

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

AIR ALLIANCE HOUSTON)
2409 Commerce Street, Suite A)
Houston, TX 77003;)
)
COMMUNITY IN-POWER AND)
DEVELOPMENT ASSOCIATION, INC)
1301 Kansas Avenue;)
Port Arthur, TX 77640;)
)
LOUISIANA BUCKET BRIGADE)
4226 Canal Street)
New Orleans, LA 70119; and)
)
TEXAS ENVIRONMENTAL JUSTICE)
ADVOCACY SERVICES)
6733 Harrisburg Boulevard)
Houston, TX 77011;)
)
Plaintiffs,)
)
v.)
)
Bob Perciasepe, in his official capacity as)
Acting Administrator, United States)
Environmental Protection Agency,)
1101A EPA Headquarters, Ariel Rios Building)
1200 Pennsylvania Avenue, NW)
Washington, D.C. 20460)
)
Defendant.)
_____)

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Air Alliance Houston, Community In-Power and Development Association (CIDA), Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services (TEJAS), (collectively, “Plaintiffs”) bring this action pursuant to section 304(a)(2) of

the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7604(a)(2), to compel Defendant Bob Perciasepe, Acting Administrator of the United States Environmental Protection Agency (“EPA”), to perform the nondiscretionary duties required by section 130 of the Act, 42 U.S.C. § 7430. Specifically, the Administrator has failed to review and, if necessary, revise the emission factors for volatile organic compounds (VOCs), carbon monoxide, and nitrogen oxides at least once every three years. 42 U.S.C. § 7430.

2. An emission factor is a “representative value” or “tool” used to estimate emissions of a specific pollutant from an air pollution source. Emission factors are central to the CAA, and are used to calculate roughly eighty percent of air emissions from virtually all industrial sectors. Emissions data calculated from emission factors is used to: design regulations; develop emission control strategies; establish emission limits and other applicable permit requirements for major sources; guide enforcement priorities; and evaluate compliance with air quality standards.

3. Refineries and petrochemical plants release VOCs and other toxic pollutants that poses significant health risks to nearby communities and to the environment. VOCs are organic chemicals that readily vaporize into the air, and can combine with nitrogen oxides to form ozone. Ozone is a criteria pollutant that is responsible for respiratory ailments and increased hospital admissions for coughing, chest pain, throat and nose irritation, lung inflammation and other respiratory issues. Some VOCs are also toxic pollutants, such as benzene, 1,3-butadiene, and hexane—all known carcinogens.

4. VOC emissions from petroleum refineries, petrochemical plants, and other industrial sources are significantly underestimated because inaccurate emission factors are used to quantify emissions from industrial flares (“flares”), liquid storage tanks (“tanks”), and

wastewater collection, treatment, and storage systems (“wastewater treatment systems”) at these facilities. Numerous scientific studies have found that VOC emissions from these sources are several orders of magnitude higher than emission factor estimates, in some cases measuring VOC emissions 132 times above the estimated amount.

5. Under section 130 of the Act, 42 U.S.C. § 7430, the Administrator has a mandatory duty to review and, if necessary, revise, emission factors used to estimate emissions of VOCs from emission sources at least once every three years. The failure to comply with this mandate compromises EPA’s ability to implement the CAA in a manner that protects public health and the environment. Yet, the Administrator has failed to perform the nondiscretionary duty to review and, if necessary, revise the emission factors used to estimate VOC emissions from flares, tanks, and wastewater treatment systems within the statutory timeframe.

6. With this action, Plaintiffs seek to compel the Administrator to expeditiously complete a review of the VOC emission factors for flares, tanks, and wastewater treatment systems, and, if necessary, revise these factors as required by section 130 of the Act, 42 U.S.C. § 7430.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2) (action arising under the CAA citizen suit provision), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1361 (mandamus). This Court may order the Administrator to perform the requisite acts and duties, may issue a declaratory judgment and may grant further relief pursuant to 42 U.S.C. § 7604(a), (d) and 28 U.S.C. §§ 2201, 2202.

8. Pursuant to section 304(a) of the CAA, 42 U.S.C. § 7604(a), “the district courts shall have jurisdiction . . . to order the Administrator to perform such act or duty [which is not discretionary].”

