

Environmental Justice: Louisiana v. EPA

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EFO Annual Meeting

October 11, 2023



Roadmap

- Brief Recap EJ
- Timeline of Events
- Background: Denka and Formosa Facilities
- State Litigation: Rise St. James
- Initiation of EPA Civil Rights Investigation
- Louisiana v. EPA
- Closure of EPA Civil Rights Investigation
- EPA Actions Taken Outside of Investigation

Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

Meaningful involvement means:

- People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
- The public's contribution can influence the regulatory agency's decision;
- Community concerns will be considered in the decision making process; and
- Decision makers will seek out and facilitate the involvement of those potentially affected.

- EO 12898, 2/11/1994, Bill Clinton
- Title V of the Civil Rights Act of 1964
- 40 C.F.R. Parts 5 and 7

<https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

Timeline of Events

- 1/20/22 and 2/2/22 – EPA receipt of Civil Rights Complaints
- 4/5/22 – EPA Initiation of Civil Rights Investigation
- 9/12/22 – Rise St. James Decision vacating Formosa permits
- 10/12/22 – EPA Letter of Concern to LDEQ and LDH
- 12/20/22 – RCRA Consent Agreement Executed with Denka
- 2/28/23 – USA v. Denka filed (CAA 303 case)
- 5/24/23 – Louisiana v. EPA filed
- 6/27/23 – EPA Administrative Closure of Civil Rights Complaints

