

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

CALIFORNIA COMMUNITIES AGAINST)
TOXICS)
P.O. Box 845)
Rosamond, CA 93560;)
))
CLEAN AIR COUNCIL)
135 S. 19th Street, Suite 300)
Philadelphia, PA, 19103;)
))
CLEAN POWER LAKE COUNTY)
1245 St. John Avenue)
Highland Park, IL 60035;)
))
DELAWARE CONCERNED RESIDENTS)
FOR ENVIRONMENTAL JUSTICE)
719 N. Shipley Street)
Wilmington, DE 19801;)
))
GREATER-BIRMINGHAM ALLIANCE TO)
STOP POLLUTION)
2320 Highland Avenue S, Suite 270)
Birmingham, AL 35205;)
))
KENTUCKY RESOURCES COUNCIL)
P.O. Box 1070)
Frankfort, KY 40602;)
))
NEW CASTLE PREVENTION COALITION)
19 Lambson Lane)
New Castle, DE 19720;)
))
UNITED CONGREGATIONS OF METRO-)
EAST)
13 Vieux Carre Drive, Suite 2)
East St. Louis, IL 62203; *and*)
))
SIERRA CLUB)
2101 Webster Street, Suite 1300)
Oakland, CA 94612,)
))
Plaintiffs,)
))
v.)
))

Civil Action No. 1:22-cv-1457

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

MICHAEL S. REGAN, Administrator,)
U.S. Environmental Protection Agency, in)
his official capacity,)
1200 Pennsylvania Ave., NW)
Washington, DC 20460,)
Defendant.)

INTRODUCTION

1. This is a suit to compel the Administrator of the U.S. Environmental Protection Agency (“EPA”) to take actions required by the Clean Air Act (“Act”). 42 U.S.C. §§ 7401-7671. The Act requires that EPA limit emissions of toxic, cancer-causing chemicals by promulgating national emission standards for hazardous air pollutants (NESHAP). 42 U.S.C. § 7412(d). It also requires EPA to “review, and revise” these standards “no less often than every eight years.” *Id.* § 7412(d)(6).

2. EPA finalized NESHAP for chemical manufacturing area sources in December 2012. 77 Fed. Reg. 75,740 (December 21, 2012); 40 C.F.R. Part 63, Subpart VVVVVV. Although more than eight years have passed since those standards were promulgated, EPA has not reviewed and revised those standards. EPA, therefore, has violated and is in ongoing violation of the Act.

3. The chemical manufacturing industry is a significant source of pollution, including volatile organic compounds and hazardous air pollutants known to cause cancer, among a host of other illnesses. EPA’s failure to review and revise the NESHAP for chemical manufacturing area sources allows these facilities to operate without requirements ensuring the use of current pollution control technology and without preventing the facilities from emitting excessive hazardous air pollution. EPA’s inaction harms Plaintiffs and their members, many of whom live, work, and recreate near these sources and who have no choice but to breathe the hazardous air pollutants they emit.

4. Some chemical manufacturing facilities also emit significant amounts of ethylene oxide, a hazardous air pollutant that EPA classifies as a human carcinogen. EPA's Office of Inspector General recently found that ethylene oxide emissions create an unacceptable risk of cancer in some communities where Plaintiffs' members live, work, and recreate. The current chemical manufacturing area source standards do not set limits for ethylene oxide. Although a 2021 EPA Office of Inspector General report recommended that EPA develop NESHAP for chemical manufacturing area sources that emit ethylene oxide, EPA has yet to do so. As a result, EPA's failure to review and revise the NESHAP for chemical manufacturing area sources harms Plaintiffs' members who are exposed to unregulated emissions of ethylene oxide from these sources.

5. To remedy EPA's failure to comply with its statutory obligation, Plaintiffs seek declaratory and injunctive relief compelling EPA to review and, if necessary, revise the NESHAP for the chemical manufacturing area source category as expeditiously as possible.

JURISDICTION, VENUE, AND NOTICE

6. This action arises under the Clean Air Act. 42 U.S.C. § 7412(d)(6).

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1361 and 42 U.S.C. § 7604(a)(2).

8. This Court may grant the requested relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, as well as 28 U.S.C. § 1361 and 42 U.S.C. § 7604(a)(2).

