

Sept. 17, 2021

Mr. Michael Regan
Administrator
Environmental Protection Agency
1101A EPA Headquarters
1200 Pennsylvania Avenue, NW
Washington D.C. 20460

Via Certified Mail

RE: Notice of Intent to Bring Citizen Suit Concerning Clean Air Act Deadlines for the National Emission Standards for Hazardous Air Pollutants (“NESHAP”): Group I Polymers and Resins, 40 C.F.R. Part 63 Subpart U

Dear Administrator Regan,

This is a notice of “a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” under section 304 of the Clean Air Act (“the Act”). 42 U.S.C. § 7604(a)(2). This notice is provided to you as Administrator of the U.S. Environmental Protection Agency (“EPA”) in your official capacity, pursuant to 42 U.S.C. § 7604(a)(2) and 40 C.F.R. Part 54, as a prerequisite to bringing a civil action.

The following organizations provide the notice included in this letter: Concerned Citizens of St. John, Reserve, Louisiana, 389 East 26th Street, Reserve, LA 70084; Louisiana Environmental Action Network, 162 Croydon Avenue, Baton Rouge, LA 70806; Sierra Club, 2101 Webster St., Ste. 1300, Oakland, CA 94612. As discussed below, EPA has failed to perform long overdue reviews and rulemakings for Group I Polymers and Resins source categories pursuant to section 112 of the Clean Air Act. *Id.* § 7412.

This letter provides notice of intent to sue and compel EPA to complete long overdue rulemakings pursuant to section 112 of the Clean Air Act for Group I Polymers and Resins. These rulemakings are urgently needed to protect public health and the environment.

EPA is overdue on conducting a review and rulemaking of the emission standards for Group I Polymers and Resins pursuant to section 112(d)(6) of the Clean Air Act.

Section 112(d)(6) of the Clean Air Act requires EPA to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [section 112] no less often than every 8 years.” *Id.* § 7412(d)(6).

EPA first promulgated the National Emission Standards for Group I Polymers and Resins in 1996. National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, 61 Fed. Reg. 46,906 (Sept. 5, 1996) (codified at 40 CFR part 63, subpart U). This standard applies to major sources of hazardous air pollutant emissions in nine source categories:

Neoprene Production, Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, HypalonTM Production, Nitrile Butadiene Rubber (“NBR”) Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production.¹

More than eight years (actually more than ten) have passed since EPA conducted a section 112(d)(6) review and rulemaking for Group I Polymers and Resins, 40 C.F.R. Part 63 Subpart U. In 2008, EPA conducted a section 112(d)(6) review and readopted standards for four Group I Polymers and Resins source categories: Neoprene Production, Polysulfide Rubber Production, Ethylene Propylene Rubber Production, and Butyl Rubber Production. National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, 73 Fed. Reg. 76,220 (Dec. 16, 2008). EPA was due to conduct a new section 112(d)(6) review for these source categories by December 16, 2016. 42 U.S.C. § 7412(d)(6).

In 2011, EPA conducted a section 112(d)(6) review and readopted standards for the following Group I Polymers and Resins source categories: Epichlorohydrin Elastomers Production, Polybutadiene Rubber Production, Styrene Butadiene Rubber and Latex Production, and NBR Production.² National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, 76 Fed. Reg. 22,566 (Apr. 21, 2011). EPA was due to conduct a new section 112(d)(6) review for these source categories by April 21, 2019. 42 U.S.C. § 7412(d)(6).

In its failure to review and revise, as necessary, 40 C.F.R. Part 63 Subpart U by the above deadlines, EPA has failed to perform a nondiscretionary duty within the meaning of section 304 of the Clean Air Act. 42 U.S.C. § 7604(a)(2). Accordingly, EPA violated and is in ongoing violation of the Act as of its final action deadlines of December 16, 2016, for Neoprene Production, Polysulfide Rubber Production, Ethylene Propylene Rubber Production, and Butyl Rubber Production, and April 21, 2019, for Epichlorohydrin Elastomers Production, Polybutadiene Rubber Production, Styrene Butadiene Rubber and Latex Production, and NBR Production.

