EC-G-1998-15

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 15 1983

MEMORANDUM

SUBJECT: Guidance on Use of Section 303 of the Clean Air Act

FROM: Edward E. Reich, Director
Stationary Source Compliance Division

Michael S. Alushin
Acting Associate Enforcement Counsel for Air

TO: Directors, Air Management Divisions
Regions I, V, and IX

Directors, Air and Waste Management Divisions
Regions II-IV, VI-VIII, and X

Regional Counsels
Regions I-X

Attached are two documents regarding procedures to be followed during emergency situations covered by Section 303 of the Clean Air Act. One is the final guideline explaining the statutory requirements of Section 303 and the relief available in a legal action taken under that section. The second is a manual outlining the services that can be provided through the contract mechanism of the Stationary Source Compliance Division of OANR providing technical support in any emergency episode that arises.

After we distributed draft versions of these documents to you last April, we received some comments and have tried to incorporate them into the final guidance being distributed today. Thank you for all the comments we received.

We hope that this guidance will encourage greater use of Section 303. If you have any questions about these materials, please contact Mark Antell at 382-2883 concerning the technical manual or Judy Katz at 382-2843 concerning the legal guidance.

Attachments

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INITIATION OF ADMINISTRATIVE AND CIVIL ACTION
UNDER SECTION 303 OF THE CLEAN AIR ACT
DURING AIR POLLUTION EMERGENCIES

The purpose of this guideline is to explain the statutory requirements and resource needs which must be met in order to take action under Section 303 of the Clean Air Act[1]/ in the event of an air pollution emergency. This guideline is directed towards both meteorological episodes (e.g., thermal inversions)

1/Section 303, as amended in 1977 and codified at 42 U.S.C. Section 7603, reads as follows:

(a) Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that the appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other actions as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator begins an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such orders shall be effective for a period of forty-eight hours or such a longer period as may be authorized by the court pending litigation or thereafter.

(b) Any person who willfully violates, or fails or refuses to comply with, any order issued by the Administrator under subsection (a) of this section may, in an action brought in the appropriate United States District Court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.

involving dangerously high levels of criteria or non-criteria pollutants; situations in which chronic exposure to air pollution causes endangerment by cumulative effect, and incidents involving industrial accidents or malfunctions (e.g., breakdown of pollution control devices) resulting in the release of air pollutants in hazardous concentrations.

STATUTORY PREQUISITES

1. An Imminent and Substantial Endangerment to Health

The threshold prerequisite is the existence of "evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial risk of harm. It should be emphasized that endangerment means a risk or threat to human health, and that EPA should not delay action until actual injury occurs. Such delay would thwart the express intent of the Clean Air Act to protect the nation's air quality in the interest of the public health. Section 303 is a precautionary provision, aimed at the avoidance of potential harm. This is best illustrated by the House Report on the Clean Act Amendments of 1977:

> In retaining the words "imminent and substantial endangerment to the health of persons", the committee intends that the authority of this section not be used where the risk of harm is completely speculative in nature or where the harm threatened is insubstantial. However,... the committee intends that this language be constructed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health. Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing.

H.R. Rep. No. 95-294, 95th Cong., Sess. 328 (1977) (emphasis added).

There is also some judicial opinion supporting an interpretation of the endangerment standard as being merely precautionary, and permitting remedial action prior to the occurrence of any actual harm. In Ethyl Corporation v. Environmental Protection Agency, 541 F.2d 1 (D.C. Cir. 1976), the Court ruled that EPA had properly acted to regulate lead in gasoline upon finding, under Section 211 of the Clean Air Act, that lead emissions would "endanger" as requiring only a finding only a finding that lead emissions presented a "significant risk" of injury to the public. There were no findings of the presence of actual harm. In upholding the Agency's view of the "endanger" standard in Section 211, the Court explained:

> When one is endangered, harm is threatened; no actual injury need ever occur.. A

> statute allowing for regulation in the face of danger is, necessarily, a precautionary statute. Regulatory action may be taken before the threatened harm occurs; indeed, the very existence of such precautionary legislation would seem to demand that regulatory action precede, and, optiomally, prevent, the perceived threat.

