

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRIENDS OF THE EARTH)
1100 15th Street, NW, 11th Floor)
Washington, DC 20005)

Plaintiff,)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and LISA JACKSON,)
Administrator,)
United States Environmental Protection Agency)
Ariel Rios Building)
1200 Pennsylvania Avenue, NW)
Washington, DC 20460)

Defendants.)

Case: 1:12-cv-00363
Assigned To : Jackson, Amy Berman
Assign. Date : 3/7/2012
Description: Admin. Agency Review

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Friends of the Earth seeks to compel Defendants, the United States Environmental Protection Agency and Lisa Jackson, Administrator of the United States Environmental Protection Agency (collectively, "EPA"), to respond to Plaintiff's October 3, 2006 petition for rulemaking under the Clean Air Act. Defendants have unreasonably delayed responding to the 2006 petition, which requested that EPA, pursuant to Section 231 of the Clean Air Act, 42 U.S.C. § 7571: (1) make a finding that lead emissions from general aviation aircraft using aviation gasoline (avgas) endanger public health or welfare; and (2) issue regulations limiting such emissions. Plaintiff also seeks to compel Defendants to carry out their nondiscretionary duty under Section 231 to determine whether lead emissions from aircraft engines using avgas cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. As described more fully below, Plaintiff submitted its petition on October 3, 2006. Over five years later, EPA has yet to make the required endangerment finding, to issue lead emissions standards, or even respond to the petition, despite the fact that EPA has long possessed sufficient information about the human health risks associated with lead emissions from avgas. Thus, this significant source of air pollution, which has been linked to elevated blood lead levels in children, remains unregulated.

JURISDICTION

3. This action is brought under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*

4. This Court has jurisdiction over this action under Section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a) (citizen suit provision), 5 U.S.C. § 703 (Administrative Procedure Act), 28 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief).

5. Section 304(a) of the Clean Air Act requires that written notice of intent to bring suit for unreasonable delay under the Act must be provided to EPA 180 days prior to commencement of such an action. *See* 42 U.S.C. § 7604(a). On May 26, 2011, Plaintiff notified EPA by certified mail of Plaintiff's intent to file suit against EPA for its unreasonable delay in making the required endangerment finding, in issuing emissions standards for lead from aircraft engines, and in responding to the petition. A copy of this written notice is attached hereto as Exhibit 1 and incorporated by reference. The notice letter was received by the Administrator on May 31, 2011. The 180-day notice period expired on November 28, 2011.

VENUE

6. Venue lies in this judicial district pursuant to Section 304(a) of the Clean Air Act, which provides that "an action to compel agency action . . . which is unreasonably delayed may

only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607(b) of this title.” 42 U.S.C. § 7604(a). Actions by EPA to regulate aircraft emissions are reviewable in the District of Columbia Circuit. *See* 42 U.S.C.

§§ 7607(b)(1); 7571. Thus an action for unreasonable delay in promulgating such regulations must be brought in the United States District Court for the District of Columbia. *See* 42 U.S.C. § 7604(a).

7. Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Defendant EPA has its principal office here; a substantial part of the events or omissions giving rise to the claim occurred here; and Plaintiff Friends of the Earth has its headquarters here.

PARTIES

8. Plaintiff Friends of the Earth, Inc. (“FoE”) is a tax-exempt environmental advocacy organization founded in 1969 and incorporated in the District of Columbia, with offices in Washington, DC and San Francisco, California. In 2005, the Bluewater Network, an environmental non-profit group organized for the protection of air and water quality from pollution by the transportation sector, merged with FoE. As of 2012, FoE has more than 10,000 members in all 50 states across the United States and more than 140,000 activists. FoE is a part of Friends of the Earth International, a federation of grassroots groups working in 76 countries on today’s most urgent environmental and social issues.

9. FoE’s mission is to defend the environment and champion a healthy and just world. To this end, one of FoE’s key programs is the promotion of policies and actions that prevent air pollution and that minimize the negative impacts of pollution on human health. FoE relies on sound science and uses the law to create and advocate for innovative strategies to conserve natural resources and protect public health and the environment. A core element of

FoE's mission is working to reduce air and water pollution throughout the United States. To these ends, FoE actively engages in rulemaking efforts before EPA relating to the regulation of industrial sources of air and water pollution and in litigation to support these efforts.