9. Plaintiffs have a right to bring this action pursuant to section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2), and the Administrative Procedure Act, 5 U.S.C. §§ 701 to 706.

10. By certified letter posted July 18, 2012, Plaintiffs sent Administrator written Notice of Intent to Sue (“Notice”) and have thereby complied with the notice requirements of section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. pt. 54. *See* Ex. A. More than 60 days have passed since Plaintiffs provided Notice. The Administrator has not responded to Plaintiff’s Notice or remedied the alleged violations. Therefore, an actual controversy exists between the parties.

11. Venue is vested in this Court under 28 U.S.C. § 1391(e) because the Administrator resides in this district.

PARTIES

12. Plaintiff Air Alliance Houston is a nonprofit, non-membership organization, incorporated and existing under the laws of the State of Texas, located in Houston, Texas. Air Alliance Houston works to reduce air pollution exposure and related health effects on behalf of communities in the Houston region. Air Alliance Houston is concerned that inaccurate accounting of VOC emissions from the many petroleum refineries and petrochemical plants in the Houston area undermine its efforts to reduce air pollution. Communities in the Houston region are vulnerable to VOCs emitted from Houston facilities because of: the toxins they contain and the smog they produce; the lack of accurate information about air pollutants, concentrations, and resulting exposures has made, and continues to make, it difficult for

Houstonians to determine how to best protect themselves; the inaccurate emissions data caused by poor quality emissions factors has made, and continues to make, it difficult for community members to effectively exercise their right to review and comment on CAA permits designed to protect ambient air quality; and, the underreporting of emissions may expose community members to pollutants at levels that are higher than the law allows and in concentrations deleterious to human health.

13. Plaintiff Community In-Power and Development Association (CIDA) is a nonprofit, membership corporation located in Port Arthur, Texas. CIDA advocates for its members' environmental justice, social, and economic rights. CIDA is concerned about accurate accounting of VOC emissions from petroleum refineries and petrochemical manufacturing plants in the Port Arthur area. Members of CIDA are exposed to VOCs, and the related toxins and smog, emitted from these facilities where they live and work; the lack of information about air pollutants, concentrations, and resulting exposures has made, and continues to make, it hard for them to determine how best to protect themselves; the inaccurate and poor quality of emissions data has made, and continues to make, it difficult for them to effectively exercise their right to review and comment on CAA permits designed to protect ambient air quality; and, the underreporting of emissions may expose members to pollutants at levels that are higher than the law allows and in concentrations deleterious to human health. CIDA brings this action on behalf of itself and its members that live, work, and recreate near petroleum refineries and petrochemical plants in the Port Arthur area in Southeast Texas.

14. Plaintiff Louisiana Bucket Brigade is a nonprofit, membership-based environmental health and justice organization located in New Orleans, Louisiana. Its mission is to work with communities to create Louisiana neighborhoods that are free of toxic air pollution

from refineries and other industrial sources. Louisiana Bucket Brigade is concerned about accurate accounting of VOC emissions from Louisiana's many petroleum refineries and petrochemical manufacturing plants. Members of Louisiana Bucket Brigade are exposed to VOCs, and the related toxins and smog, emitted from these facilities where they live and work; the lack of information about air pollutants, concentrations, and resulting exposures has made, and continues to make, it hard for them to determine how best to protect themselves; the inaccurate and poor quality of emissions data has made, and continues to make, it difficult for them to effectively exercise their right to review and comment on CAA permits designed to protect ambient air quality; and, the underreporting of emissions may expose members to pollutants at levels that are higher than the law allows and in concentrations deleterious to human health. Louisiana Bucket Brigade brings this action on behalf of itself and its members that live, work, and recreate near petroleum refineries and petrochemical plants in Louisiana.