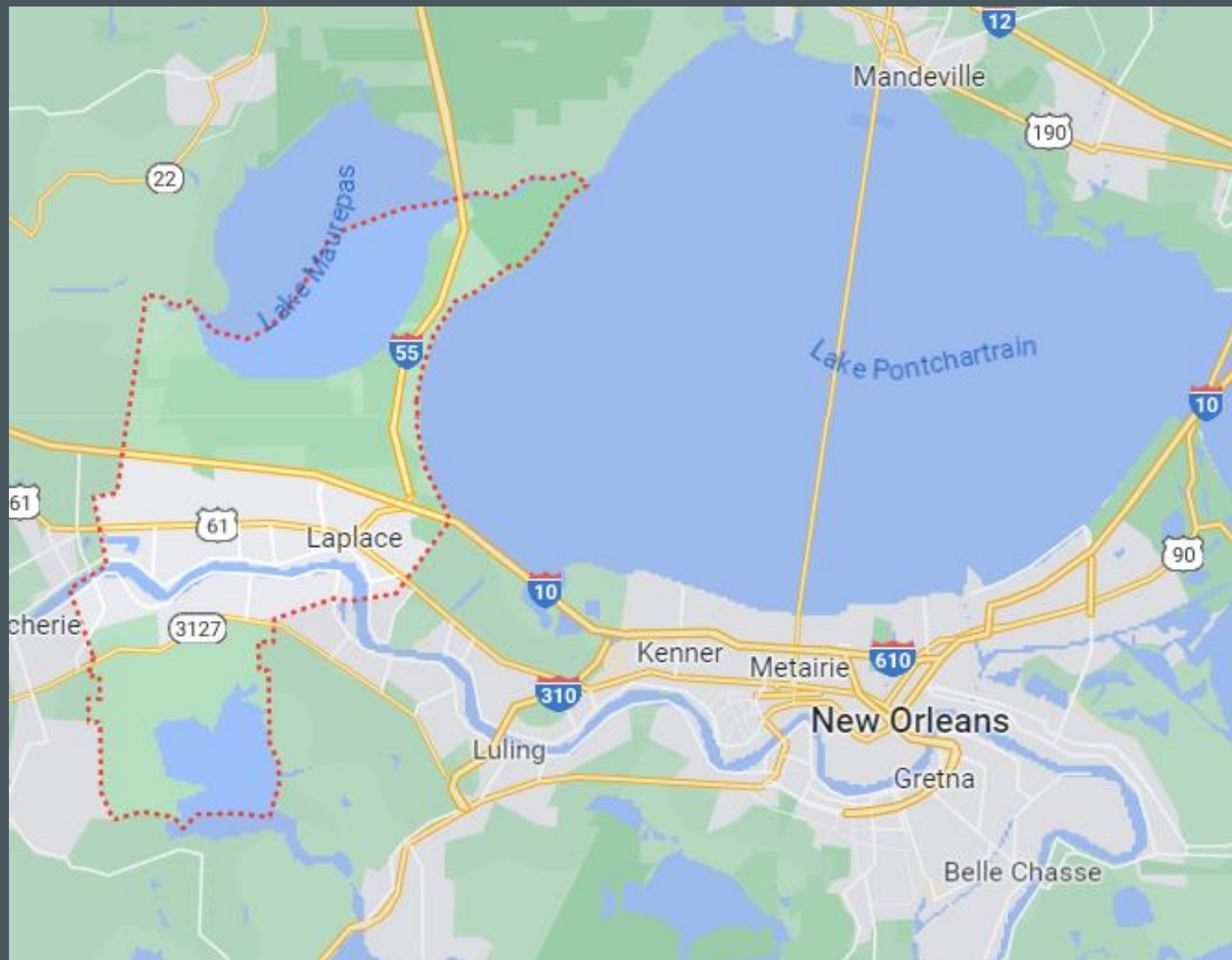
Denka Performance Elastomers

- LaPlace, Louisiana
- St. John the Baptist Parish
- Pontchartrain Works Facility
- Neoprene Manufacturer