541 F.2d at 13. In Reserve Mining Company v. Environmental Protection Agency, 514 F.2d 492 (8th Cir. 1975), the Court had similarly interpreted an endangerment standard in the Federal Water Pollution Control Act in a case involving asbestos discharges into Lake Superior. The court stated that "Congress used the term "endangering" in a precautionary or preventive sense, and, therefore, evidence of potential harm as well as actual harm comes within the purview of that term." 514 F.2d at 528.

An important question for purposes of Section 303 of the Clean Air Act, however, concerns the effect of the modifying phrase "imminent and substantial" upon the meaning of "endangerment." In Reserve Mining, the Court stated that the "term 'endangering'... connotes a lesser risk of harm than the phrase 'imminent and substantial endangerment to the health of persons.'" 514 F.2d at 528. Accord, Ethyl Corporation v. Environmental Protection Agency, 541 F.2d at 20 n.36. This issue is particularly important to EPA's ability under Section 303 to abate suspected carcinogens, the harm from which might take many years to manifest itself.

It is our position that in order to adequately safeguard public health by being in a position to preclude an air pollution emergency at its inception, the phrase "imminent and substantial endangerment" must be interpreted to refer to an imminent and substantial risk of harm, no matter how distant the manifestion of harm may be. If there exists a non-speculative risk of harm, the agency may properly act under Section 303. This is consistent with the legislative history quoted previously, and with the established definition of "endangerment" as referring to the risk of harm, not actual harm itself. This is also consistent with the 1970 Senate Report on Section 303, which states:

> The levels of concentration of air pollution agents or combination of agents which substantially endanger health are levels which should never be reached in any community. When the prediction can reasonably be made that such elevated levels could be reached even for a short period of time--that it is that they are imminent --an emergency action plan should be implemented...

S. Rep. No. 91-1196, 91st Cong., 2d Sess. 36 (1970). Thus, EPA may properly take action to abate air emissions when a substantial risk of harm is about to arise. This is several steps prior to the occurrence of any actual harm, but is appropriate in view of the precautionary nature of Section 303.[2]

This approach is also crucial to the Agency's ability to abate emissions which are believed to be but which are yet not confirmed as dangerous to human health. In United States v. Vertac Chemical Corporation, 489 F. Supp. 870 (E.D. Ark. 1980), the Court found the chemical dioxin, widely believed but not fully proven to be hazardous, to be presenting a "reasonable medical concern over public health" and to be thereby constituting an imminent and substantial endangerment to health under Section 7003 of the Resource Conservation and Recovery Act. Id. at 885. An Agency response under Section 303 of the Clean Air Act would be appropriate in the presence of pollutants reasonably believed to be dangerous to human health. As with regard to any pollutants sought to be abated under Section 303, EPA must be prepared to document the basis of its belief in the danger of these pollutants. If the Agency can show a "reasonable medical concern" created by the suspect emissions, it will have met the "imminent and substantial endangerment" test of Section 303.

Appendix L of the State Implementation Plan regulations (40 CFR Part 51) outlines a phased emission reduction program for air pollution emergencies involving criteria pollutants. In increasing degrees of seriousness, the levels are "alert", "warning", "emergency", and "significant harm to health." The "significant harm to health" levels are levels at which actual injury occurs and are levels that should never be reached. It is not consistent with the intent of the Act for the Regional Offices to wait until the levels of "significant harm to health," specified in 40 CFR 51.16(a), are reached prior to initiating a Section 303 action. The "emergency" level is intended to be the level at which action must be taken to avoid reaching levels of significant harm. Generally speaking, it is at these designated emergency levels that an imminent and substantial endangerment, i.e., an imminent and substantial risk to public health, is deemed to exist. The "warning" and "alert" levels specified in Appendix L are designed to ameliorate situations before the emergency stage by application of moderate controls.