¹EPA, *Group I Polymers and Resins: National Emission Standards for Hazardous Air Pollutants (NESHAP)*, <https://www.epa.gov/stationary-sources-air-pollution/group-i-polymers-and-resins-national-emission-standards-hazardous> (last visited Aug. 23, 2021); *National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, Final rule*, 76 Fed. Reg. 22,566 (Apr. 21, 2011).

² In this rulemaking, EPA also conducted a section 112(d)(6) review of HypalonTM Production. Because there are no longer any operating facilities in the United States that produce HypalonTM, and EPA does not anticipate that any will begin operation in the future, we do not address it in this letter. *See* 76 Fed. Reg. at 22,569 n.3.

EPA is overdue on conducting a health and environmental risk review and rulemaking of the emission standards for multiple Group I Polymers and Resins source categories pursuant to section 112(f)(2) of the Clean Air Act.

Section 112(f)(2) of the Clean Air Act requires that:

(A) . . . [T]he Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to [section 112(d)], promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. . . .

If standards promulgated pursuant to [section 112(d)] and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for this source category.

. . .

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under [section 112(d)] for each source category or subcategory concerned.

42 U.S.C. § 7412(f)(2).

Thus, the promulgation of emission standards under section 112(d) triggers a non-discretionary duty under section 112(f) to review the health and environmental risk still posed by hazardous air pollutants emitted by a source category. *Id.* Based on the risk review, EPA must set more stringent standards for a given category to remove all unacceptable health risks and “to provide an ample margin of safety to protect public health . . . or to prevent . . . an adverse environmental effect.” *Id.*

EPA has failed to perform a section 112(f)(2) review and rulemaking for Neoprene Production that satisfies the Act. In a 2008 rulemaking, EPA stated that it performed reviews under Clean Air Act sections 112(d) and 112(f)(2) for multiple Group I Polymers and Resins source categories, including Neoprene Production, Polysulfide Rubber Production, Ethylene Propylene Rubber Production, and Butyl Rubber Production. 73 Fed. Reg. 76,220. The agency stated that it determined that no revision of the standards was necessary. *Id.* However, EPA failed to perform an adequate section 112(f)(2) review rulemaking for Neoprene Production. EPA assumed that the cancer risk from chloroprene was zero without assessing it and wrongly

concluded that it was not a possible human carcinogen.³ Section 112(f)(2) requires EPA to promulgate standards that “provide an ample margin of safety to protect public health,” and EPA cannot determine the impact of chloroprene emissions on public health without assessing its cancer risk. 42 U.S.C. § 7412(f)(2).

EPA is also overdue for a section 112(f)(2) review and rulemaking for Neoprene Production, Ethylene Propylene Rubber Production, Epichlorohydrin Elastomers Production, NBR Production, and Butyl Rubber Production source categories because over eight years have passed since it promulgated standards under section 112(d). *Id.* In a 2011 rulemaking, EPA established new MACT standards pursuant to section 112(d)(2) and (3) of the Clean Air Act for previously unregulated emissions from front-end process vents in the Butyl Rubber Production and Ethylene Propylene Rubber Production source categories and back-end processes in the Epichlorohydrin Elastomers Production, NBR Production, Neoprene Production, and Butyl Rubber Production source categories.⁴ This section 112(d) promulgation triggered EPA’s duty to complete a section 112(f)(2) health and environmental risk review and rulemaking of these source categories within eight years, *i.e.*, by April 21, 2019. *Id.* § 7412(f)(2)(A). As EPA has not performed a section 112(f)(2) review within eight years of promulgating section 112(d) standards for Neoprene Production, Ethylene Propylene Rubber Production, Epichlorohydrin Elastomers Production, NBR Production, and Butyl Rubber Production, EPA has failed to perform a nondiscretionary duty within the meaning of Clean Air Act section 304. *Id.* § 7604(a)(2). Accordingly, EPA has violated and is in continuing violation of the Clean Air Act.

EPA’s violations of the Clean Air Act are causing and contributing to hazardous air pollution around the United States, including a health emergency in St. John the Baptist Parish, Louisiana.