10. In 2003, Bluewater Network (prior to its merger with FoE) commented on EPA proposed amendments to existing emission standards for nitrogen oxides for newly certified commercial aircraft gas turbine engines. Bluewater Network discovered the lack of regulation of lead emissions from general aviation aircraft during its review of the emission standards. Then, in recognition of the harmful and toxic effects of lead when absorbed by the human body, it began advocacy with the EPA to address the danger that lead in avgas poses to public health and submitted a letter requesting that EPA make an endangerment finding. Following the 2005 merger with the Bluewater Network, FoE continued to advocate for protection of public health from avgas lead emissions.

11. FoE's members are aware of the threats to public health, welfare, and the environment posed by lead emissions and rely on the organization to compel EPA to satisfy its statutory obligations in this regard, specifically, to provide necessary and relevant information concerning lead emissions from general aviation aircraft and the technologies and operational procedures available to control them and to ensure the protection of public health against the threats posed by such emissions.

12. The health and environmental interests of FoE and its members are impacted by Defendants' failure to make the required endangerment finding for lead emissions from aircraft, to regulate such lead emissions, and to respond to FoE's petition. FoE members and their families, including young children, who are especially vulnerable to harm from lead exposure, live, work, play, and attend school near airports where leaded avgas is used and lead is emitted

into the air. Some FoE members live in areas near airports where lead is emitted and that EPA has classified as “nonattainment” for lead due to their failure to meet the Agency’s own health-based National Ambient Air Quality Standards (“NAAQS”). FoE’s members are personally and negatively affected by the continued release of lead emissions from aircraft.

13. FoE members who live in close proximity to airports where leaded avgas is used have experienced negative health effects associated with exposure to lead. They are concerned that their health issues are attributable to lead emitted by aircraft flying over their homes and experience anxiety associated with such concerns. Their exposure to lead puts them and their families at greater risk of adverse health conditions, which will continue unless EPA regulates lead emissions from avgas-fueled aircraft.

14. FoE members live near airports where flight schools operate. These schools generally operate many flights in a given day that are characterized by repeated circling of the airport at low altitudes. Indeed, FoE members regularly experience the smell of burning avgas, as well as of the deposit of emission residue on their homes, yards, and gardens.

15. FoE members are concerned that the risks posed by exposure to lead emissions from the avgas-fueled aircraft that take off and land near their homes could contribute to a devaluation of their properties.

16. Certain FoE members have changed their behavior to limit exposure to lead emissions—in some cases, sacrificing treasured activities such as gardening or watching their children play outside. FoE members are also concerned about the risks posed by lead emissions to local wildlife.

17. Defendants have failed in their duty to regulate lead emissions from aircraft—the regulation of which would reduce air pollution that causes harm to human health and the

environment. Defendants' failure to regulate avgas lead emissions—the largest source of lead air pollution—or to respond to FoE's petition directly injures the interests of FoE and its members in breathing clean air, drinking clean water, and the enjoyment of their property.

18. FoE and its members also suffer procedural injuries related to Defendants' failure to issue proposed regulations limiting lead emissions from avgas-fueled aircraft. FoE and its members are actively involved in a variety of regulatory processes to reduce air pollution and to protect human health. The Bluewater Network (prior to its merger with FoE) first raised the issue of endangerment of public health or welfare by avgas-caused lead air pollution in a December 2003 letter to EPA, arguing that EPA had a duty to make an endangerment finding for avgas lead emissions. Following FoE's 2006 filing of its petition and EPA's subsequent inaction, FoE made multiple additional requests to EPA for a response to the 2006 petition.

19. Defendants' failure to issue proposed regulations or otherwise to respond to the petition violates the procedural rights of FoE and its members to participate beneficially in the rulemaking process. If and when Defendants respond to the petition and issue proposed regulations, FoE and its members will participate in the rulemaking process, will contribute to and gain information from the proceedings, and will be able to carry out FoE's goal of advocating in favor of reducing air pollution from aircraft.

20. The injuries described above are actual, concrete, and particularized injuries suffered by FoE and by its members. These injuries are caused by the actions and omissions of EPA, as described herein. The injuries to FoE and its members would be redressed by the relief sought herein. Plaintiff has no adequate remedy at law.

21. Defendant United States Environmental Protection Agency is a federal agency with its principal offices located at Ariel Rios Building, 1200 Pennsylvania Avenue, NW,

Washington, DC 20460. EPA is charged with “protect[ing] and enhanc[ing] the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b). Under Section 231 of the Clean Air Act, EPA is required to determine whether lead emissions from aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare and, if endangerment is found, to issue emissions standards applicable to the emission of lead from aircraft engines.