9. Venue is vested in this Court under 28 U.S.C. § 1391(e) because the Defendant, EPA Administrator Michael S. Regan, resides in this district.

10. By certified mail postmarked March 18, 2022, Plaintiffs gave notice of this action to the Administrator as required under 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.1-54.3.

11. As more than sixty days have passed since that submission, Plaintiffs have satisfied the notice requirements of section 7604(b)(2).

PARTIES

12. Plaintiff California Communities Against Toxics (“CCAT”) is a nonprofit organization headquartered in Rosamond, California. CCAT is an environmental justice network of members and member groups that advocates for environmental justice and protection from toxic air pollution in the State of California and nationally. Through public education, advocacy, and community organizing, CCAT aims to reduce individuals’ exposure to pollution, to expand knowledge about the effects of toxic chemicals on human health and the environment, and to protect the most vulnerable people from harm.

13. Plaintiff Clean Power Lake County (“CPLC”) is a nonprofit organization headquartered in Highland Park, Illinois. CPLC is a community-driven coalition committed to local action to secure environmental, economic, and racial justice. CPLC’s mission is to ensure clean air, clean water, and healthy soil for every Lake County community member and to achieve the self-determination of those disproportionately impacted by environmental pollution.

14. Plaintiff Delaware Concerned Residents for Environmental Justice (“DCR4EJ”) is a nonprofit organization headquartered in Wilmington, Delaware. DCR4EJ is an environmental justice collective where individuals, health advocates,

native indigenous peoples, and organized groups are united around a shared commitment to a bottom-up process rooted in principles to combat toxic chemicals, processes and pollution, the climate crisis, food access, and public health. DCR4EJ's mission is to inform and empower communities to take action to protect the fundamental rights to clean air, water, land, and food.

15. Plaintiff Greater-Birmingham Alliance to Stop Pollution ("GASP") is a nonprofit organization headquartered in Birmingham, Alabama. GASP's mission is to advance healthy air & environmental justice in the greater-Birmingham area through education, advocacy, and collaboration. GASP envisions a healthy, just, and sustainable Alabama for everyone who lives, works, learns, and worships there. GASP strives to reduce air pollution, to educate the public on the health risks associated with poor air quality, and to encourage community leaders to serve as role models for clean air and clean energy development.

16. Plaintiff Kentucky Resources Council ("KRC") is a nonprofit organization headquartered in Frankfort, Kentucky. KRC's mission is to protect built and natural communities from pollution and environmental damage. KRC combines policy and legal advocacy to protect the Commonwealth's natural resources and ensure environmental justice for Kentucky's most vulnerable people and communities.

17. Plaintiff New Castle Prevention Coalition ("NCPC") is a nonprofit organization headquartered in New Castle, Delaware. NCPC works to build community resilience and strength by coalescing with residents and other stakeholders to address the impacts and root causes of issues affecting the Route 9 Corridor communities, including environmental injustice.

18. Plaintiff United Congregations of Metro-East (“UCM”) is a nonprofit organization headquartered in East St. Louis, Illinois. UCM is a group of pastors, church members, and other community organizations throughout the St. Louis Metro East who work together on social justice issues. UCM’s mission is to combat the root cause of systemic injustice in its region by uniting people of faith in transforming their communities. UCM works to achieve its mission by providing training and resources to help people uncover their power and come together to change their circumstances.

19. Plaintiff Sierra Club is a national nonprofit organization headquartered in Oakland, California, with 67 chapters and over 800,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club is committed to reducing pollution from industrial sources, including chemical manufacturing facilities.

20. Defendant Michael S. Regan is the Administrator of the EPA. In that role, he is charged with the duty to uphold the Clean Air Act and to take required regulatory actions according to the schedules established therein. *See* 42 U.S.C. § 7601.

LEGAL FRAMEWORK

21. The Clean Air Act is designed “to protect and enhance 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)(1). A “primary goal” of the Clean Air Act is, therefore, “pollution prevention.” 42 U.S.C. § 7401(c). The statutory and regulatory

framework of the Act is designed to prevent pollution by imposing emissions standards on various kinds of pollution, including hazardous air pollutants. Hazardous air pollutants especially harm public health and the environment by, for example, heightening the risk of cancer in nearby communities. 42 U.S.C. § 7412; 40 C.F.R. Parts 61, 63.