EPA’s failure to conduct timely section 112(d)(6) and (f)(2) reviews and rulemakings for Group I Polymers and Resins harms fence-line communities near about 25 active Group I Polymers and Resins facilities in the United States, specifically in Louisiana, Kentucky, Texas, New York, Connecticut, California, Ohio, Michigan, Georgia, and Mississippi.⁵ Nine of these facilities are located in Louisiana.⁶

Due to EPA’s failure to act, residents in and around St. John the Baptist Parish, Louisiana in particular face a health emergency due to dangerous levels of toxic air pollution, including pollution from the only Neoprene Production unit in the country, currently owned by Denka Performance Elastomer (“Denka”). Residents of St. John the Baptist Parish are predominantly Black and live in a heavily industrialized area between New Orleans and Baton Rouge long

³ 73 Fed. Reg. at 76,225; EPA, *Residual Risk Assessment for Eight Source Categories* 32-34 (Aug. 2008), <https://www.regulations.gov/document/EPA-HQ-OAR-2007-0211-0024> (stating that no available carcinogen dose-response assessments for inhalation exposure exist to assess cancer risk, listing maximum individual lifetime cancer risk for chloroprene as “--a”, and stating that chloroprene is not a known, probable, or possible human carcinogen).

⁴ See 76 Fed. Reg. at 22,569-70; 75 Fed. Reg. 65,068, 65,074, 65,075, 65,106 (proposed Oct. 21, 2010) (citing 42 U.S.C. § 7412(d)(2) and (3) as authority for proposing MACT standards for previously unregulated emission points).

⁵ *Group I Polymers and Resins Facilities*, downloaded from <https://echo.epa.gov/facilities/facility-search/results> (by searching for active facilities covered by MACT Subpart U).

⁶ *Id.*

known as “Cancer Alley.”⁷ They are surrounded by petrochemical plants, oil refineries, and other chemical facilities.

Neoprene production emits multiple hazardous air pollutants (“HAPs”), including chloroprene, hydrogen chloride, toluene, and 1,3-butadiene.⁸ In a 2010 Integrated Risk Information System (“IRIS”) assessment, EPA concluded that chloroprene “is likely to be carcinogenic to humans” and determined that chloroprene levels of 0.002 µg/m³ are attributable to a cancer risk of 1-in-1 million.⁹ EPA also concluded that chloroprene, in addition to contributing to cancer risk from air pollution, can increase the threat of numerous other adverse health effects, including “a range of nasal, thoracic, and systemic noncancer effects.”¹⁰ The IRIS assessment cited to studies concluding that chloroprene has been reported to cause a range of other health problems—including dizziness, headache, insomnia, fatigue, and others—as well as damage to the nervous, cardiovascular, and hematological systems.¹¹

EPA’s most recent National Air Toxics Assessment, based on data from 2014 and released in 2018 (“2014 NATA”), found that St. John residents face a cancer risk as high as 1,505-in-1 million—the highest cancer risk in the nation from air pollution—due to toxic air pollutant emissions from nearby industrial sources including the neoprene production facility.¹² EPA attributes 85% (1,279 per million people) of the cancer risk from air pollution in census tract 708 to chloroprene emissions, 12% (187 per million people) to ethylene oxide emissions, and 3% (38 per million people) to all other pollutants.¹³ Localized data also show that living closer to the plant increases the likelihood of other health effects, including respiratory and neurological issues.¹⁴

Each day that passes worsens the impact of EPA’s continuing Clean Air Act violations as community members suffer the consequences of exposure to high levels of toxic air pollution from Group I Polymers and Resins sources, including the neoprene production facility. Since the

⁷ Tristan Baurick et al., *Polluter’s Paradise: Welcome to “Cancer Alley,” Where Toxic Air Is About to Get Worse*, PROPUBLICA (Oct. 30, 2019), <https://www.propublica.org/article/welcome-to-cancer-alley-where-toxic-air-is-about-to-get-worse>.

⁸ EPA, *Detailed Facility Report*, <https://echo.epa.gov/detailed-facility-report?fid=110067396669> (last visited Sept. 13, 2021); EPA, *Residual Risk Assessment for Eight Source Categories 32* (Aug. 2008), <https://www.regulations.gov/document/EPA-HQ-OAR-2007-0211-0037>.

