

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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MOSSVILLE ENVIRONMENTAL )  
ACTION NOW )  
650 Prater Road )  
Westlake, LA 70669; )  
LOUISIANA ENVIRONMENTAL )  
ACTION NETWORK )  
P.O. Box 66323 )  
Baton Rouge, LA 70896; and )  
SIERRA CLUB )  
85 Second Street, 2d Floor )  
San Francisco, CA 94105-3411, )  
)  
Plaintiffs, )  
)  
v. )  
)  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY and )  
STEPHEN L. JOHNSON, )  
Administrator, United States )  
Environmental Protection Agency, )  
)  
Defendants. )

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CIVIL ACTION NO.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action to compel defendant Johnson to promulgate lawful regulations to reduce emissions of hazardous air pollutants from facilities that polymerize vinyl chloride monomer to produce polyvinyl chloride and/or copolymer products (“PVC plants”). Although the Clean Air Act required defendant to promulgate such regulations by November 15, 2000, 42 U.S.C. § 7412(e)(1)(E), he has not done so.

**JURISDICTION**

2. This action arises under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604. This Court has jurisdiction over this action pursuant to said Act, 42 U.S.C. § 7604(a)(2),

as well as 28 U.S.C. §§ 1331 and 1361, and may issue a declaratory judgment and grant further relief pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 2201 and 2202. Plaintiff has a right to bring this action pursuant to 42 U.S.C. § 7604(a)(2) and the Administrative Procedure Act, 5 U.S.C. §§ 701 to 706.

3. By certified letter posted on May 22, 2008, plaintiffs Mossville Environmental Action Now (“MEAN”), Louisiana Environmental Action Network (“LEAN”), and Sierra Club gave notice to defendants, pursuant to 42 U.S.C. § 7604(b)(2), of the violations alleged herein.

### **PARTIES**

4. Plaintiff MEAN is a nonprofit corporation organized and existing under the laws of the State of Louisiana. MEAN is a membership organization dedicated to promoting environmental justice and protecting the residents of Mossville and southwest Louisiana from toxic pollution.

5. Plaintiff LEAN is a nonprofit corporation organized and existing under the laws of the State of Louisiana. LEAN is a statewide network of 106 member groups and more than 1700 individual members. LEAN works to improve the environment for the benefit of all of the citizens of Louisiana.

6. Plaintiff Sierra Club is a nonprofit corporation organized and existing under the laws of the State of California. A national organization dedicated to the protection of public health and the environment, Sierra Club has more than 700,000 members in all fifty states and the District of Columbia.

7. For the reasons stated below, the actions challenged herein cause MEAN, LEAN, and Sierra Club injury for which they have no adequate remedy at law.

8. Defendant Stephen L. Johnson is the Administrator of the United States

Environmental Protection Agency (“EPA”), and in that role is charged with the duty to promulgate regulations according to the schedules set out in the Clean Air Act.

### **GENERAL ALLEGATIONS**

9. In 1990, Congress amended the Clean Air Act to mandate important new initiatives in several areas of air pollution control. To ensure that these initiatives would be implemented in a timely fashion, the 1990 amendments established mandatory deadlines for EPA action. *See, e.g.*, 42 U.S.C. § 7412(e)(1).

10. As part of the Clean Air Act amendments, Congress enumerated 189 pollutants as “hazardous air pollutants” (“HAPs”) in the Clean Air Act itself. 42 U.S.C. § 7412(b)(1). Congress then directed EPA to set emission standards for all the categories of sources that emit the listed pollutants. 42 U.S.C. § 7412(c), (d).

11. Section 112(e)(1) of the Act provides in pertinent part:

The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) of this section as expeditiously as practicable, assuring that –

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(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after November 15, 1990.

42 U.S.C. § 7412(e)(1).

12. Thus, § 112(e) of the Clean Air Act required defendant to promulgate, no later than November 15, 2000, regulations for all of the categories and subcategories of sources listed pursuant to §112(c) of the Act.

13. Congress also provided expressly for EPA to review and revise the few standards that it had promulgated under the pre-1990 air toxics provisions:

Each such standard shall be reviewed and, if appropriate revised, to comply with the requirements of subsection (d) of this section within 10 years after the date of enactment of the Clean Air Act Amendments of 1990.