15. Plaintiff Texas Environmental Justice Advocacy Services (TEJAS) is a nonprofit corporation located in Houston, Texas. TEJAS's mission is to create sustainable, healthy communities in the Houston Ship Channel region by educating individuals on health impacts from environmental pollution and empowering individuals to promote enforcement of environmental laws. TEJAS is particularly concerned about accurate accounting of VOC emissions from petroleum refineries and petrochemical manufacturing plants in the Houston Ship Channel. Members of TEJAS are exposed to VOCs and the related toxins and smog emitted from these facilities where they live and work; the lack of information about air pollutants, concentrations, and resulting exposures, has made, and continues to make, it hard for them to determine how best to protect themselves; the inaccurate and poor quality of emissions data has made, and continues to make, it difficult for them to effectively exercise their right to

review and comment on CAA permits designed to protect ambient air quality; and, the underreporting of emissions may expose members to pollutants at levels that are higher than the law allows and in concentrations deleterious to human health. TEJAS brings this action on behalf of itself and its members that live, work, and recreate near petroleum refineries and petrochemical plants in the Houston Ship Channel.

16. The Plaintiffs and their members live, work, recreate, and breathe the air near petroleum refineries and petrochemical plants that emit VOCs from flares, tanks, and wastewater treatment systems. Plaintiffs' members have experienced, continue to experience, or are likely to experience, harm to their health and to their environmental, recreational, aesthetic, and economic interests due to the Administrator's ongoing failure to complete a review of emission factors as required by section 130 of the Act, 42 U.S.C. § 7430.

17. Defendant Bob Perciasepe is the Acting Administrator of the EPA and in that role is charged with the duty to review and, if necessary, revise, the emission factors in accordance with Section 130 of the Act. 42 U.S.C. § 7430.

LEGAL BACKGROUND

18. The CAA was established "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" and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution." 42 U.S.C. § 7401(b).

19. A "primary goal" of the Act is "pollution prevention." *Id.* § 7401(c).

20. As part of the regulatory framework prescribed by the Act to accomplish these objectives, EPA must establish "methods ('emission factors') used...to estimate the quantity of

emissions of . . . volatile organic compounds . . . from sources of such air pollutants.” 42 U.S.C. § 7430.

21. EPA must periodically review and revise these emission factors. Section 130 provides that “at least every 3 years [after Nov. 15, 1990], the Administrator *shall* review and, if necessary, revise, the methods (‘emission factors’) used for purposes of [the CAA] to estimate the quantity of emissions of . . . volatile organic compounds . . . from sources of such air pollutants.” 42 U.S.C. § 7430 (emphasis added). Section 130 requires that the Administrator complete a review, and either make a formal determination that revision is not appropriate, or revise the emission factors for VOCs within the statutory deadline. *See id.*

22. The timely review and, if necessary, revision of VOC emission factors is crucial to EPA’s ability to implement the CAA in a manner that is protective of public health. The EPA recognizes that timely review and revision of emission factors is critical because new test data, information, and technology can render existing emission factors obsolete or prove them to be unreliable.

FACTUAL BACKGROUND

23. An emission factor is a “representative value” or “tool” used to estimate emissions of a specific pollutant from an air pollution source. EPA regulations define an “emission factor” as “the ratio relating emissions of a specific pollutant to an activity or material throughput level.” 40 C.F.R. § 51.50.

24. EPA has also defined “emission factor” as “a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant.” Office of Air Quality Planning & Standards, Office of Air and Radiation, EPA, AP-42, Compilation of Air Pollutant Emission Factors Volume I: Stationary

Point and Area Sources 1 (5th ed. 1995), *available at* www.epa.gov/ttn/chief/ap42/index.html [hereinafter AP-42]. EPA guidance documents define emission factors as “a tool that is used to estimate air pollutant emissions to the atmosphere.” Office of Air Quality Planning & Standards, Office of Air and Radiation, EPA, EPA-454/R-95-015, Procedures for Preparing Emission Factor Documents, 2-1 (1997), *available at* www.epa.gov/ttnchie1/efdocs/procedur.pdf.

25. The Compilation of Air Pollutant Emission Factors, or AP-42 as it is commonly referred to, is the official compilation of emission factors and contains more than 1,700 emission factors for over 200 air pollutants. AP-42, *supra*. The AP-42 emission factors are used by major stationary sources to determine emissions from various pollution producing process units, including flares, tanks, and wastewater treatment systems.