22. The 1990 Clean Air Act Amendments introduced the current framework under which hazardous air pollutants are regulated. With the 1990 Amendments, Congress created an initial list of hazardous air pollutants subject to regulation under the Act, 42 U.S.C. § 7412(b)(1), which include chemicals that are carcinogenic, neurotoxic, or cause other kinds of serious harm to human health. Congress also provided that EPA should add further chemicals to this list “upon a showing . . . that the substance is an air pollutant,” which is “known to cause or may be reasonably anticipated to cause adverse effects to human health or adverse environmental effects.” 42 U.S.C. § 7412(b)(3)(B).

23. Under the Act’s air toxics framework, a source which emits or has the potential to emit at least 10 tons per year of a listed hazardous air pollutant or at least 25 tons per year of any combination of hazardous air pollutants is a “major source.” 42 U.S.C. § 7412(a)(1). The Act requires EPA to create a list of categories of major sources, and to promulgate emissions standards for each of these major source categories. 42 U.S.C. § 7412(c)(1), (d). Major source emissions standards—often referred to as “maximum achievable control technology” or “MACT” standards—require “the maximum degree of reduction in emissions of . . . hazardous air pollutants . . . [that] is achievable.” 42 U.S.C. § 7412(d)(2). The minimum stringency required of such

standards—or MACT “floor”—must reflect what the best controlled source or sources have “achieved.” 42 U.S.C. § 7412(d)(3).

24. Sources that emit (or have the potential to emit) less than 10 tons per year of any hazardous air pollutant and less than 25 tons per year of any combination of hazardous air pollutants are referred to as “area sources.” 42 U.S.C. § 7412(a)(2). As with major sources, the Act requires EPA to list categories of area sources, 42 U.S.C. § 7412(c)(3), and to promulgate emission standards for each area source category. EPA has the discretion to issue MACT standards for area sources. The Act also allows EPA to issue alternative standards for area sources based instead on “generally available control technologies” (GACT). 42 U.S.C. § 7412(d)(5).

25. For all source categories under the NESHAP program, whether major source or area source, EPA is required to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emissions standards . . . no less often than every eight years.” 42 U.S.C. § 7412(d)(6).

26. In addition to strengthening preexisting emissions standards for a given source category, EPA’s duty during the review and revise process includes making any other changes “necessary” to comply with the Act, such as “add[ing] limits . . . for any air toxics that the existing standard does not address.” *Louisiana Env’tl. Action Network v. EPA*, 955 F.3d 1088, 1096 (D.C. Cir. 2020).

27. Standards that EPA promulgates under section 112 of the Act become effective “upon promulgation.” 42 U.S.C. § 7412(d)(10).

28. When promulgating new or revised standards, EPA must follow the Act’s rulemaking procedures, including public notice-and-comment. *See* 42 U.S.C. § 7607(d)(1)(C).

FACTS

Failure to Review and Revise the Chemical Manufacturing Area Source NESHAP

29. In 1999, as part of its Urban Air Toxics Strategy, EPA listed Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Manufacturing, Plastic Materials and Resins Manufacturing, and Synthetic Rubber Manufacturing as area source categories under 42 U.S.C. § 7412(c)(3). *See National Air Toxics Program: The Integrated Urban Strategy*, 64 Fed. Reg. 38,706 (July 19, 1999).

30. In 2002, EPA listed Agricultural Chemicals and Pesticides Manufacturing, Miscellaneous Organic Chemical Manufacturing, and Pharmaceutical Production as area source categories under 42 U.S.C. § 7412(c)(3). *See National Emission Standards for Hazardous Air Pollutants: Revision of Area Source Category List Under Section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act*, 67 Fed. Reg. 43,112 (June 26, 2002).

31. Also, in 2002, EPA listed Inorganic Pigments Manufacturing as an area source category under 42 U.S.C. § 7412(c)(3). *See National Emission Standards for Hazardous Air Pollutants: Revision of Area Source Category List Under Section 112(c)(3) and 112(k)(3)(B)(ii) of the Clean Air Act*, 67 Fed. Reg. 70,427 (Nov. 22, 2002).

32. On October 29, 2009, EPA promulgated emissions standards for these nine area source categories collectively, as “chemical manufacturing area sources,” through a single set of emission standards codified at 40 C.F.R. Part 63, Subpart VVVVVV. *See National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources*, 74 Fed. Reg. 56,008 (Oct. 29, 2009) (2009 Final Rule).