42 U.S.C. § 7412(q)(1). Thus, the 1990 Amendments required EPA to revise its pre-1990 hazardous air pollutant standards to comply with § 112(d) (as amended), unless they were determined to already meet § 112(d)'s requirements.

14. In § 112(d), Congress required EPA to issue emissions standards that “require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section that the Administrator . . . determines is achievable for new or existing sources in the category.”

42 U.S.C. § 7412(d)(2).

15. “Polyvinyl Chloride and Copolymers Production” was listed as a category of major sources, pursuant to § 112(c) of the Act on the initial source category list published in the Federal Register on July 16, 1992. 57 Fed. Reg. 31576, 31591 (July 16, 1992).

16. On December 8, 2000, EPA issued a proposed rule entitled “National Emissions Standards for Polyvinyl Chloride and Copolymers Production.” 65 Fed. Reg. 76958 (December 8, 2000). In that rulemaking, EPA reviewed a previously issued vinyl chloride emission standard that predated the 1990 Clean Air Act Amendments pursuant to § 112(d) and § 112(q)(1).<sup>1</sup> In its final rule, issued July 10, 2002, EPA determined that the existing vinyl chloride standard reflected the application of MACT, thereby meeting the requirements of section 112(d) of the Clean Air Act. 67 Fed. Reg. 45886 (July 10, 2002) (“2002 NESHAP”). Accordingly, in the

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<sup>1</sup> EPA identified vinyl chloride as a hazardous air pollutant prior to the enactment of the Clean Air Act Amendments of 1990, *see* 40 Fed. Reg. 59477 (December 24, 1975). Pursuant to § 112 of the pre-1990 Clean Air Act, EPA proposed and promulgated emission standards for vinyl chloride emissions from PVC plants and ethylene dichloride-vinyl chloride plants, another significant source of vinyl chloride emissions. 40 C.F.R. Part 61, Subpart F; 40 Fed. Reg. 59532 (proposal); 41 Fed. Reg. 46560 (October 21, 1976) (final rule).

2002 NESHAP, EPA required PVC and copolymers production facilities to comply with the existing vinyl chloride NESHAP. *Id.*

17. On September 9, 2002, Sierra Club and MEAN filed a petition for review of the 2002 NESHAP with the District of Columbia Circuit Court of Appeals. The Court vacated the 2002 NESHAP, holding that the EPA had failed to establish emission standards for every hazardous air pollutant that PVC plants emit as required by § 112(d)(1). *Mossville Environmental Action Now v. EPA*, 370 F.3d 1232 (D.C. Cir. 2004); *see also Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 634 (D.C. Cir. 2000) (holding that Clean Air Act § 112(d)(1) establishes a “clear statutory obligation to set emission standards for each listed HAP” that the source category emits). EPA has yet to respond to the vacatur, and accordingly, has not promulgated new standards at this time.

18. By vacating the PVC standards, the D.C. Circuit restored the status quo before those standards took effect—a status quo in which EPA’s mandatory duties under § 112(e) of the Act were unfulfilled. *See Env'tl. Defense v. Leavitt*, 329 F. Supp. 2d 55, 64 (D.D.C. 2004). Thus, EPA is in violation of its non-discretionary duty under Clean Air Act § 112(e)(1) to issue § 112(d) standards for PVC plants no later than November 15, 2000.

#### **ALLEGATIONS DESCRIBING PLAINTIFF’S INJURIES**

19. EPA “has classified vinyl chloride as a Group A known human carcinogen.” 65 Fed. Reg. 76958, 76960 (Dec. 8, 2000). The agency also has determined that “[c]hronic (long-term) exposure to vinyl chloride through inhalation and oral exposure in humans has resulted in liver damage” and that animal studies “raise a concern about potential reproductive and developmental hazards to humans.” *Id.*

20. Exposure to the other HAPs that PVC plants emit is also associated with adverse health effects. Exposure to vinylidene chloride (1,1 dichloroethylene), for example, may cause cancer as well as damage to the lungs, liver, kidneys, and central nervous system. *Id.* Exposure to chlorine and hydrogen chloride can cause irritation to the eyes, respiratory tract and lungs, as well as pulmonary edema, bronchitis, gastritis and dermatitis. 67 Fed. Reg. 44713, 44715 (July 3, 2002).