26. The EPA Locating and Estimating Air Toxics Emissions (“L&E”) report series compiles available information on source categories of toxic air emissions and identifies potential release points and emission factors. Office of Air Quality Planning & Standards, Office of Air and Radiation, EPA, Locating and Estimating Air Toxics Emissions from Sources of (source category or substance) (2010), *available at* www.epa.gov/ttnchie1/le/. The emission factors in the L&E report series cover toxic pollutants that are also VOCs, such as benzene and toluene. Whereas AP-42 emission factors sometimes do not differentiate between different types of VOCs, the emission factors in the L&E report series can be used to estimate emissions of specific toxics that are also VOCs and create an inventory of toxic air emissions.

27. Industry uses emission factors to report air pollution to EPA and state regulatory agencies. EPA and state agencies rely on this data to develop national, regional, state, and local emissions inventories. These emission inventories are the primary tool that EPA and state agencies use to develop emissions control strategies and make air quality management and

permitting decisions. *Basic Emissions Factors Information*, Env'tl. Prot. Agency, www.epa.gov/ttn/chief/efpac/abefpac.html (last updated July 17, 2012).

28. “Emissions factors have long been the fundamental tool in developing national, regional, state, and local emissions inventories for air quality management decisions and in developing emissions control strategies. More recently, emissions factors have been applied in determining site-specific applicability and emissions limitations in operating permits by federal, state, local, and tribal agencies, consultants, and industry.” *Id.* For example, emission factors are used to calculate pollutant loadings used in the development of federally mandated air quality plans designed to reduce smog and other pollutants. Emission factors may also be used to determine compliance; EPA relies on the emission inventories—based on self-reported industry emissions calculated using emission factors—to set an emission limit that industry then demonstrates compliance with using emission factors. In addition, regulated industries often use emission factors to determine if new or modified facilities will emit air pollution at levels that require a CAA permit and best available pollution control technologies. Because poor quality emission factors can significantly underestimate pollution emissions, the use of inaccurate emission factors can result in the public being exposed to more air pollution than the law allows.

29. Petroleum refineries and petrochemical plants utilize flares, tanks, and wastewater treatment systems—all of which emit significant quantities of harmful VOCs—in their operations. Low income and minority communities suffer disproportionate health and environmental impacts due to their proximity to these industrial sources, raising environmental justice concerns.

30. Flares are used to control VOC releases from industrial operations, including petroleum refineries and petrochemical plants by combusting excess gases—mostly

hydrocarbons—to convert them into inert compounds. VOCs and other toxic pollutants are released from flares as a result of incomplete combustion.

31. Liquid storage tanks are used in many industries that consume or produce organic liquid, including petroleum refining and petrochemical manufacturing. Tanks emit significant quantities of VOCs, some of which are toxic, such as benzene, toluene, and xylene.

32. Many industrial facilities, including petroleum refineries and petrochemical plants, generate wastewater streams containing organic compounds. Emissions from wastewater treatment systems are mostly fugitive VOCs and dissolved gases that evaporate from wastewater surfaces left open to the air during some of the treatment processes.

33. VOC emissions endanger human health and the environment. VOCs are substances that readily vaporize into the air, and include gaseous hydrocarbons and partially oxidized hydrocarbons. VOCs and nitrogen oxides combine in a light-induced chemical reaction to produce photochemical smog, an air pollution event that is characterized by high levels of ground-level ozone. Ozone is a criteria pollutant known to endanger public health and the environment.

At elevated levels, ozone has been shown in human laboratory and/or community studies to be responsible for the reduction of lung function, respiratory symptoms (e.g. cough, chest pain, throat and nose irritation), increased hospital admissions for respiratory causes, and increased lung inflammation. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes. Ambient ozone has been linked to adverse effects on agricultural crops and forests.

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units, 63 Fed.

Reg. 48,890, 48,893 (proposed Sept. 11, 1998). Some VOCs are also toxic pollutants, such as 1,3-butadiene, toluene, and benzene—a known carcinogen.

34. The existing emission factors used to estimate VOC emissions from flares, tanks, and wastewater treatment systems either significantly underestimate emissions or are rated poor quality by EPA, potentially exposing communities to high levels of VOCs that are prohibited by law and can have significant adverse health effects and pose grave risks to nearby communities.