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[2] This permits the Agency to act to seek abatement of emissions reasonably believed to be carcinogenic but for which a harmful level, and the time for harm from such emissions to become apparent, are both uncertain.

Under certain circumstances an imminent and substantial endangerment to health may exist even though the Appendix L emergency levels have not been reached. Accordingly, the concentrations outlined in Appendix L as the "emergency levels" are only to be considered as a guide in determining when an imminent and substantial endangerment to health exists. Flexibility is essential and appropriate action must be taken pursuant to Section 303 whenever it is necessary to prevent the significant harm to health levels from being reached. For example, if review of forecasted meteorological conditions indicate that a situation is likely to deteriorate so rapidly that any action started at the emergency level in Appendix L would come too late to be effective in preventing the significant harm to health level from being reached, the Agency should act at such earlier time as is necessary to allow for enforcement action to be effective. Moreover, emergency conditions can be present even if there is no clear prediction that specified endangerment levels will be reached. An imminent and substantial endangerment to health may exist, for example, where pollutant concentrations lower than established emergency levels occur or are predicted to occur for an extended period of time.

With regard to non-criteria pollutants, sources of information on dangerous concentrations may vary. Among these are standards established by the Occupational Safety and Health Administration (OSHA) for exposure to air pollutants inside the workplace. Although not directly related to ambient air, these standards might provide a starting point for assessing the risk to the public when such pollutants, e.g., various organics, become airborne in a community. Computerized health effects data bases, such as Toxline and Chemline, might also be helpful. (These data bases are run by the National Library of Medicine and may be accessed through the EPA Headquarters or regional office libraries.) It will be necessary to gather scientific and medical data, in addition to meterological data, in order to find an imminent and substantial endangerment to public health as a result of emissions of non-criteria pollutants. The role of experts for this purpose is discussed below.

2. <u>State or Local Authorities Have Not Acted to Abate Pollution Source(s).</u>

A second prequisite to initiating a Section 303 action is that the Administrator receive evidence "that appropriate State or local authorities have not acted to abate such sources." Section 51.16(a) of 40 CFR requires that each State Implementation

Plan for a Priority I region include a contingency plan which, as a minimum, provides for taking any emission control actions necessary to prevent ambient air pollutants concentrations of criteria pollutants from reaching levels which could cause significant harm to the health of persons. More specifically, the State Implementation Plans submitted to the Administrator were: (1) to specify two or more stages of episode criteria; (2) to provide for public announcements whenever any specific stage has been determined to exist; and (3) to specify emission control actions to be taken at each episode stage. (Section 51.16(g) of the Implementation Plan regulations requires that the State Implementation Plans for Priority II regions include, as a minimum, requirements (1) and (2);) Although Section 51.16 addresses only SIP contingency plans for criteria pollutants, the requirement of State or local failure to abate applies also to conditions involving non-criteria pollutants. The issue for purposes of implementing Section 303 is at what point it becomes the duty or the prerogative of EPA to act to abate an air pollution emergency.

Prevention and curtailment of an air pollution emergency is initially the responsibility of State and local governments. EPA has secondary responsibility for taking steps to avert emergency conditions. The Regional Office's initial duty, therefore, is to observe State and local abatement efforts (e.g., monitoring implementation of an emergency episode plan) and to render assistance should a State or locality request it. The Regional Office should take action under Section 303 only if State and local action is either unsuccessful or not forthcoming, as where a State lacks adequate abatement resources or simply refuses to attempt to abate the emergency. Under such circumstances, the Regional Office may assume primary responsibility for curtailing the emergency or, preferably, render technical assistance to the State's abatement efforts.