22. Defendant Lisa P. Jackson is the Administrator of the United States Environmental Protection Agency, and, in that capacity, has final responsibility for actions taken by EPA and for ensuring that EPA complies with and fully implements the Act in accord with Congress’s intent. Administrator Jackson’s principal place of business is located in Washington, DC. Administrator Jackson is sued in her official capacity.

FACTUAL BACKGROUND

23. According to EPA, “[l]ead has been demonstrated to exert a broad array of deleterious effects on multiple organ systems.” Advance Notice of Proposed Rulemaking on Lead Emissions From Piston-Engine Aircraft Using Leaded Aviation Gasoline, 75 Fed. Reg. 22,440, 22,449 (Apr. 28, 2010) (“ANPR”). These effects are persistent and can be irreversible. *See id.* at 22,451. No “safe” threshold level for lead in blood has been identified. *See id.* at 22,441, 22,448.

24. EPA has identified a “broad range of adverse health effects” from lead emissions including “damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells.” EPA, Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards, 75 Fed. Reg. 71,033, 71,035 (Nov. 22, 2010).

25. EPA has recognized the “general consensus” that the developing nervous system in children is among the most sensitive “health endpoints” associated with lead exposure.

75 Fed. Reg. at 22,449. “Children are particularly vulnerable to Pb exposure, in part because they are more likely to ingest Pb and in part because their still developing bodies are more sensitive to the effects of Pb. Urban children are also of particular risk if the mother is exposed to lead.” 75 Fed. Reg. at 71,035.

26. Neurotoxic effects in children resulting from lead exposure have been substantiated at blood lead levels lower than 10 µg/dL. *See* 75 Fed. Reg. at 22,441, 22,448. Cognitive effects from lead exposure in children include decreased intelligence test results (including IQ testing) and reduced academic achievement, as well as impairments with regard to attention, executive function, language, memory, learning, and visuospatial processing. *See id.* at 22,449–50. Lead exposure also causes hematological and immune adverse health effects for children. *See id.* at 22,449.

27. Adults also are susceptible to adverse health effects caused by lead exposure, including hematological, cardiovascular and renal effects. *See id.*

28. In addition, EPA has identified lead as a probable carcinogen. *See id.*

29. In 1976, EPA listed lead as a criteria pollutant under the Clean Air Act, finding that “lead was an air pollutant which, in the Administrator’s judgment, has an adverse effect on public health or welfare.” 75 Fed. Reg. at 22,444.

30. Given the danger to human health caused by lead, EPA phased out the use of leaded gasoline in motor vehicles and regulated industrial sources of the pollutant. *See* Prohibition of Gasoline Containing Lead or Lead Additives for Highway Use, 61 Fed. Reg. 3832 (Feb. 2, 1996). While EPA expects lead from avgas to be absorbed in the same manner as lead from motor vehicle gasoline, *see* 75 Fed. Reg. at 22,442, the Agency has failed to propose any emissions standards for lead emissions from avgas-fueled aircraft.

31. EPA has known for years that lead emissions from aircraft are “overall, the largest source category” of lead emissions. 72 Fed. Reg. 64,570, 64,571 (Nov. 16, 2007) (citing 2002 report). Lead emissions from aircraft engines using leaded avgas are being released at approximately 20,000 airports across the country. *See* 75 Fed. Reg. at 22,440. In 2008, these emissions totaled 779 tons, *see id.* at 22,453, making avgas-fueled aircraft “the largest single source category for emissions of lead to air, comprising approximately half of the national inventory,” *id.* at 22,442.

32. EPA has estimated that 16 million people reside and 3 million children attend school in close proximity to airport facilities where lead emissions from aircraft engines are released. *See id.* at 22,442.

33. EPA has recognized that lead emissions from avgas-fueled aircraft could cause an increased risk to residents in the vicinity of general aviation airports. *See* EPA, PBT NATIONAL ACTION PLAN FOR ALKYL-LEAD 14 (June 2002), *available at* http://www.epa.gov/pbt/pubs/Alkyl_lead_action_plan_final.pdf (last visited Feb. 8, 2012). This potential risk is exacerbated by the fact that “[l]ead particles can remain airborne for some time following the initial introduction into the atmosphere,” *id.* at 14, and that lead persists in the environment and accumulates in soils, aquatic systems, and biological tissues, *see* 75 Fed. Reg. at 22,451. Due to this persistence, “[lead] deposited from the air may contribute to human and ecological exposures for years into the future.” 73 Fed. Reg. 66,964, 66,971 (Nov. 12, 2008).

