

1 MATTHEW C. MACLEAR (SBN 209228)  
mcm@atalawgroup.com  
2 ERICA A. MAHARG (SBN 279396)  
eam@atalawgroup.com  
3 AQUA TERRA AERIS (ATA) LAW GROUP  
4 4030 Martin Luther King Way  
Oakland, CA 94609  
5 Telephone: (510) 473-8793

6 **Attorneys for Plaintiffs**

7 ASSOCIATION OF IRRITATED RESIDENTS  
8 SAN JOAQUIN RAPTOR/WILDLIFE RESCUE CENTER  
CENTRAL VALLEY SAFE ENVIRONMENT NETWORK  
9 PROTECT OUR WATER

10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA**

12 ASSOCIATION OF IRRITATED RESIDENTS,  
13 a non-profit association, SAN JOAQUIN  
RAPTOR/WILDLIFE RESCUE CENTER a non-  
14 profit corporation, CENTRAL VALLEY SAFE  
ENVIRONMENT NETWORK, a non-profit  
15 association, and PROTECT OUR WATER, a  
16 non-profit association,

17 Plaintiffs,

18 vs.

19 CERTAINTEED LLC, a Delaware Limited  
20 Liability Company,

21 Defendant.  
22

Civil Case Requirement:

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES UNDER THE CLEAN AIR  
ACT (42 U.S.C. § 7604)**

1 **I. JURISDICTION AND VENUE**

2 1. Plaintiffs Association of Irrigated Residents (“AIR”), San Joaquin Raptor/Wildlife Rescue  
3 Center (“SWR/WRC”), Central Valley Safe Environment Network (“CVSEN”) and Protect Our  
4 Water (“POW”) (collectively, “Plaintiffs”) bring this suit under the citizen suit enforcement  
5 provision, 42 U.S.C. § 7604, of the federal Clean Air Act (“CAA”) to redress and prevent violations  
6 of the CAA by CertainTeed LLC (“Defendant”) at its facility located at 17775 Ave. 23 1/2,  
7 Chowchilla, California, 93610 (“Facility”). Among other things, the suit seeks declaratory relief,  
8 injunctive relief, and the assessment of civil penalties for violations of permits and requirements under  
9 Title V (i.e., the federal operating permits program) of the CAA, 42 U.S.C. §§ 7661-7661f, and the  
10 State Implementation Plan (“SIP”) adopted by the State of California and approved by the  
11 Environmental Protection Agency (“EPA”) pursuant to section 110 of the CAA, 42 U.S.C. § 7410,  
12 codified at 40 C.F.R. § 52.220. In this lawsuit, Plaintiffs allege that Defendant has repeatedly violated  
13 and continues to violate requirements in its Title V permit to operate for the Chowchilla Plant.

14 2. This court has subject matter jurisdiction under the CAA, 42 U.S.C. § 7604 (citizen suit  
15 provision), and the federal jurisdiction statute, 28 U.S.C. § 1331 (federal question jurisdiction)  
16 because the sources of the violations are located within this judicial district. The relief requested is  
17 authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201-2202.

18 3. The violations complained of occurred and continue to occur in the Eastern District of  
19 California. Venue is therefore proper in the Eastern District of California, pursuant to the Clean Air  
20 Act, 42 U.S.C. § 7604(c)(1), and the federal venue statute, 28 U.S.C. § 1391(b)-(c).

21 4. Consistent with the CAA’s citizen suit provision, 42 U.S.C. § 7604(b)(1)(A), on May 18,  
22 2020, Plaintiffs notified in writing the Administrator of the EPA (the “Administrator”), the Regional  
23 Administrator of Region 9 EPA, the Governor of California, the California Air Resources Board  
24 (“CARB”), Defendant, and the plant manager of the Chowchilla Plant of the violations alleged in this  
25 complaint and of Plaintiffs’ intent to sue. More than sixty (60) days have passed since this notice  
26 (“Notice of Intent to Sue”) was served via certified U.S. mail. Defendant has violated and remains in  
27 violation of CAA, the California SIP, and its Title V permit. Plaintiffs are informed and believe, and  
28 thereon allege, that neither EPA nor CARB has commenced or is diligently prosecuting a court action

1 to redress the ongoing violations alleged in the Notice of Intent to Sue and in this complaint. The  
2 Notice of Intent to Sue and its exhibits are attached hereto as **Exhibit A** and fully incorporated herein  
3 by reference.

4 5. A copy of this complaint will be sent to the Attorney General of the United States and the  
5 Administrator, pursuant to 42 U.S.C. § 7604(c)(3).

## 6 **II. PARTIES**

7 6. Plaintiff AIR is a California non-profit corporation incorporated in 2012. AIR's mission is to  
8 combat the pollution of the air and waters of the San Joaquin Valley of the State of California by  
9 raising awareness of sources of pollution, advocating for regulatory oversight, and litigating against  
10 polluters in violation of state and federal environmental laws.

11 7. Plaintiff SJR/WRC is a California non-profit corporation and plaintiffs CVSEN and POW are  
12 non-profit associations sponsored by SJR/WRC. SJR/WRC, CVSEN and POW's organizational  
13 purposes are protecting and preserving wildlife habitats and the environment, including combating  
14 pollution of the air and waterways in the San Joaquin Valley.