The time allowed for State and local government to take adequate action prior to EPA's assuming primary responsibility will obviously depend on the nature of the potential or actual emergency. The more the endangerment would be increased by delay, the shorter this lead-time should be. All that is required by Section 303, however, is that State or local action be insufficient to abate or preclude the emergency conditions, and that the appropriate State or local agency be consulted in order to determine what action it intends to take, and whether the information upon which EPA intends to act is accurate. The requirement of consultation should not be viewed as an obstacle to effective action by EPA. As explained in the House Report on the 1977 Clean Air Amendments:

> The consultation requirement is in furtherance of the committee's intent that the Administrator not supplant effective State or local emergency abatement action. However,... if State and local efforts are not forthcoming in timely fashion to abate the hazardous condition, this provision would permit prompt action by the Administrator.

H.R. Rep. 95-294, 95th Cong., 1st Sess. 328 (1977). The consultation requirement is therefore not a concurrence requirement, but rather one of notification and corroboration prior to taking action. The scope of action taken by EPA should be restricted to what is necessary as a supplement to any action taken by State or local authorities, as, e.g., where a State is able to implement only portions of its SIP emergency episode plan, yet further action is needed to curtail the episode.

RELIEF AVAILABLE UNDER SECTION 303

The foregoing statutory prerequisites apply to both the initiation of a civil action to abate an air pollution emergency and to the issuance of an order by the Administrator directly to the source of the hazardous air emissions, demanding a curtailment of those emissions. These two forms of relief--the civil action for an injunction and the administrative order--are briefly discussed below.

1. Injunctive Relief

Section 303 permits the Administrator to seek injunctive relief in a federal district court "upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that the appropriate State or local authorities have not acted to abate such sources..." Pursuant to the Memorandum of Understanding between EPA and the Department of Justice, codified in Section 305 of the Clean Air Act, the action would be filed on behalf of the Administrator by the United States Attorney for the appropriate federal court district. EPA Regional and Headquarters Offices, however, have the responsibility of providing all data and evidentiary material to the Department of Justice.

As will be discussed more fully below, it is essential to a successful civil action that expert testimony be elicited, either in the form of affidavits or through expert appearances at depositions or trial, regarding the risk of harmful effects to the health of persons from exposure to the relevant pollutant. This is especially so in the case of an emergency involving a non-criteria pollutant, the harmful levels or effects of which have not already been established by EPA or other agencies. A diligent effort should be made to obtain evidence, perhaps from citizen complaints or hospital records, that the particular emission sought to be controlled has in fact already caused adverse effects to the health of some individuals. Such evidence, while not essential to a Section 303 action, could be helpful in substantiating an imminent and substantial endangerment. Among the experts to be consulted concerning hazardous pollutants and the presence and extent of any adverse health effects are physicians, epidemiologists, and toxicologists.

In addition, expert meteorological testimony is needed in order to assess the magnitude of hazardous pollutant concentrations and to pinpoint the source of the dangerous emissions, if not already known (as in an area of numerous industrial point sources), and to ascertain the expected

geographical breadth of the emergency, based upon such parameters as current and forecasted wind speed, wind direction, atmospheric stability, temperature, and precipitation.3/ The meteorological expert may also be able to predict the duration of an emergency episode by determining the time which will elapse before changed meteorological conditions might substantially improve the dispersion of the hazardous pollutant concentrations.

Also, experts in industrial processes and pollution controls will be needed in order to explain to a court the nature of the polluting process and what abatement options are available, e.g., plant shutdown versus reduced production. In any action for an injunction, a court can be expected to provide no more relief than is necessary, and place as light a burden as possible on the emitting source, in providing for effective curtailment of the air pollution emergency. The industrial expert will thus play a crucial role in the shaping of judicial relief in a Section 303 action.

This testimony--medical, scientific, meteorological, and technical--is essential to prevailing in a Section 303 suit. The burden of proof will be on the Government, which must show by a preponderance of the evidence that the defendant is the source of air pollutants which, by their very nature or because of existing meteorological conditions, have caused harm to individuals or are presenting an imminent and substantial risk of such harm. In order to assure the credibility of this testimony, sampling personnel should be prepared to testify to the reliability and quality assurance of the air samples evaluated by the experts.