33. Following reconsideration and stay of the 2009 Final Rule by EPA, the chemical manufacturing area source standards did not become effective until December 21, 2012. See National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources, 77 Fed. Reg. 75,740 (Dec. 21, 2012).

34. The Act requires EPA to “review, and revise as necessary” the chemical manufacturing area source standards within eight years of promulgation. 42 U.S.C. § 7412(d)(6).

35. The Act also requires EPA to “review, and revise as necessary” the chemical manufacturing area source standards within eight years of every subsequent revision. 42 U.S.C. § 7412(d)(6).

36. The Act required EPA to “review, and revise as necessary” the chemical manufacturing area source emission standards no later than October 29, 2017.

37. More than eight years have passed since the promulgation of standards for chemical manufacturing area sources (October 29, 2009).

38. In addition, more than eight years have passed since the date the standards became effective (December 21, 2012).

39. EPA has failed to review and revise the chemical manufacturing area source standards as required by the Act. 42 U.S.C. § 7412(d)(6).

Health Effects of Chemical Manufacturing Area Source Pollution

40. Chemical manufacturing area sources emit a “substantial portion” of the hazardous air pollutants which EPA has “judged to pose the greatest potential threat to public health in the largest number of urban areas.” National Air Toxics Program: The Integrated Urban Strategy, 64 Fed. Reg. at 38,706, 38,721.

41. Chemical manufacturing area sources emit hazardous air pollutants, including metal compounds such as arsenic, cadmium, chromium, lead, manganese, and nickel compounds; organic chemicals such as 1,3-butadiene, 1,3-dichloropropene, acetaldehyde, chloroform, ethylene dichloride, hexachlorobenzene, methylene chloride, quinoline, and ethylene oxide, among other pollutants. 40 C.F.R. Part 63, Subpart VVVVVV, Table 1. Many of these pollutants are carcinogenic, or have other negative health effects, including respiratory, neurological, developmental, and reproductive harm.

42. For example, exposure to lead can cause severe brain and kidney damage in children, as well as anemia in both children and adults. Lead also causes significant neurological harm to developing fetuses.

43. EPA classifies arsenic as carcinogenic, and chronic inhalation can also lead to skin conditions, including chronic dermatitis, conjunctivitis, and pharyngitis.

44. Arsenic and other metals also persist in the human body and in the environment and can cause harm from both inhalation and other pathways of exposure.

45. As an example of some of the serious effects of some of the other hazardous air pollutants, exposure to 1,3-butadiene is known to be particularly harmful. Like many of the other HAPs, this pollutant is known to cause cancer and a range of cardiovascular diseases, and can also cause acute health impacts such as trouble breathing and other serious harm from short-term exposure.

46. Hazardous air pollutants are also particularly harmful to children, pregnant women, and the developing fetus due to a combination of increased vulnerability and exposure.

**Unregulated Ethylene Oxide Emissions from
Chemical Manufacturing Area Sources**

47. EPA classifies ethylene oxide as a known human carcinogen.

48. According to EPA, ethylene oxide exposure can cause lymphoid cancers in males and breast cancer in females. Ethylene oxide emissions also cause other negative health effects, including damage to eyes, skin, respiration, and the nervous system.

49. In 2016, EPA reevaluated the extent of the risk from human exposure to ethylene oxide emissions and determined that ethylene oxide is far more harmful than previously understood – including about 60 times more carcinogenic to children.

50. In 2016, EPA’s toxicology program established a new cancer risk value for ethylene oxide, that EPA’s air office then used to assess the national cancer risk from hazardous air pollution in the 2014 National Air Toxics Assessment.

51. The results of the 2014 National Air Toxics Assessment showed that ethylene oxide contributed to a risk of cancer equal to or greater than 100-in-one million—EPA’s benchmark for “unacceptable risk”¹—in 58 census tracts across the United States. Among these are census tracts where chemical manufacturing area sources are located and where Plaintiffs’ members live, work, and recreate.

52. In 2020 and 2021, EPA’s Office of Inspector General urged EPA on multiple occasions to take action to address the unregulated ethylene oxide emissions from chemical manufacturing area sources.

¹ Plaintiffs have indicated in comments to the agency that its 1989 benchmark for unacceptability is long outdated and that strengthening EPA’s unacceptability policy benchmark is necessary to take into account the sensitivity of children and cumulative harm to people exposed to multiple sources of pollution.