15 8. AIR's members use the resources in the San Joaquin Valley airshed most immediately  
16 impacted by Defendant's violations of CAA. Members reside, visit, work, and recreate near the  
17 Chowchilla Plant and are exposed to the Chowchilla Plant's emissions. The health-related, aesthetic,  
18 recreational, environmental, and economic interests of AIR's members are and have been injured by  
19 Defendant's failure to comply with its CAA permit, which is designed to achieve healthy air quality  
20 for people and the environment. Interests of AIR's members that are directly injured by Defendant's  
21 violations at the Chowchilla Plant include, but are not limited to: (1) breathing air in the San Joaquin  
22 Valley free from excessive pollution discharges and without the impact of and concern over negative  
23 health effects that such emissions cause; (2) enjoying outdoor recreation that is unimpaired by  
24 pollution from the Chowchilla Plant's emissions; (3) using and enjoying property and viewing and  
25 enjoying natural scenery, wildlife, and a sky that is unimpaired by pollution from the Chowchilla  
26 Plant's excessive emissions; and (4) protecting the natural ecology of the region from air pollution-  
27 related impacts.

28 9. Plaintiffs SJR/WRC, CVSEN and POW's members also use the resources in the San Joaquin

1 Valley airshed most immediately impacted by Defendant’s violations of CAA. Members reside, visit,  
2 work, and recreate near the Chowchilla Plant and are exposed to the Chowchilla Plant’s emissions.  
3 Plaintiff SJR/WRC also rescues and cares for injured or ailing raptors and other wildlife affected by  
4 air and water pollution throughout the San Joaquin Valley. The health-related, aesthetic, recreational,  
5 environmental, and economic interests of SJR/WRC, CVSEN and POW’s members are and have  
6 been injured by Defendant’s failure to comply with its CAA permit, which is designed to achieve  
7 healthy air quality for people and the environment. Interests of SJR/WRC, CVSEN and POW’s  
8 members that are directly injured by Defendant’s violations at the Chowchilla Plant include, but are  
9 not limited to: (1) breathing air in the San Joaquin Valley free from excessive pollution discharges  
10 and without the impact of and concern over negative health effects that such emissions cause; (2)  
11 enjoying outdoor recreation that is unimpaired by pollution from the Chowchilla Plant’s emissions;  
12 (3) using and enjoying property and viewing and enjoying natural scenery, wildlife, and a sky that is  
13 unimpaired by pollution from the Chowchilla Plant’s excessive emissions; and (4) protecting the  
14 natural ecology, including raptors and other wildlife, of the region from air pollution-related impacts.

15 10. Defendant CertainTeed LLC (“CertainTeed”) is a limited liability company organized under  
16 the laws of Delaware and registered in California. According to the Title V permit issued by the San  
17 Joaquin Valley Air Pollution Control District to operate the Chowchilla Plant, CertainTeed  
18 Corporation is the legal owner and operator of the Chowchilla Plant. Based on information available  
19 to Plaintiffs, CertainTeed Corporation surrendered its registration with the California Secretary of  
20 State in 2019 after restructuring into two entities, CertainTeed LLC and DBMP LLC, and CertainTeed  
21 LLC became the owner/operator of the Chowchilla Plant.

### 22 **III. STATUTORY BACKGROUND**

#### 23 **A. CLEAN AIR ACT CITIZEN ENFORCEMENT PROVISION**

24 11. The CAA is designed “to protect and enhance the quality of the Nation’s air resources so as  
25 to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. §  
26 7401(b)(1).

27 12. Any person may commence a civil enforcement action under the CAA against any party “who  
28 is alleged to have violated . . . or to be in violation of [] an emission standard or limitation.” *Id.* at §

1 7604(a). An “emission standard or limitation” is, among other things, any term or condition of a  
2 permit issued under an approved State Implementation Plan, any standard or limitation under any  
3 approved State Implementation Plan, or any permit term of a Title V operating permit. *Id.* at §  
4 7604(f)(4).

5 **B. STATE IMPLEMENTATION PLANS (SIPs)**

6 13. The EPA has established National Ambient Air Quality Standards (“NAAQS”) for a number  
7 of “criteria pollutants,” such as particulate matter. 42 U.S.C. § 7409; 40 C.F.R. pt. 50. An area that  
8 meets the NAAQS for a particular criteria pollutant is deemed to be in “attainment” for that pollutant.  
9 *Id.* at § 7407(d)(1). An area that does not meet the NAAQS is a “nonattainment” area. *Id.*

10 14. Pursuant to 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval a State  
11 Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS.  
12 Specifically, SIPs set forth requirements for permitting programs and specific emission standards and  
13 limitations to assure that geographic areas either remain in attainment or regain attainment status.  
14 Compliance with permit terms and conditions is a critical component of NAAQS attainment and  
15 maintenance. Once a state’s SIP is approved by EPA, it is published in the Code of Federal  
16 Regulations and becomes enforceable federal law. 42 U.S.C. § 7413; 40 C.F.R. § 52.23.

17 15. The State of California Implementation Plan for Achieving and Maintaining the National  
18 Ambient Air Quality Standards (“California SIP”) can be found at 40 C.F.R. § 52.220.

19 16. The California SIP includes the rules and regulations adopted by the various air districts  
20 statewide.

21 **C. TITLE V OPERATING PERMITS**

22 17. Title V of the CAA, 42 U.S.C. §§ 7661 -7661f, establishes an operating permit program for  
23 “major sources” of air emissions, such as the CertainTeed Chowchilla Plant. The purpose of the Title  
24 V program is to ensure that all “federally-enforceable” requirements for a source’s compliance with  
25 CAA are collected in one place—the Title V Federal Operating Permit. Thus, for example, the SIP  
26 provisions applicable to a source are incorporated into the source’s Title V permit. EPA has stated  
27 that the Title V program “will enable the source, States, EPA, and the public to understand better the  
28 requirements to which the source is subject, and whether the source is meeting those requirements.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.