⁹ EPA, *Toxicological Review of Chloroprene In Support of Summary Information on the Integrated Risk Information System (IRIS)*, EPA/635/R-09/010F at 97, 138 (Sept. 2010), <https://iris.epa.gov/static/pdfs/1021tr.pdf> (“2010 IRIS”); Memo from Kelly Rimer, Leader, Air Toxics Assessment Group, Health & Env’t Impacts Div., OAQPS, to Frances Verhalen, P.E., Chief, Air Monitoring/Grants Section, EPA Region 6, Re: Preliminary Risk-Based Concentration Value for Chloroprene in Ambient Air (May 5, 2016), <https://www.epa.gov/sites/default/files/2016-06/documents/memo-prelim-risk-based-concentrations050516.pdf>.

¹⁰ See EPA, *IRIS Chemical Assessment Summary – Chloroprene* at 5 (Sept. 2010), https://iris.epa.gov/static/pdfs/1021_summary.pdf (“2010 IRIS Summary”).

¹¹ *Id.* at 5.

¹² See EPA, *2014 National Air Toxics Assessment* (Aug. 22, 2018), <https://gispub.epa.gov/NATA/> (“2014 NATA”); Sharon Lerner, *A Tale of Two Toxic Cities*, THE INTERCEPT (Feb. 24, 2019), <https://theintercept.com/2019/02/24/epa-response-air-pollution-crisis-toxic-racial-divide/>.

¹³ 2014 NATA, *supra* note 2612.

¹⁴ Ruhan Nagra et al., “Waiting to Die”: Toxic Emissions and Disease Near the Denka Performance Elastomer Neoprene Facility in Louisiana’s Cancer Alley, 14 ENVIRONMENTAL JUSTICE at 14, 22 (Feb. 2021), <https://www.liebertpub.com/doi/abs/10.1089/env.2020.0056>.

COVID-19 pandemic began over a year ago, St. John residents have faced a new devastating effect of exposure to toxic air pollution: increased vulnerability to mortality from COVID-19.¹⁵ Early in the COVID-19 pandemic, St. John the Baptist Parish had the highest COVID-19 death rate per capita in the United States.¹⁶

EPA must act expeditiously to fulfill its legal responsibilities and exercise its full authority to protect public health in a new Group I Polymers and Resins rulemaking.

In 2016, EPA created an Action Plan to protect community health in St. John and began fence-line monitoring.¹⁷ But EPA has since failed to fulfill its Action Plan or protect St. John residents from toxic air pollution. On May 6, 2021, Concerned Citizens of St. John submitted a petition to EPA calling for the agency to end this health emergency, including by performing a new rulemaking under Clean Air Act section 112(d)(6) and 112(f)(2).¹⁸ This petition provided advance notice of the violations discussed in this notice letter. On June 7, 2021, EPA responded to the petition with a letter stating it would “be considering use of all relevant Clean Air Act authorities available to achieve further emission reductions and health protections for the citizens of St. John the Baptist Parish” but did not provide information on whether or when EPA would complete a new rulemaking.¹⁹

On June 15, 2021, EPA submitted an information collection request to Denka under Clean Air Act section 114, requiring submission of information about its emissions, including fence-line monitoring to EPA’s air and enforcement offices.²⁰ It is unclear when EPA will receive this information or when it will release this information to the public.

The undersigned parties appreciate the steps that EPA has recently taken and call for EPA to move as quickly as possible to begin and complete the overdue Clean Air Act rulemakings. The Clean Air Act requires EPA to revise the emission standards as necessary (including to

¹⁵ See Michael Petroni et al., *Hazardous air pollutant exposure as a contributing factor to COVID-19 mortality in the United States*, 15 ENVIRONMENTAL RESEARCH LETTERS (Sept. 11, 2020), <https://iopscience.iop.org/article/10.1088/1748-9326/abaf86/pdf> (finding increased mortality from COVID-19 linked with exposure to hazardous air pollution); Sara Sneath, *Louisiana’s river region residents seek scrutiny of pollution’s role in coronavirus deaths*, THE NEW ORLEANS ADVOCATE (Apr. 16, 2020), https://www.nola.com/news/coronavirus/article_773badc2-7a6c-11ea-bb14-d325aeeceb71.html.

¹⁶ Ashley Killough and Ed Lavandera, *This small Louisiana parish has the highest death rate per capita for coronavirus in the country*, CNN.COM (Apr. 16, 2020), <https://www.cnn.com/2020/04/15/us/louisiana-st-john-the-baptist-coronavirus/index.html>.

¹⁷ EPA, *Action Plan* (June 2016),

<https://www.epa.gov/sites/production/files/2016-06/documents/epa-laplace-action-plan.pdf>.