35. The EPA has acknowledged, and scientific studies show, that the AP-42 emission factors for flares, tanks, and wastewater treatment systems significantly underestimate VOC emissions from these processes. *See, e.g.*, Office of Inspector Gen., EPA, 2006-P-00017, EPA Can Improve Emissions Factors Development and Management 11-12 (2006) (explaining that for refineries “[t]he under-reporting was caused largely due to the use of poor quality emissions factors”); Memorandum from Brenda Shine, EPA, to EPA (July 27, 2007) at 1, Docket ID No. EPA-HQ-OAR-2003-0146-0010 (“This document provides the basis for our hypothesis that there is a systematic low bias in reported emissions of VOC and air toxics from petroleum refineries.”).

36. Scientific studies conducted using remote sensing technology, including Differential Absorption Lidar (DIAL) and Passive Fourier Transform Infrared (PFTIR), show that VOC emissions from flares, tanks and wastewater treatment systems can be several orders of magnitude higher than AP-42 emission factor estimates. *See, e.g.*, David T. Allen and Vincent M. Torres, Univ. of Tex. at Austin, Ctr. Energy & Envtl. Res., *TCEQ 2010 Flare Study Final Report* (2011), available at www.tceq.texas.gov/assets/public/implementation/air/rules/Flare/2010flarestudy/2010-flare-study-final-report.pdf; David Randall & Jeff Coburn, EPA, EPA 453/R-10-002, Critical Review

of DIAL Emission Test Data for BP Petroleum Refinery in Texas City, Texas, at ES-2 tbl. 1 (2010), *available at* www.epa.gov/airtoxics/bp_dial_review_report_12-3-10.pdf (finding that VOC emissions from several units exceeded emission estimates based on AP-42 emission factors); Loren Raun & Dan W. Hoyt, Bur. Pollution Control & Prevention, City of Houston, Measurement and Analysis of Benzene and VOC Emissions in the Houston Ship Channel Area and Select Major Stationary Sources Using DIAL (Differential Absorption Light Detection and Ranging) Technology to Support Ambient HAP Concentrations Reductions in the Community (DIAL Project) (2011), *available at* www.greenhoustontx.gov/dial20110720.pdf (finding that VOC and benzene emissions from tanks and wastewater treatment systems far exceeded emission estimates based on unidentified emission factors that are presumed to be from AP-42); Marathon Petroleum Co., LL.C., *Performance Test of a Steam-Assisted Flare with Passive FTIR* (May 2010), *available at* www.tceq.texas.gov/assets/public/implementation/air/rules/Flare/2010flarestudy/mpc-txc.pdf; Marathon Petroleum Co., LL.C., *Performance Test of a Steam-Assisted Elevated Flare with Passive FTIR –Detroit* (2010), *available at* www.tceq.texas.gov/assets/public/implementation/air/rules/Flare/2010flarestudy/mpc-detroit.pdf; Flint Hills resources Port Arthur, LL.C., *PFTIR Test of Steam-Assisted Elevated Flares–Port Arthur* (2011), *available at* www.epa.gov/compliance/resources/publications/civil/programs/caa/portarthur-report.pdf; Allan Chambers & Mel Stroscher, Alberta Research Council, Inc., *Refinery Demonstration of Optical Technologies for Measurement of Fugitive Emissions and for Leak Detection* (2006), *available at* www.environmentalintegrity.org/pdf/publications/EIP_Att_D_Total_Upset.pdf.

37. The L&E emission factors used to estimate air emissions of certain toxics, including those that are also VOCs, from tanks and waste water treatment systems have been rated poor or below average quality by EPA. EPA assigns each emission factor a rating of A through E, with E being the poorest quality, based on certain data quality criteria. The emission factors in the L&E report series for estimating emissions of 1,3 butadiene, benzene, chlorobenzenes, toluene, methyl ethyl ketone, and xylene emissions from storage tanks and wastewater treatment systems are either unrated or are rated D—below average, or E—poor.