The procedure for seeking an injunction are set forth in the Federal Rules of Civil Procedure, Rule 65 (copy attached). In the event that immediate relief is needed, Rule 65 provides for temporary injunctive relief in the form of a preliminary injunction which can be obtained from a federal district court, after a hearing, in order to reduce further emissions of the suspect pollutant below emergency levels until a full trial can be held. The government should be prepared to have its experts testify in court if preliminary or permanent injunction is sought.

3/ Atomospheric stability refers the degree of turbulence in the atmosphere.

The following should be kept in mind as elements of proof necessary to obtaining a preliminary injunction:

1. Absent immediate injunctive relief, irreparable harm will be caused by the polluting source(s); 2) this harm would outweigh any harm to the source(s) from the granting of relief requiring the source(s) to abate emissions; 3) the risk to public health is sufficient to make success on the merits and the granting of a permanent injunction likely; and 4) the public interest necessitates immediate relief. See 7-pt. 2 Moores Federal Practice para, 65.04 (1980); See also United States v. Midwest Solvent Recovery, Inc., 484 F. Supp. 138. 144 (N.D. Ind. 1980).

In addition, Rule 65 provides for injunctive relief in the form of ten-day temporary restraining order (TRO), which can be granted without a hearing while a motion for preliminary injunction is prepared.4/ Expert testimony in the form of affidavit should suffice for the purpose of obtaining a TRO.

The proof necessary to obtain a TRO is that immediate and irreparable injury will occur if injunctive relief is withheld until the defendant can be given notice and an opportunity to appear. Rule 65 implies that a hearing on a motion for preliminary injunction should take place as soon as possible after the granting of a TRO. Id., Para. 65.05-65.08; see also 4 West's Federal Forms $5297 (1970).

2. Administrative Order

Prior to the 1977 Clean Air Act Amendments, the only method of enforcement provided in Section 303 was injunctive relief from a federal district court upon a showing of imminent and substantial endangerment from air pollutant emissions. The 1977 Amendments left this authority in place and added a provision authorizing the Administrator to issue an order to a source to take steps to curtail its emissions in the event "it is not practicable to assure prompt protection of the health of persons solely by commencement of... a civil action." Within twenty-four

4/ Only once has a TRO been requested under Section 303. The incident occurred in 1971, in Birmingham, Ala. After local efforts to curtail emissions from several sources failed, a TRO was requested and granted under Section 303, requiring various process modifications and cessations.

hours of issuing the order, however, the Administrator must file a suit for injunctive relief, or the order will expire. Upon such filing, the court may then extend the life of the order pending litigation. Violation of the order may be penalized up to $5,000 per day per violation. This penalty may be sought in a civil action brought to enforce the order.5/ Also in such an action, a source may challenge the Administrator's basis for issuing the order.

This administrative order mechanism was intended by Congress to enhance EPA's emergency response capability even beyond that provided by the TRO process previously discussed. As explained in the 1977 House Report:

> Even more prompt action may be necessary where pollution levels exceed the never to be exceeded levels without prior forecast that this may occur... The committee bill reflects the committee's determination to confer completely adequate authority <u>to deal promptly</u> and effectively with emergency situations which jeopardize the health of persons. Thus, the section provides that if it is not practicable to assure prompt protection of health solely by commencement of a civil action, the Administrator may issue such orders as may be necessary for this purpose.

H.R. Rep. No.95-294, 95th Cong., 1st Sess. 327-28 (1977) (emphasis added). The administrative order is thus an available enforcement mechanism in those instances where even a TRO might be issued too late to effectively curtail an endangerment to public health. Such situations might be those involving emissions that are hazardous even in very limited duration of exposure, rendering a TRO too late to be fully effective, or situations which, although potentially quite harmful, are expected to be of very short duration, such that the emissions would cease before the TRO could issue (e.g., the demolition of an asbestos-lined building). In such situations, the time required to gather the expert evidence in support of a TRO might defeat efforts to avert adverse public health effects, absent a more immediate enforcement mechanism.