¹⁸ Petition to EPA for Emergency Action and Rulemaking from Concerned Citizens of St. John (May 6, 2021), https://earthjustice.org/sites/default/files/files/ccsj_petition_for_emergency_action_petition_for_rulemaking_05-06-2021_1.pdf.

¹⁹ Letter from Joseph Goffman, Acting Assistant Administrator, Office of Air and Radiation, to Emma Cheuse, Senior Attorney, Earthjustice (June 7, 2021) (attached).

²⁰ Letter from Penny Lassiter, Office of Air Quality Planning and Standards, EPA and Evan Belser, Office of Civil Enforcement, EPA, to Jorge Lavastida, Executive Officer and Plant Manager, Denka Performance Elastomer, LLC, Re: Clean Air Act Information Request for Denka Performance Elastomer, LLC Facility in LaPlace, Louisiana (June 15, 2021), <https://edms.deq.louisiana.gov/app/doc/recaptcha?previousUrl=https://edms.deq.louisiana.gov/app/doc/view?doc=12754954>; 42 U.S.C. § 7414.

account for developments), and to assure “an ample margin of safety to protect public health.” 42 U.S.C. § 7412(f)(2).

Notably, EPA’s Office of Inspector General (“OIG”) has similarly called for EPA to conduct a new section 112(d)(6) and 112(f)(2) residual risk and technology review for Group I Polymers and Resins to protect human health from toxic air pollution, including chloroprene, and to advance environmental justice.²¹ In responses to the OIG’s Report, the Office of Air and Radiation (“OAR”) stated that it planned to perform a rulemaking for Group I Polymers and Resins (Neoprene) for “draft completion” by Quarter 2, Fiscal Year 2024²² and that EPA was evaluating “options to reduce risk.”²³ Commenting on the OAR’s response to the report, the OIG stated that its recommendations were unresolved, in part because OAR did not commit to conducting a new residual risk review for Group I Polymers and Resins.²⁴ EPA has not yet committed to assessing health risk or assuring an ample margin of safety to protect public health from these source categories, nor has it committed to doing so expeditiously. The final rule date of 2024 that it stated to the OIG is three years away. The rulemakings at issue are already years overdue.

The rulemakings the OIG has advised EPA to perform and that this notice letter addresses are essential to reduce toxic air pollution, including chloroprene, from Group I Polymers and Resins sources. When EPA performs the overdue rulemakings, sections 112(f)(2) and 112(d)(6) will require EPA to strengthen the emission standards for several reasons, including: (1) new evidence on the carcinogenicity of chloroprene, (2) new science on assessing health risk, and (3) new court precedent.

First, new evidence on the carcinogenicity of chloroprene has emerged since EPA assessed health risks from Neoprene Production in 2008. 73 Fed. Reg. 76, 220. EPA issued a potent IRIS cancer risk value for chloroprene in 2010, upon finding that it is carcinogenic.²⁵ New evidence has also emerged since EPA’s 2011 rulemaking. EPA’s 2014 NATA found that cancer risks in St. John the Baptist Parish, Louisiana are as high as 1,505-in-1 million and that this heightened risk is driven primarily by chloroprene and ethylene oxide emissions.²⁶

Second, new health science has evolved since EPA’s last section 112(f) reviews and rulemakings on Group I Polymers and Resins in 2008 and 2011.²⁷ Under section 112(f)(2), EPA

²¹ EPA Office of Inspector General, *EPA Should Conduct New Residual Risk and Technology Reviews for Chloroprene and Ethylene Oxide-Emitting Source Categories to Protect Human Health* at 21, 25 (May 6, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/epaoig_20210506-21-p-0129.pdf.

²² *Id.* at 36 (Appendix D: Agency Response to Draft Report).

²³ EPA Office of Air and Radiation, *Response to OIG Final Report from Joseph Goffman to OIG* at 3 (July 7, 2021), https://www.epa.gov/system/files/documents/2021-08/epaoig_21-p-0129_agency_response.pdf.

²⁴ See EPA Office of Inspector General, *Comment on EPA Response* (Aug. 5, 2021), https://www.epa.gov/system/files/documents/2021-08/epaoig_21-p-0129_ig_comment_on_response.pdf; EPA Office of Air and Radiation, *Response to Final Report* (July 7, 2021), https://www.epa.gov/system/files/documents/2021-08/epaoig_21-p-0129_agency_response.pdf.