53. In its reports, the Office of Inspector General identified at least 25 facilities in 17 major metropolitan areas across the United States that are significant risk drivers for cancer based on their ethylene oxide emissions. For the census tracts closest to these facilities, cancer risks are equal to or greater than 100-in-one million. Moreover, at least 14 of these plants are in the chemical manufacturing industry, and at least 5 of those 14 plants are chemical manufacturing area sources.

54. The EPA Office of Inspector General's 2021 report highlighted that the emission standards for these chemical manufacturing area sources do not currently regulate ethylene oxide emissions.

55. The 2021 Inspector General report also urged EPA to promptly review and strengthen the chemical manufacturing area source standards, including by regulating ethylene oxide and conducting a residual risk review to ensure that the public is not exposed to unacceptable risks.

56. A 2022 Inspector General report also exposed EPA's longstanding failures to fulfill section 7412(d)(6) deadlines and to prioritize section 7412 review rulemakings.

57. Despite strong new evidence of the dangers of ethylene oxide, including EPA's 2016 cancer risk value and its national air toxics assessment, and despite the fact that chemical manufacturing sources emit significant quantities of ethylene oxide, EPA has thus far failed to regulate ethylene oxide emissions from chemical manufacturing area sources.

58. Chemical manufacturing area sources are therefore currently permitted to emit unregulated amounts of ethylene oxide.

ALLEGATIONS OF INJURY

59. EPA's failure to review, and if necessary revise chemical manufacturing area source standards, as 42 U.S.C. § 7412(d)(6) requires, is harming and will continue to harm Plaintiffs and their members.

60. Chemical manufacturing area sources emit hazardous air pollutants and volatile organic compounds that are known to cause respiratory, neurological, developmental, and reproductive harm, as well as cancer.

61. In addition, EPA currently allows chemical manufacturing area sources to emit ethylene oxide without implementing pollution controls. Ethylene oxide is a highly carcinogenic chemical which also causes damage to the brain and the nervous system.

62. Plaintiffs' members live, work, recreate, and engage in a variety of other activities near chemical manufacturing area sources. Plaintiffs' members have no choice but to breathe the hazardous air pollutants emitted by chemical manufacturing area sources.

63. Plaintiffs' members are concerned about the presence of hazardous air pollutants in the communities where they live, work, recreate, and engage in other activities. As a result of these reasonable concerns about harms stemming from increased exposure to toxic air pollutants, Plaintiffs' members' enjoyment in the activities which they previously enjoyed is significantly diminished. Plaintiffs' members' recreational and aesthetic interests are therefore harmed.²

² Plaintiffs have many members who live, work, or recreate near and who are experiencing current and ongoing injuries due to EPA's failure to complete the overdue rulemaking as alleged here, for example: an 80-year-old woman who lives within one mile of three chemical manufacturing plants regulated under the Chemical Manufacturing Area Source NESHAP; and a 73-year-old woman who lives less than a mile away from an ethylene oxide chemical manufacturing plant.

64. Further, chemical manufacturing area sources emit air pollutants that can harm surrounding wildlife, plants, waters, land, communities, and ecosystems. For example, chemical manufacturing area sources emit volatile organic compounds, which contribute to the build-up of ambient ozone. Ozone harms plant species and causes wildlife avoidance and harm to biodiversity. The harms caused to surrounding ecosystems by emissions from chemical manufacturing area sources also impair Plaintiffs' members' recreational and aesthetic interests.

65. The Administrator's failure to take the actions for chemical manufacturing area sources required by § 7412(d)(6) deprive Plaintiffs' members of the cleaner air that would result from those actions. EPA's inaction prolongs and increases Plaintiffs' members' exposure to higher levels of hazardous air pollutants and volatile organic compounds that harm Plaintiffs' members' health, recreational, and aesthetic interests, as described above. Performing the overdue rulemaking and assuring emission reductions required under § 7412(d)(6) would reduce these exposures, and would reduce the related health, recreational, aesthetic, and other harms suffered by Plaintiffs' members.