5/ This is analagous to the provision in Section 113(b) of the Clean Air Act for a civil action to enforce, and seek penalties for violation of, an order issued under Section 113(a) to comply with emission limitations.

The administrative order is just such a mechanism. Expert testimony is not required for issuance of an administrative order. What is needed, however, is evidence which reasonably leads the Administrator to believe that certain air emissions from particular sources are creating an imminent and substantial endangerment to public health. This evidence might be in the form of emissions data combined with adverse meteorological reports and medical bulletins. Provided the informal consultation requirement has been met, the Administrator may issue an order calling for abatement of emissions by whatever means the Administrator determines are necessary under the circumstances of the case. Because of the potential adverse economic impact of such an order upon the source, the order should require no more than what is clearly necessary to curtailing hazardous emissions. The fact that the order may only last twenty-four hours, during which time a TRO application and civil suit can feasibly be filed, and that the basis of the order may be challenged by any source subject to it in a proceeding to enforce the order, are indicative of Congress' intent that the order be immediately available although not necessarily supported by the best possible expert credible evidence.

Note that the administrative order may also be used to require additional sampling or monitoring by the suspected source with a view towards abating its emissions. This additional data can then by utilized in a subsequent civil action, if such an action is necessary to abatement. Additional sampling and monitoring may also be required of a source through the use of Section 114 of the Clean Air Act Act. Section 113(a)(3) permits EPA to issue an order to a source if its fails to comply with a requirement of 114. Such an order is not effective until the person to whom it is issued has had an opportunity to confer with EPA.

Thus, Section 114 provides a mechanism for requiring source sampling and monitoring with a much lower standard of proof of violation than that required by Section 303. EPA may issue an order requiring sampling and monitoring under Section 114 for the purpose "(i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this Act..." This is contrasted with the requirement under section 303 that EPA have evidence that a source "is presenting an imminent and subtantial endangerment to the health of persons, and that appropriate State or local auhorities have not acted to abate such sources." However,

while the standard for issuing a 114 order is lower, a 114 testing order takes longer to enforce because it must be enforced by the issuance of a 113(a)(3) order after the source has been offered an opportunity to confer.

Delegations for Issuing Administrative Orders and Judicial Complaints Under Section 303

I. Administrative Orders

Pursuant to Delegation 7-49, authority to issue administrative orders under Section 303 rests with the Regional Administrators and the Assistant Administrator for Air, Noise, and Radiation. The Regional Administrators must consult with the Associate Enforcement Counsel for Air before issuing such orders. The Assistant Administrator for Air, Noise and Radiation must consult in advance with the Associate Enforcement Counsel for Air and notify any affected Regional Administrator or their designees before issuing orders. Because speed is of the essence in issuing administrative orders under Section 303, the Headquarters concurrences can be issued by telephone and followed up later in writing.

II. Referral of Civil Actions for Injunctive Relief

Pursuant to Delegation 7-22-A, all referrals to the Department of Justice of requests for civil actions for emergency TRO's must be made by the Special Counsel for Enforcement. The Special Counsel for Enforcement must notify the Assistant Administrator for Air, Noise and Radiation and the appropriate Regional Administrator when a case is referred to the Department of Justice.

FORMS FOR OBTAINING INJUNCTIVE RELIEF

MOTION FOR TEMPORARY RESTRAINING ORDER

The United States of America, by its undersigned attorneys, by authorization of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency, moves that this Court, in order to prevent irreparable injury to the United States and its citizens, enter immediately an order to restrain temporarily the defendatns set for thi n the compalint from discharging excessive (pollutant) into the ambient air pending action by this Court on te complaint filed this day by the United States in this cause, and in support of the motion, states:

Defendants are discharging from their plants and/or installations at (city, state) _____, substantial amounts of (pollutant) , into the ambient air. Such discharges (in combination with adverse weather conditions) have caused or are contributing to, concentrations of (pollutant), in the ambient air exceedings a level of (number) (units) of (pollutant . This level presents an imminent and substantial endangerment to the health of persons.