²⁵ 2010 IRIS, *supra* note 9, at 144, 146-48; 2010 IRIS Summary, *supra* note 10, at 5, 12-13.

²⁶ 2014 NATA, *supra* note 11.

²⁷ 42 U.S.C. § 7412(f)(2); 73 Fed. Reg. 76,220 (EPA’s most recent section 112(f) review and rulemaking on Neoprene Production, Polysulfide Rubber Production, Ethylene Propylene Rubber Production, and Butyl Rubber

must account for cumulative health risks and impacts for the most-exposed individuals and communities by assessing the real-world impacts that occur from exposure in early life, and from exposure to multiple pollutants through multiple pathways and from multiple sources. In 2008, the National Academy of Sciences published a report highlighting many ways in which EPA must strengthen its approach for health risk assessments to follow the best available science, including to account for vulnerability, uncertainty, and socioeconomic disparities.²⁸ In recent years, the California EPA’s Office of Environmental Health Hazard Assessment has strengthened its health reference values and risk assessment guidelines based on the best available science, illustrating ways in which EPA must do the same.²⁹

Third, caselaw requires stronger standards and specific changes to 40 C.F.R. Part 63 Subpart U. EPA’s duty to review and revise existing standards under section 112(d)(6) includes making all changes “necessary” to bring standards into full compliance with the Clean Air Act. 42 U.S.C. § 7412(d)(6); *see, e.g., Louisiana Env’tl Action Network v. EPA*, 955 F.3d 1088, 1098 (D.C. Cir. 2020) (requiring revisions “necessary” to bring rule into compliance with the Act’s definition of an adequate “emission standard” in section 112(d)(1)-(3)). To bring standards into full compliance with the Act, EPA must set all missing HAP emission limits from Group I Polymers and Resins and otherwise assure that the standards comply with the Act. *See id.* at 1096 (holding that adding missing limits on air toxics was a “necessary” revision under section 112(d)(6)). For example, most HAP emissions from Neoprene Production, including chloroprene emissions, are emitted from front-end processes.³⁰ EPA currently controls chloroprene emission limitations on back-end processes only. 40 C.F.R. § 63.494. Therefore, EPA’s regulations currently do not control most chloroprene emissions.

EPA must also revise the emission standards to require fenceline monitoring. The Clean Air Act requires EPA to “review, and revise” technology-based emission standards “as necessary,” at least once every eight years, taking into account new pollution control developments. 42 U.S.C. § 7412(d)(6). EPA acknowledged in the 2015 refinery rule that for sources with fugitive emissions, fenceline monitoring is a “development” requiring revised emission standards that require fenceline monitoring and a corrective action level based on the monitoring.³¹ In fact, in a July 2021 information request, EPA required Denka to use Method 325A/B fenceline monitoring, the same method that the refinery rule requires.³²

Production); 76 Fed. Reg. 22,566 (EPA’s most recent section 112(f) review and rulemaking on Epichlorohydrin Elastomers Production, Polybutadiene Rubber Production, Styrene Butadiene Rubber and Latex Production, and NBR Production).

²⁸ National Research Council Committee on Improving Risk Analysis Approaches Used by the U.S. EPA, *Science and Decisions: Advancing Risk Assessment* (2009), <https://doi.org/10.17226/12209>.

²⁹ *See, e.g., Cal. EPA, Air Toxics Hot Spots Program Guidance Manual* (Mar. 6, 2015), <https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

³⁰ EPA, *Residual Risk Assessment for Eight Source Categories* at 31 (Aug. 2008), <https://www.regulations.gov/document/EPA-HQ-OAR-2007-0211-0024>.

³¹ *See* 42 U.S.C. § 7412(d)(6); EPA, *Petroleum Refinery Sector Risk and Technology Review*, 80 Fed. Reg. 75,178, 75,182 (Dec. 1, 2015).

