22, 2013 at 11:40 AM

Hello, Aaron

A month has passed since our last contact, and I am following up on the FOIA request pertaining to two categories of records that the EPA agreed to provide to us. When will the EPA provide us with the notification card data and identify the relevant agency rulemaking dockets where we can find agency consideration of any health studies and reports?

Thanks,
Monique

Monique Harden, Co-Director & Attorney
Advocates for Environmental
Human Rights 832 Topaz
Street, New Orleans, LA

70124 phone: [504.799.3060](tel:504.799.3060)
fax: [504.799.3061](tel:504.799.3061)
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Juan Antonio Coronado's medical report, June 21, 2012. Juan Antonio, shown below with his granfmother on Jaunary 18th 2013 , passed away on April 2013 in Vicam, Sonora Mexico at 3 years of age of cirrosis of the liver.