66. Additionally, in performing the overdue rulemaking, the Administrator would be required to eliminate an unlawful provision that creates an "affirmative defense to a claim for civil penalties for violations of [the standards] that are caused by malfunction." 40 C.F.R. § 63.11501(e). Removing this provision is required by section 7412(d)(6) and a 2014 decision of the U.S. Court of Appeals for the D.C. Circuit, which held that affirmative defense provisions such as this are unlawful because it exceeds EPA's authority under the Clean Air Act. *Nat. Res. Def. Council v. E.P.A.*, 749 F.3d 1055, 1062 (D.C. Cir. 2014). Removal of this unlawful affirmative defense provision would

help ensure that facilities take steps to control emissions at all times. This would reduce Plaintiffs' members' pollution exposures, and would reduce the related health, recreational, aesthetic, and other harms.

67. Plaintiffs and their members suffer harm because they are denied the opportunity to present written comments, data, documentary information, views, and arguments to EPA and have them considered by the agency and responded to as part of the overdue § 7412(d)(6) rulemaking. The Administrator's failure to conduct the overdue rulemaking has thus denied Plaintiffs and their members the opportunity to seek greater health protections and emissions reductions and to have EPA consider and respond to such comments in taking the final actions required by § 7412(d)(6). This deprivation of the opportunity to present comments and arguments and have them considered and addressed by EPA impairs Plaintiffs' and their members' ability to serve and protect their interests and fulfill their organizational missions.

68. Plaintiffs and their members are also harmed because the Administrator's failure to conduct the overdue rulemaking deprives them of information, including determinations from the Administrator pursuant to section 7412(d)(6) and underlying evidence related to such determinations, such as information regarding the emission limitations existing sources have achieved, the current pollution control methods, practices, and technologies that could be or are being used to achieve emission reductions, the health and environmental risks that remain under the existing standards, and other information EPA would consider and make public during the overdue rulemaking that is relevant to the review and need for stronger emission standards—information to which Plaintiffs and their members are entitled by law. *See,*

e.g., 42 U.S.C. § 7607(d)(3)-(6) (describing documents that must be made “open to public inspection” as part of § 7412 rulemakings).

69. Plaintiffs need this information to advance their organizational purposes, including educating their members and constituents, and working to assure stronger health and environmental protections. Plaintiffs’ members need this information to better understand the operations of and dangers posed by chemical manufacturing facilities near their homes, to take self-protective measures to minimize their exposure to pollutants emitted by chemical manufacturing facilities, and to work for stronger health and environmental protections.

70. For all of the foregoing reasons, the failures complained of herein cause Plaintiffs and their members injuries for which they have no adequate remedy at law. Granting the requested relief and ordering the overdue rulemaking would redress these injuries.

CLAIM FOR RELIEF

71. The allegations of all foregoing paragraphs are hereby incorporated as if set forth fully herein.

Violation of § 7412(d)(6) of the Clean Air Act

72. The Administrator’s failure to review and revise National Emission Standards for Hazardous Air Pollutants for the chemical manufacturing area source category under 40 C.F.R. Part 63, Subpart VVVVVV, within the timeframe required by 42 U.S.C. § 7412(d)(6) constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not discretionary” within the meaning of § 7604(a)(2) of the Clean Air Act.

73. Each day the Administrator fails to take these legally required actions, Defendant commits new, additional, and ongoing violations of his (EPA's) duties under § 7412(d)(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask that the Court:

(1) Declare that EPA's failure to timely review the national emission standards for chemical manufacturing area sources, 40 C.F.R. Part 63, Subpart VVVVVV, and either to revise those standards as necessary, or issue a final determination that such revision is not necessary, as required by section 7412(d)(6) of the Act, 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 APA section 7604(a)(2);

(2) Order the Defendant Administrator to review the national emission standards for chemical manufacturing area sources, 40 C.F.R. Part 63, Subpart VVVVVV, and either to revise the chemical manufacturing area source National Emission Standards for Hazardous Air Pollutants as necessary, or issue a determination that revision is not necessary, in accordance with section 112(d)(6) and pursuant to an expeditious deadline set by this Court;

(3) Retain jurisdiction to ensure compliance with this Court's decree;

(4) Award Plaintiffs the cost of this action, including reasonable attorney fees;

and

(5) Grant such other relief as the Court deems just and proper.

DATED: May 24, 2022

Respectfully submitted,

/s/ Gonzalo Rodriguez
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Emma Cheuse (D.C. Bar No. 488201)
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