³² Letter from Penny Lassiter, Office of Air Quality Planning and Standards, EPA and Evan Belser, Office of Civil Enforcement, to Jorge Lavastida, Executive Officer and Plant Manager, Denka Performance Elastomer, LLC, Re: Clean Air Act Information Request for Denka Performance Elastomer, LLC Facility in LaPlace, Louisiana,

Additionally, EPA’s new rulemakings must provide an “ample margin of safety to protect public health” as interpreted under new caselaw. 42 U.S.C. § 7412(f)(2)(A). The D.C. Circuit has recognized that an “ample margin of safety” requires an actual margin or buffer of health protection, beyond the bare minimum of what might be needed to prevent unacceptable risk. Adopting conservative assumptions in a health risk model does not guarantee that the model provides an “ample margin of safety.” *Sierra Club v. EPA*, 895 F.3d 1, 13 (D.C. Cir. 2018).

New court precedent also requires EPA to remove the illegal affirmative defense to civil penalties for exceedances of emissions standards caused by a malfunction that is in the rules. *See, e.g.*, 40 C.F.R. § 63.480(j)(4). Such a defense is illegal because it exceeds EPA’s authority and violates the Clean Air Act citizen suit provision, 42 U.S.C. 7604(a). *Nat. Res. Def. Council v. EPA*, 749 F.3d 1055, 1062-63 (D.C. Cir. 2014). New court precedent also requires EPA to remove any startup, shutdown, or malfunction (“SSM”) loopholes in the emission standards. For example, the 2011 rulemaking establishes alternative emission standards during shutdowns for Butyl Rubber Production and Ethylene Propylene Rubber Production source categories, 76 Fed. Reg. at 22,571, but SSM exemptions violate the Clean Air Act’s requirement that a section 112-compliant standard apply continuously. *Sierra Club v. EPA*, 551 F.3d 1019, 1028 (D.C. Cir. 2008).

Additionally, EPA must update and strengthen flare requirements. The section 112 standards for Group I Polymers and Resins incorporate EPA’s general flare standards under 40 C.F.R. § 63.11, which are outdated and decades overdue for review. *See, e.g.*, 76 Fed. Reg. at 22,590 (requiring compliance with 40 C.F.R. § 63.504(c)); 40 C.F.R. § 63.504(c) (requiring the use of techniques specified in section 63.11). On multiple occasions, EPA itself has stated that the general flare standards under 40 C.F.R. section 63.11 are outdated, lead to the operation of flares with poor destruction efficiency, and require revision.³³ In some recent section 112 rulemakings for sources that include flares, EPA has recognized the need to strengthen the flare requirements.³⁴

Enclosure 1 at 7 (June 15, 2021), <https://edms.deq.louisiana.gov/app/doc/recaptcha?previousUrl=https://edms.deq.louisiana.gov/app/doc/view?doc=12754954>.

³³ EPA published two documents in 2012 that acknowledged the shortcomings of the general flare standards. First, EPA published an Enforcement Alert regarding flaring violations, in which the agency recognized that certain needed parameters affecting the efficiency of flares are not captured within current standards, including maintaining the appropriate steam-to-vent-gas ratio and ensuring that the heating value of combustion zone gas is high enough to maximize combustion efficiency, neither of which are included in the General Flare Requirements. *See EPA, Enforcement Alert: EPA Enforcement Targets Flaring Efficiency Violations* (Aug. 2012), <https://www.epa.gov/sites/production/files/documents/flaringviolations.pdf>. Second, following on the uniform emission standards rulemaking, EPA published a report in April 2012 entitled “Parameters for Properly Designed and Operated Flares,” which noted in particular that reliance on the net heating value of the vent gas—the parameter the General Flare Requirements use—“as an indicator of good combustion ignores any effect of steaming.” EPA Office of Air Quality Planning and Standards, *Parameters for Properly Designed and Operated Flares* (Apr. 2012), <https://www3.epa.gov/airtoxics/flare/2012flaretechreport.pdf>.