38. In 2008, the City of Houston filed a Data Quality Act petition asking EPA to correct the emission factors in AP-42 and the L&E report series that are used to estimate emissions from petroleum refineries and petrochemical manufacturing plants.

39. In response to the petition, EPA committed to developing a comprehensive protocol for the estimation of petroleum refinery emissions, providing a draft analysis of the DIAL study conducted at the BP Amoco facility in Texas City, evaluating data from any future remote sensing studies, and undertaking a review, and improvement, of existing emission factors and methodologies for specific emission sources, including tanks and flares. While EPA has completed several of these tasks, the Agency has not completed a Section 130 review of the VOC emission factors for flares, tanks, and wastewater treatment systems, and either made a formal determination that revision is not warranted or revised the emission factors.

40. The existing emission factors used to estimate VOC emissions from flares are included in section 13.5 of AP-42. The Administrator has not completed a review, and either made a formal determination that revision is not appropriate or revised these emission factors since September 1991. The existing emission factors for flares in AP-42 significantly underestimate actual VOC emissions from flares.

41. The existing emission factors in AP-42 used to estimate VOC emissions from flares are based primarily on a thirty-year old flare efficiency study conducted by EPA in 1983. Despite the availability of more recent test data demonstrating that emission factors underestimate VOC emissions from flares by overestimating flare efficiency by as much as 28%, EPA has not completed the requisite review. In addition to EPA's own report on operating parameters that affect flare combustion efficiency and performance, eleven studies on flare efficiency have been conducted since 2006 that EPA can use to update the emission factors for flares in AP-42. EPA's own report, published in 2012, found that certain operating parameters can reduce flare efficiency, and established certain parameters that flares must operate within to achieve and maintain combustion efficiency above 98%. At some facilities, EPA is already requiring installation of remote sensing technologies that directly measure combustion efficiency, and continuous monitoring of operating parameters that affect combustion efficiency. *See* Consent Decree, *United States v. BP Products N. A., Inc.*, Civil No. 2:12 CV 207, at app. D (N.D. Ind. Sept. 28, 2012), *available at* www.epa.gov/compliance/resources/decrees/civil/caa/whiting-cd.pdf; Consent Decree, *United States v. Marathon Petroleum Co.*, Civ. Action No. 2:12-cv-11544, at 41-51 (E.D. Mich. April 5, 2012), *available at* www.epa.gov/compliance/resources/decrees/civil/caa/marathonrefining-cd.pdf. EPA's delay in completing the requisite review of the emission factors for flares is inexcusable in light of the available information documenting the extent to which existing emission factors undercount toxic VOC emissions from flares that nearby communities are continually exposed to.

42. The emission factors used to estimate VOC emissions from tanks are included in section 7.1 of AP-42 and the L&E report series. The Administrator has not completed a review,

and either made a formal determination that revision is not appropriate or revised the emission factors for tanks in AP-42 since at least 2006, and for the emission factors in the L&E report series in over fourteen years. EPA last completed a review of the existing L&E emission factors used to estimate benzene emissions from tanks in 1998; last reviewed the existing L&E emission factors used to estimate emissions of chlorobenzenes, methyl ethyl ketone, toluene, and xylene from tanks in 1994; last reviewed the existing L&E emission factors used to estimate emissions of trichloroethylene in 1989; last reviewed the existing L&E emission factors used to estimate emissions of ethylene oxide in 1986; and last reviewed the existing L&E emission factors used to estimate emissions of acrylonitrile and chloroform in 1984. The existing emission factors for tanks in AP-42 significantly underestimate actual VOC emissions, and the existing emission factors in the L&E report series for estimating acrylonitrile, benzene, chlorobenzenes, chloroform, ethylene oxide, methyl ethyl ketone, toluene, trichloroethylene, and xylene emissions from tanks are either unrated or are rated D—below average, or E—poor.

43. At least three scientific studies conducted since 2006 shows that existing emission factors significantly underestimate toxic VOC emissions from tanks. EPA's failure to complete the requisite review of emission factors for tanks is inexcusable in light of the information available to EPA, the significant amounts of toxic VOC emissions from tanks that are unaccounted for by emission factors, and the danger these emissions pose to nearby communities.