34. Children living within one kilometer of an airport where leaded avgas is used have been found to have statistically significantly elevated lead blood levels. *See* Marie Lynn Miranda et al., *A Geospatial Analysis of the Effects of Aviation Gasoline on Childhood Blood*

Lead Levels, 119 ENVTL. HEALTH PERSP. 1513, 1513-1516 (Jul. 13, 2011), available at <http://dx.doi.org/10.1289/ehp.1003231> (last visited Feb. 8, 2012).

35. In 2010, EPA designated sixteen nonattainment areas for lead that violate NAAQS or contribute to the violation of those standards in a nearby area. *See* 75 Fed. Reg. 71,033. Each of these sixteen areas is in close proximity to one or more general aviation airports where lead-emitting aircraft take off and land.

36. On November 8, 2011, EPA announced the designation of five additional nonattainment areas for lead. *See* EPA, Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards, 76 Fed. Reg. 72,097 (Nov. 22, 2011). The four new nonattainment areas located in the continental U.S. are each in close proximity to one or more general aviation airports where lead-emitting aircraft take off and land.

LEGAL BACKGROUND

I. Statutory Context

37. The Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, confers on the Administrator of the EPA the exclusive authority to regulate the emission of pollutants from aircraft.

38. Under Section 231(a)(2)(A) of the Clean Air Act, the Administrator “shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in [her] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7571(a)(2)(A).

39. The Clean Air Act further requires that “[w]ithin 90 days after the issuance of such proposed regulations, [the EPA Administrator] shall issue such regulations with such modifications as he deems appropriate.” *Id.* § 7571(a)(3).

II. Regulatory History

(i) The Petition and Notice

40. On October 3, 2006, Plaintiff petitioned EPA to regulate lead emissions from avgas-fueled general aviation aircraft under Section 231 of the Clean Air Act.

41. The petition requested that EPA fulfill its duty to “[m]ake a finding that lead emissions from general aviation aircraft endanger public health and welfare and issue a proposed emissions standard for lead from general aviation aircraft under [Section] 231.” FoE requested that EPA provide a substantive response to the petition within 180 calendar days. That 180-day time period expired on April 1, 2007. In 2008, 2009, 2010, and 2011, FoE made additional requests that EPA respond to the petition.

42. On May 26, 2011, Plaintiff provided notice of its intention to file a legal action against EPA for its unreasonable delay in making the required endangerment finding, in issuing emissions standards for lead from aircraft engines, and in responding to the petition as required by Section 304(a) the Clean Air Act.

43. The 180-day notice period expired on November 28, 2011.

(ii) The Advance Notice of Proposed Rulemaking

44. On November 17, 2007, EPA published a Federal Register notice requesting comments on FoE’s 2006 petition to assist it in “developing” its “response to the petition.” 72 Fed. Reg. at 64,572.

45. Over two years later, on April 28, 2010, EPA issued an Advance Notice of Proposed Rulemaking on Lead Emissions From Piston-Engine Aircraft Using Leaded Aviation Gasoline. 75 Fed. Reg. 22,440.

46. Despite being labeled an “Advance Notice of Proposed Rulemaking,” the ANPR did not propose any regulations applicable to avgas-fueled aircraft, establish any timeframe by which EPA intends to undertake the requested rulemaking, or articulate whether EPA will propose such regulations in the future. Instead, the ANPR merely “describe[d] information currently available and information being collected” and “describe[d] and request[ed] comment on additional information being collected.” *Id.* at 22,440.

47. The August 27, 2010 deadline for submission of comments on the ANPR has passed. 75 Fed. Reg. 36,034 (June 24, 2010). To date, EPA has taken no steps toward regulation of lead emissions from aircraft under Section 231 of the Clean Air Act.

(iii) EPA’s Failure to Respond to the Petition

48. Recent actions by EPA confirm that the Agency has not established any timetable for moving forward with respect to the regulation of leaded avgas.

49. EPA reportedly met with pilots and representatives of the aviation industry in Alaska in February 2011 and, according to Aircraft Owners and Pilots Association Online, “emphasized that so far the EPA is only studying [general aviation] emissions, not proposing regulations on them, and that no fixed time frame has been established for publishing a finding from its review.” *EPA Meets With Alaska Operators on Avgas Issue*, AOPA ONLINE, Feb. 14, 2011, *available at* http://www.aopa.org/advocacy/articles/2011/110214epa_meets_with_alaska_operators_on_avgas.html (last visited Feb. 8, 2012).