The appropriate state and local authorities have diligently attempted to decrease the level of contamination in the atmosphere. However, defendants continue to discharge (pollutant into the ambient atmosphere causing imminent and substantial endangerment to the health of persons.

The presense of such levels of (pollutant is a present and continuing danger to human health. Unless the discharges of (pollutant are immediately restrained, the health of people in the area will continue to suffer immediate and irreparable harm.

Plaintiff further moves for said Temporary Restraining Order to be issued forthwith and without notice, on the ground that the discharge constitute and imminent and substantial endangerment to the health of persons.

Therefore, in view of the immediate danger to public health that the defendants are contributing to by the release of (pollutants) into the ambient air, plaintiff prays that the Court enter a temporary restraining order immediately.

Respectfully submitted,

Assistant Attorney General

United States Attorney

By (signature)

Assistant United States Attorney

(signature)

Attorney
Department of Justice
Washington, D.C. 20530
Attorneys for Plaintiff

TEMPORARY RESTRAINING ORDER

This cause came to be heard on the motion of plaintiff, upon the complaint herein and affidavits attached thereto, for a temporary restraining order; and, it appearing to the court therefrom that immediate and irreparable injury, loss and damage will result to the plaintiff before notice can be given and the defendant or his attorney can be heard in opposition to the granting of a temporary restraining order for the reason that continued levels of pollution by (pollutant) will cause irreparble damage to the health of persons, it is

ORDERED, that defendants set out in the complaint filed herein, their agents, servants, employees and attorneys and all persons in active concert or participation with them are hereby restrained from causing or contributing the alledged pollution and each defendant separately must take the following action:

(List each defendant separately and state what immediate action that defendant must take).

ORDERED, that this order expire within 10 days after entry, unless within said time it is for good cause shown extended for a longer period, and it is further

ORDERED, that plaintiff's complaint be set for hearing on preliminary injunction on (date) at (time) of that day or as soon thereafter as counsel can be heard, in the United States District courtroom in the City of _____, State of _____.

This order issued at city, state, this _____ day of (month), (year).

_____
United States District Judge

COMPLAINT
(for Civil Action)

The United States of America, by its undersigned attorneys and by authority of the Attorney General alleges that:

1. This is a civil action to enjoin the above names defendant(s) from discharging any (pollutant) into the ambient atmosphere from their manufacturing operations in the (city, state) area. Such discharges contribute to the imminent and substantial endangerment to the health of persons as determined by the Administrator of the Environmental Protection Agency. Authority to bring this action is in the Department of Justice by 42 USC 7605.

2. This court has jurisdiction of the subject matter of this action pursuant to 28 USC 1345.

3. Defendant(s) are corporations doing business in (city,) state) within the _____ District of (Federal district court).

4. During normal operation of the defendants' plants the defendants discharge (pollutant) into the ambient air.

5. The Administrator of the Environmental Protection Agency has received evidence that a combination of pollution sources, including the defendant's plants, are presenting an imminent and substantial endangerment to the health of persons of discharging matter into the ambient air.

6. The appropriate State and local authorities have diligently attempted to decrease the level of contamination in the atmosphere. However, the various sources emitting (pollutant) in significant quantities, including the defendants plants, continue to discharge (pollutant)into the ambient atmosphere to levels that cause significant harm to the health of human beings.

7. The average (pollutant) level in the ambient air for the past forty-eight (48) hours is approximately (number) (units) Such levels for such periods of time are harmful to the health of human beings.