44. The existing emission factors used to estimate VOC emissions from wastewater treatment systems are included in section 4.3 of AP-42 and the L&E report series. The Administrator has not completed a review, and either made a formal determination that revision is not appropriate or revised the emission factors for wastewater treatment systems in AP-42

since at least 2006, and for the emission factors in the L&E report series in over fourteen years. EPA last completed a review of the existing L&E emission factors used to estimate benzene emissions from wastewater treatment systems in 1998; last reviewed the existing L&E emission factors used to estimate 1,3 butadiene emissions from wastewater treatment systems in 1996; last reviewed the existing L&E emission factors used to estimate emissions of chlorobenzenes and xylene emissions from wastewater treatment systems in 1994; and last reviewed the existing L&E emission factors used to estimate emissions of chloroform, epichlorohydrin and ethylene dichloride from wastewater treatment systems in 1984. The existing emission factors for wastewater treatment systems in AP-42 significantly underestimate actual VOC emissions, and the existing emission factors in the L&E report series for estimating benzene, 1,3 butadiene, chlorobenzenes, chloroform, epichlorohydrin, ethylene dichloride, and xylene emissions from wastewater treatment systems are either unrated or are rated D—below average, or E—poor.

45. Notwithstanding the poor quality of these emission factors and EPA's own acknowledgments and scientific data that makes clear that these emission factors can significantly undercount the emissions nearby communities are exposed to, the Administrator has failed to complete a review and make necessary revisions of these emission factors within the statutory timeframe in accordance with section 130 of the CAA. In light of EPA's continued failure to act, Plaintiffs issued a notice of intent to sue EPA for failure to comply with its statutory duties under section 130 of the CAA on July 18, 2012. *See* Ex. A.

CAUSES OF ACTION

46. Plaintiffs re-allege and incorporate the allegations of all foregoing paragraphs.

47. The Administrator has failed to review and, if necessary, revise the existing emission factors for flares in AP-42 since 1991. The Administrator's ongoing failure to

complete a Section 130 review, and either make a final determination that revision is not appropriate or revise the VOC emission factors for flares in AP-42 within the statutory timeframe 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 section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2).

48. The Administrator has failed to review and, if necessary, revise the existing emission factors for tanks in AP-42 and L&E since at least 2006. The Administrator’s ongoing failure to complete a Section 130 review, and either make a final determination that revision is not appropriate or revise the VOC and other emission factors for tanks in AP-42 and L&E within the statutory timeframe 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 section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2).

49. The Administrator has failed to review and, if necessary, revise the existing emission factors for wastewater treatment systems in AP-42 and L&E since at least 2006. The Administrator’s ongoing failure to complete a Section 130 review, and either make a final determination that revision is not appropriate or revise the VOC and other emission factors for tanks in AP-42 and L&E within the statutory timeframe 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 section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the Administrator’s failure to complete a review of the VOC emission factors for flares in AP-42, and either make a final determination that revision is not

appropriate or revise the emission factors within the statutory timeframe, 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 section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

B. Declare that the Administrator’s failure to complete a review of the VOC emission factors for tanks in AP-42 and L&E, and either make a final determination that revision is not appropriate or revise the emission factors within the statutory timeframe, 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 section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

C. Declare that the Administrator’s failure to complete a review of the VOC emission factors for wastewater treatment systems in AP-42 and L&E, and either make a final determination that revision is not appropriate or revise the emission factors within the statutory timeframe, 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 section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

D. Order the Administrator to complete the required Section 130 reviews and to either revise the VOC emissions factors for flares, tanks, and wastewater treatment systems in AP-42 and L&E, or make a final determination that such revision is not appropriate, pursuant to section 130 of the CAA, 42 U.S.C. § 7430, in accordance with expeditious deadlines specified by this Court;

E. Retain jurisdiction of this action to ensure compliance with this Court’s decree;

F. Award Plaintiffs the costs of this action, including attorney’s fees; and

G. Grant such other relief as the Court deems just and proper.

DATED: May 1, 2013

Respectfully submitted,

/s/ Jennifer Peterson
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**Motion to appear pro hac vice pending*

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