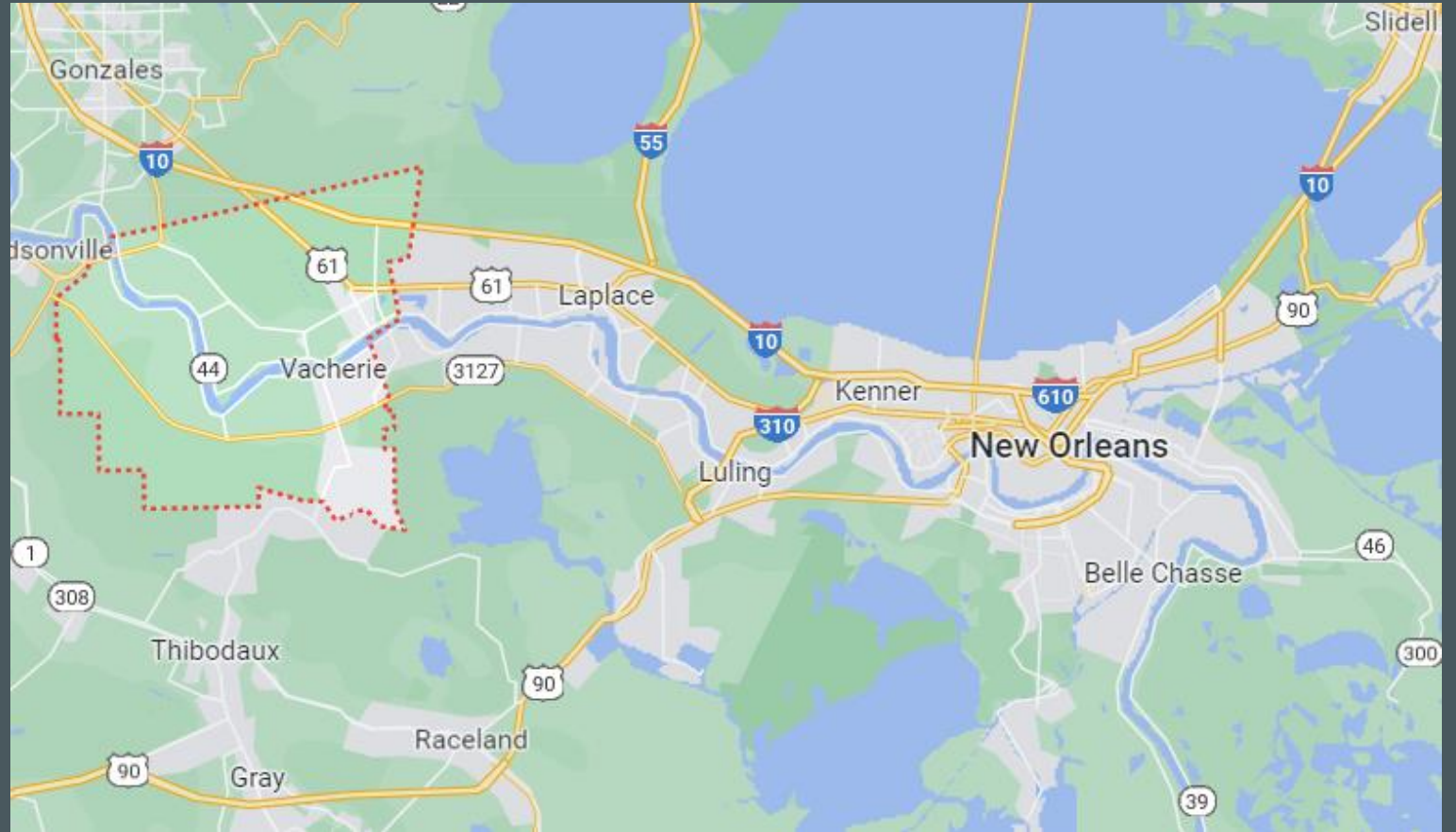
Formosa Plastics

- Welcome, Louisiana
- St. James Parish
- Plastics Manufacturer
- Proposed petrochemical complex
- 14 Title V permits issued 2020
- “Sunshine Project”

St. John the Baptist Parish



St. James Parish



Rise St. James v. LDEQ

- C-69402927, 19th Judicial District Court Parish of East Baton Rouge
- Groups appealed the LDEQ decision to issue air permits to FG LA, a Formosa Plastics Group company for the construction of a new chemical manufacturing complex on a 2,400 acre site adjacent to Welcome, LA in St. James Parish
- Court vacated and remanded the permits back to LDEQ
 - Formosa failed to show its emissions would not cause or contribute to violations of federal air standards; LDEQ's decision to issue the permit anyway violated the CAA

Civil Rights Complaints and EPA Investigation

- USEPA Office of External Civil Rights Complaints (OECRC)
- EPA Complaint Nos. 01R-22-R6 (1/20/22) and 04R-22-R6 (2/2/22)
- Both complaints allege LDEQ discriminates on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation at 40 CFR Part 7

EPA OECRC Investigation - Issues

1. Whether LDEQ administers its air pollution control program with intent/effect of subjecting persons to discrimination on the basis of race, including but not limited to:
 - a. LDEQ actions/failures to take certain actions related to Denka facility air emissions and the predominantly Black residents of St. John the Baptist Parish;
 - b. LDEQ decision to reaffirm the issuance of 14 new air permits for the Formosa facility and the predominantly Black residents of St. James Parish
2. Whether LDEQ is implementing the procedural safeguards of 40 CFR Parts 5 and 7

Louisiana v. EPA

- 2:23-cv-00692-JDC-KK, United States District Court, Western District of Louisiana, Lake Charles Division
- Louisiana arguments:
 - EPA violated private non-delegation doctrine
 - EPA imposed disparate impacts based requirements in contravention of Title VI of the Civil Rights Act
 - EPA attempts to impose extra-regulatory, unratified requirements
- Status

Closure of EPA OECRC Investigation

- "Based on information now available, including multiple significant developments, OECRC is closing these complaints administratively as of the date of this letter."
- Closure Letter issued June 27, 2023

EPA Actions Outside of Civil Rights Investigation

<https://www.epa.gov/la/laplace-st-john-baptist-parish-louisiana>

CAA 303 Civil Suit

- USA v. Denka
- 2:23-cv-00735
- United States Dist. Court for the Eastern Dist. of LA
- Chloroprene emissions

RCRA Agreement

- In the Matter of Denka Performance Elastomer, LLC
- RCRA-06-2023-0906

EtO Rule

- Proposed Rule
- NSPS for SOCFMI and NESHAP for SOCFMI and Group I and II Polymers and Resins Industry
- 88 Fed. Reg. 25080 (Apr. 25, 2023)

Thank you

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