50. In March 2011, EPA made a presentation to a Federal Aviation Administration committee admitting that it “has a duty to respond to FOE’s request that [EPA] evaluate the question of endangerment,” but that it “ha[s] made no decisions.” EPA Presentation to FAA Aviation Rulemaking Committee (March 2011), *available at*

<http://www.faa.gov/about/initiatives/avgas/media/media/EPAslides.pdf> (last visited Feb. 8, 2012).

51. EPA has failed to promulgate a final rule to regulate air emissions from avgas-fueled general aviation aircraft pursuant to the Clean Air Act.

FIRST CLAIM FOR RELIEF
Violation of the Clean Air Act

(Failure to Respond to Friends of the Earth's Petition)

52. Plaintiff hereby realleges and incorporates each and every allegation in the preceding paragraphs.

53. EPA has a mandatory duty to respond to Plaintiff's October 2006 petition to regulate lead emissions from avgas-fueled aircraft under the Clean Air Act.

54. EPA failed to respond to Plaintiff's October 2006 petition to regulate lead emissions from avgas-fueled aircraft.

55. EPA violated the Clean Air Act by failing to respond to Plaintiff's October 2006 petition to regulate lead emissions from avgas-fueled aircraft. This failure constitutes unreasonable delay, actionable under the citizen suit provision of the Clean Air Act. 42 U.S.C. § 7604(a).

56. EPA's violation is continuous and ongoing. EPA will continue to violate the Clean Air Act until it complies with its mandatory duty to respond to Plaintiff's October 2006 petition.

SECOND CLAIM FOR RELIEF
Violation of the Administrative Procedure Act

(Failure to Respond to Friends of the Earth's Petition)

57. Plaintiff hereby realleges and incorporates each and every allegation in the preceding paragraphs.

58. EPA has a duty to respond to Plaintiff's October 2006 petition to regulate lead emissions from avgas-fueled aircraft under Section 706 of the Administrative Procedure Act, 5 U.S.C. § 706(2).

59. EPA failed to respond to Plaintiff's October 2006 petition to regulate lead emissions from avgas-fueled aircraft.

60. EPA's failure to respond to Plaintiff's October 2006 petition to regulate lead emissions from avgas-fueled aircraft constitutes an unreasonable delay contrary to and in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

61. EPA's violation is continuous and ongoing. EPA will continue to violate the Administrative Procedure Act until it complies with its duty to respond to Plaintiff's October 2006 petition.

THIRD CLAIM FOR RELIEF
Violation of the Clean Air Act

(Failure to Make Endangerment Determination for Lead Emissions from Aircraft)

62. Plaintiff hereby realleges and incorporates each and every allegation in the preceding paragraphs.

63. Section 231(a)(2)(A) of the Clean Air Act requires that the Administrator "shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in [her] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7571(a)(2)(A).

64. EPA has a mandatory duty to determine whether lead emissions from avgas-fueled aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare under Section 231(a)(2)(A) of the Clean Air Act.

65. EPA has never made a determination whether lead emissions from avgas-fueled aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

66. EPA violated the Clean Air Act by failing to determine whether lead emissions from general aviation engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. This failure to make an endangerment determination constitutes unreasonable delay, actionable under the citizen suit provision of the Clean Air Act. 42 U.S.C. § 7604(a).

67. EPA's violation is continuous and ongoing. EPA will continue to violate the Clean Air Act until it complies with its mandatory duty to make a determination whether lead emissions from avgas-fueled aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

A. Declare that EPA's failure to respond to Plaintiff's October 2006 petition to regulate lead emissions from avgas-fueled general aviation aircraft constitutes an unreasonable delay under Section 304(a) of the Clean Air Act and the Administrative Procedure Act; and enjoin EPA from further delaying a substantive response to the petition.

B. Declare that EPA's failure to determine whether lead emissions from general aviation aircraft engines cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare constitutes an unreasonable delay under Section 304(a) of the Clean Air Act; and direct EPA to issue such a determination within 90 days after entry of this Court's judgment.

C. Declare that if EPA, upon making a determination as directed under paragraph B above, finds that lead emissions from general aviation aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare, EPA must initiate rulemaking pursuant to Section 231(a) to establish standards to limit such emissions.

D. Award Plaintiff its costs of litigation, including reasonable attorney and expert witness fees, pursuant to 42 U.S.C. § 7604(d).

E. Grant Plaintiff such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 7th, day of March, 2012,



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