21. PVC plants are also known to emit dioxin. *See* Nat'l Ctr. for Env'tl. Assessment, U.S. EPA, EPA/600/P-03/002F, *An Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States for the Years 1987, 1995, and 2000*, at 8-36 to 8-38 (2006). Dioxin is a known human carcinogen, and can pose a danger even in low daily doses of exposure. National Toxicology Program, U.S. Dept. of Health and Human Services, Eleventh Edition, *Report on Carcinogens* (2005).

22. Sierra Club, LEAN, and MEAN members live, work, and recreate in communities where PVC plants and copolymers plants are located. As a result, they are exposed to the hazardous air pollutants that these facilities emit through exposure to toxic air pollution as well as exposure to contaminated water, soil, and fish. These Sierra Club, LEAN, and MEAN members are exposed to the resulting risk of adverse health effects.

23. Defendants' failure to promulgate lawful regulations establishing emissions standards for PVC plants by the November 15, 2000 deadline (specified in § 112(e)(1)(E)) increases and prolongs Sierra Club, LEAN, and MEAN members' exposure to hazardous air pollutants and their risk of adverse health effects.

24. PVC plants' toxic emissions contaminate the air, soil, and water in and around plaintiffs' members' homes. As a result, it is unsafe to eat fruits and vegetables raised in

plaintiffs' members' gardens. Likewise, dermal exposure to soil in plaintiffs' members' gardens is unsafe. For both reasons, plaintiffs refrain from gardening and from eating food grown in their own gardens — activities they would otherwise enjoy. Further, plaintiffs' members are aware that they are exposed to toxic pollution from PVC plants in their homes and gardens and, as a result, they enjoy outside activities less and sometimes have to stay inside and shut the windows.

25. Plaintiffs' members would enjoy fishing in local waterbodies and eating the fish they catch, but health advisories indicate that the fish are contaminated with dioxins and other toxins emitted by PVC plants. Accordingly, plaintiffs' members refrain from fishing, an activity they would otherwise enjoy.

26. Hazardous air pollutants also cause environmental harms by, *inter alia*, causing death, illness, and impaired reproductive success in wildlife, fish and plants. Sierra Club, LEAN, and MEAN's membership encompasses numerous active outdoor recreation enthusiasts who engage in a wide variety of activities including hiking, backpacking, birdwatching and other wildlife observation, gardening, flower and plant identification, edible wild plant gathering, canoeing, fishing, hunting, and others. Sierra Club, LEAN, and MEAN members pursue these activities in areas that are in close proximity to PVC plants. The emissions of hazardous air pollutants from these plants harm Sierra Club, LEAN, and MEAN members by placing at risk the wildlife, fish, and plant resources that are an integral component of their recreational and aesthetic experience.

### **CLAIM FOR RELIEF**

27. The allegations of the foregoing paragraphs are hereby incorporated as if set forth fully herein.

28. Defendant's failure to promulgate lawful regulations for PVC plants constitutes a

“failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” within the meaning of § 304(a)(2). 42 U.S.C. § 7604(a)(2).

**PRAYER FOR RELIEF**

29. WHEREFORE, Plaintiff requests that this Court:

- (1) Declare that defendant Johnson’s failure to promulgate lawful regulations for PVC plants by the November 15, 2000 deadline specified in § 112(e)(1)(E) constitutes “a failure to perform any act or duty under this chapter which is not discretionary with the Administrator” within the meaning of § 304(a)(2), 42 U.S.C. § 7604(a)(2),
- (2) Order defendant Johnson to propose and promulgate, in accordance with expeditious deadlines specified by this Court, regulations establishing emissions standards for PVC plants under Clean Air Act § 112(d),
- (3) Retain jurisdiction of this action to ensure compliance with its decree,
- (4) Award plaintiff the costs of this action, including attorney’s fees, and,
- (5) Grant such other relief as the Court deems just and proper

DATED: October 22, 2008



Respectfully submitted,

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