8. The discharges of matter by the defendants should be eliminated pursuant to Section 303 of the Clean Air act which provides:

> (a) Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted at abate such sources, may bring
>
> on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.
>
> (b) Any person who will fully violated or fails or refuses to comply with, any order issued by the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.

9. The continuous emission of (pollutant) into the ambient air by the defendants contributes to the present situation which, if allowed to continue, will cause significant harm to the health of persons in the <u>city</u> ____ area.

10. The United States of America and its citizens will suffer immediate and irreparable harm to their health unless the defendants are immediately restrained from discharging (pollutant) into.

WHEREFORE, THE UNITED STATES PRAYS:

a. That the defendants, their officiers, directors, agents, servants, employees, attorneys, successors, and assigns, and each of them cease the discharge of (pollutant) into the ambient air in a manner prescribed by this Court and not discharge such matter thereafter unless pursuant to instruction to do so from this Court.

b. That costs and disbursements of this action be awarded to the plaintiff; and

c. That this Court grant such other and further relief as it seem just and proper.

(no signature necessary)
Assistant Attorney General

(no signature necessary)
United States Attorney

By _____
Assistant United States Attorney

_____
Attorney, Department of Justice
Washington, D.C. 20530

Attorneys for Plaintiff

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION

(Address)

IN THE MATTER OF (source)	)	
	)	DOCKET NO (_____)
PROCEEDINGS PURSUANT TO SECTION 303 OF THE CLEAN AIR ACT, AS AMENDED, 42 U.S.C. §7401 *et seq.*, 42 U.S.C. §7603	)	

The Regional Administrator for Region (___) of the United States Environmental Protection Agency (EPA) makes the following Findings of Fact, reaches the following Conclusion of Law and Issues the following Order:

FINDINGS OF FACT

1. The Administrator of EPA his delegated the authority vested in him by Section 303 of the Clean Air Act (the Act) as amended, 42 U.S.C. §7401 *et seq.*, 42 U.S.C. §7603, to the Regional Administrator for Region (____).

2. Section 303 of the Act, 42 U.S.C. §7603 provides that, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons and that appropriate State or local authorities have not acted to abate such sources, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source or sources.

3. Defendants are discharging from their plants and/or installations at (city/state), substantial amounts of (pollutant), into the ambient air. Such discharges (in combination with adverse weather conditions) have caused or are contributing to, concentrations of (pollutant)), in the ambient air exceeding a level of (number) (units) of (pollutant). This level presents an imminent and substantial endangerment to the health of persons.

4. (source) is a source which is presenting an imminent and substantial endangerment to the health of persons.

5. (state) and (local jurisdiction)) authorities have not acted to abate (list sources).

OR

(state) and (local jurisdiction)) authorities have dililently attempted to decrease the level of contamination in the atmosphere. However, defendants continue to discharge (pollutant) into the ambient atmosphere causing imminent and substantial endangerment to the health of persons.

CONCLUSION OF LAW

1. The Regional Administrator for Region (_) (The Regional Administrator, is vested with the authority of the Administrator under Section 303 of the Act, 42 U.S.C. §7603.

2. (Source(s) have been found by the Regional Administrator to be presenting an imminent and substantial endangerment to the health of persons and to be an appropriate subject for the issuance of an order under Section 303 of the Act.

ORDER

The Regional Administrator for Region (__) hereby orders that defendants set out in this order, their agents, servants, employees and attorneys and all persons in active concert or participation with them are hereby ordered to refrain from causing or contributing to levels of pollution that will cause irreparble damage to the health of persons and each defendant separately must take the following action:

1. (List each defendant separately and state what immediate action that defendant must take.)

2. This order shall be effective for a period of not more than twenty-four hours unless the Regional Administrator files a civil action on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other actions as may be necessary.

3. This Order is effective immediately upon receipt by defendants. The Regional Administrator for Region (___) hereby issues the above-identified Order which shall become effective as provided therein.

_____ date

_____ Regional Administrator