³⁴ EPA has promulgated revised, stricter flare NESHAP standards in the 2015 refinery rule and in rules for similar industries: miscellaneous organic chemical manufacturing and ethylene production. *See National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review*, 85 Fed. Reg. 49,084 (Aug. 12, 2020); *National Emission Standards for Hazardous Air*

Stronger emission standards are essential to guarantee permanent emission reductions at Group I Polymers and Resins sources, including Denka, and to protect public health. The Louisiana Department of Environmental Quality's ("LDEQ") and EPA's enforcement of the rules currently in effect have failed to ensure the emission reductions needed to protect community health. Although EPA found serious non-compliance with the Clean Air Act at Denka (previously owned by Dupont) in 2016, so far it does not appear that the facility has completed corrective or remedial action or paid penalties regarding those violations.³⁵ LDEQ and Denka entered into an Administrative Order on Consent in 2017, and although LDEQ and Denka have stated that some emission reductions have occurred, air monitoring data from 2020 and 2021 show that emissions are still dangerous for community health.³⁶ For example, as of April 2021, ambient concentrations of chloroprene were as high as 12.209 $\mu\text{g}/\text{m}^3$ in St. John³⁷ – 6,000 times the ambient concentration risk value of 0.002 $\mu\text{g}/\text{m}^3$, the level set by EPA scientists in 2010 and recognized as the goal for community health protection, and 60 times the level of 0.2 $\mu\text{g}/\text{m}^3$, the level at which EPA deems the cancer risk level presumptively unacceptable because it causes a cancer risk of 100-in-1 million or more.³⁸

The undersigned parties seek stronger emission standards with prompt compliance deadlines that will finally protect public health, increase the likelihood of prompt compliance, and speed up enforcement in the future if non-compliance occurs. The new rule should include compliance mechanisms such as fence-line monitoring, frequent and transparent public reporting, automatic liability admissions, automatic corrective action, and automatic penalty requirements.³⁹

60-Day Notice. Under section 304 of the Clean Air Act, Concerned Citizens of St. John, Louisiana Environmental Action Network, and Sierra Club may commence a citizen suit to compel you to perform any or all of the above duties at any time beginning 60 days from the postmark of this letter which is September 17, 2021. *See* 42 U.S.C. § 7604(b)(2); 40 C.F.R.

Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production, 85 Fed. Reg. 40,386 (July 6, 2020). In the rulemakings here, however, EPA should not add the exemptions included in those flare rules that are currently subject to pending reconsideration petitions and litigation.

³⁵ Letter from Steve Thompson, Chief, Air Enforcement Branch, EPA to Celena Cage, Administrator, Enforcement Division, LDEQ, Re: Transmittal of NEIC Investigation Report redacted by Denka (Apr. 13, 2017) (attaching NEICP1216E01: Focused Clean Air Act Compliance Investigation, NEIC Project No. VP1216, Prepared for EPA Region 6 (Oct. 2016)) (attached).

³⁶ LDEQ, *Administrative Order on Consent* at 2 (Jan. 6, 2017), https://www.deq.louisiana.gov/assets/docs/Denka/DENKA_AdministrativeOrderOnConsentAOCJan2017.pdf.

³⁷ EPA, *Continuous Air Monitoring Summary Results for Chloroprene March 10, 2020 - July 8, 2021*, <https://www.epa.gov/system/files/documents/2021-08/continuous-monitoring-summary-march-10-2020-through-july-08-2021.pdf>.

³⁸ *See* Memo from Kelly Rimer, Leader, Air Toxics Assessment Group, Health & Env't Impacts Div., OAQPS, to Frances Verhalen, P.E., Chief, Air Monitoring/Grants Section, EPA Region 6, Re: Preliminary Risk-Based Concentration Value for Chloroprene in Ambient Air (May 5, 2016), <https://www.epa.gov/sites/production/files/2016-06/documents/memo-prelim-risk-based-concentrations050516.pdf>. EPA's 100-in-1 million cancer risk benchmark, set in 1989, is also far too high and should be reduced to recognize that lower levels of cancer risk from toxic air are also unacceptable.

³⁹ *See, e.g.,* Cynthia Giles, *Next Generation Compliance: Environmental Regulation for the Modern Era Part I: Rules with Compliance Built In* (Jan. 27, 2020), <http://eelp.law.harvard.edu/wp-content/uploads/Cynthia-Giles-Part-1-FINAL.pdf>.

§ 54.2(d). This means that these groups may file suit on or after November 16, 2021, to compel EPA to fulfill these critical nondiscretionary duties and seek a court order for EPA to comply with the Clean Air Act as expeditiously as possible.

Contact Information. We are acting as attorneys for the above-listed organization in this matter. Please contact us at your earliest convenience regarding this matter and address any communications to the addresses and telephone number listed below.

Sincerely,



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