

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE UNITED STATES OF AMERICA)	
and the LOUISIANA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
THE DOW CHEMICAL COMPANY,)	
UNION CARBIDE CORPORATION, and)	
PERFORMANCE MATERIALS NA, INC.,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs, the United States of America (United States), by the authority of the Attorney General, and through the undersigned attorneys, acting on behalf of the Administrator of the United States Environmental Protection Agency (EPA), and the Louisiana Department of Environmental Quality (LDEQ), file this Complaint and allege as follows:

I. NATURE OF THE ACTION

1. This civil action seeks injunctive relief and civil penalties from The Dow Chemical Company (Dow), and its wholly owned subsidiaries Union Carbide Corporation (Union Carbide) and Performance Materials NA, Inc. (PMNA) (*collectively*, Defendants) for violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (CAA), the Louisiana Environmental Quality Act, La. R.S. 30:2001 *et seq.* (LEQA), the regulations promulgated pursuant to those statutes, and the operating permits that incorporate those requirements.

2. The United States brings this case pursuant to Clean Air Act Sections 113(b) and 167, 42 U.S.C. §§ 7413(b) and 7477, based on the Defendants' alleged failures to adhere to good

air pollution control practices, including its failures to properly operate, maintain, monitor, and control steam-assisted flares at four of Defendants' petrochemical manufacturing facilities. Defendant Dow owns and operates the facilities located in Freeport, Texas (Freeport Facility) and Plaquemine, Louisiana (Plaquemine Facility). Defendant Union Carbide owns and operates the facility located in Hahnville, Louisiana (Hahnville Facility). Defendant PMNA owns and operates the facility located in Orange, Texas (Orange Facility) (*collectively*, Defendants' Facilities). LDEQ brings this case pursuant to the LEQA based on these same failures with respect to Defendants' Plaquemine and Hahnville Facilities.

3. Defendants' alleged violations of the CAA and the LEQA resulted in thousands of tons of illegal emissions of volatile organic compounds (VOCs), hazardous air pollutants (HAPs), and other pollutants into the air in the states of Louisiana and Texas.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter and the parties hereto, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has personal jurisdiction over the Defendants because they do business in the state of Louisiana and within the jurisdictional boundaries for the federal district court for the Eastern District of Louisiana, as established by Congress under 28 U.S.C. § 98(a).

5. This Court has supplemental jurisdiction over the state law claims asserted by the LDEQ pursuant to 28 U.S.C. § 1367 because those claims are so related to the claims alleged in the United States' action that they form part of the same case or controversy.

6. Venue is proper in this Judicial District, pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in this Complaint occurred and are occurring at the Defendants' Facilities located in this District.

III. NOTICE

7. Notices of violations were given to Defendants, and the states of Louisiana and Texas as required by CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1). Notice of commencement of this action was given to the states of Louisiana and Texas as required by CAA Section 113(b), 42 U.S.C. § 7413(b).

8. The thirty-day period established in CAA Section 113(a), 42 U.S.C. § 7413(a), between the notices of violation provided by the United States and the commencement of this civil action has passed.

IV. AUTHORITY

9. The United States Department of Justice has the authority to bring this action on behalf of EPA under, *inter alia*, 28 U.S.C. §§ 516 & 519, and under Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

V. DEFENDANTS

10. Defendant Dow Chemical Company is a Delaware corporation that does business in the states of Louisiana and Texas.

11. At all times relevant to the Complaint, Defendant Dow has owned and operated the following facilities: a) Plaquemine Petrochemical Plant, Plaquemine, Louisiana (Plaquemine Facility), and b) Freeport Petrochemical Plant, Freeport, Texas (Freeport Facility).

12. Defendant Union Carbide Corporation is a New York corporation authorized to do business in the state of Louisiana. Union Carbide is organized and operates as a wholly owned subsidiary of Defendant Dow.

13. At all times relevant to the Complaint, Defendant Dow, or a predecessor-in-interest, both directly or through Defendant Union Carbide has owned and operated a

petrochemical manufacturing plant located in Hahnville, Louisiana (Hahnville Facility).

14. Defendant Performance Materials NA, Inc., is a Delaware corporation authorized to do business in the state of Texas. PMNA operates and is organized as a wholly owned subsidiary of Defendant Dow.

15. At all times relevant to the Complaint, Defendant Dow, or a predecessor-in-interest, both directly, or through Defendant PMNA has owned and operated the Sabine River Works plant located in Orange, Texas (Orange Facility).

16. The Plaquemine, Freeport, Hahnville, and Orange Facilities are collectively referred to as the “Defendants’ Facilities.”

17. At all times relevant to the Complaint, each of the Defendants has been a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and the applicable federal and state regulations alleged herein.

VI. CLEAN AIR ACT STATUTORY AND REGULATORY BACKGROUND

A. National Ambient Air Quality Standards (NAAQS) and New Source Review (NSR)

1. General

18. CAA Section 108(a), 42 U.S.C. § 7408(a), requires EPA to identify and prepare a list of each air pollutant that results from numerous or diverse mobile or stationary sources and that may endanger public health or welfare through its emissions. EPA must then issue air quality criteria for each such “criteria” air pollutant.

19. CAA Section 109, 42 U.S.C. § 7409, requires EPA to promulgate regulations establishing primary and secondary NAAQS for air pollutants for which air quality criteria have been issued pursuant to Section 108 of the CAA. Under Section 109(b) of the CAA, 42 U.S.C. § 7409(b), the primary NAAQS must be adequate to protect the public health with an adequate margin of safety. The secondary NAAQS must be adequate to protect the public welfare from

known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

20. Pursuant to CAA Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified and listed air quality criteria and NAAQS for the following criteria air pollutants: ground level ozone, particulate matter (PM), nitrogen dioxide, carbon monoxide (CO), lead, sulfur dioxide (SO₂) (*collectively*, the Criteria Pollutants). *See* 40 C.F.R. §§ 50.8-50.11 (primary NAAQS); *see also* 40 C.F.R. §§ 50.15 and 50.19 (secondary NAAQS).

21. VOCs readily react in sunlight with NO_x – forming the criteria pollutant ozone.

22. Pursuant to CAA Section 107(d), 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries (known as “air quality control regions”) where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is deemed an “attainment” area, while an area that does not meet the NAAQS for a particular pollutant is deemed a “non-attainment” area. The states’ air quality designations are identified at 40 C.F.R. Part 81.

23. At all times relevant to this Complaint, St. Charles Parrish, Louisiana, where the Hahnville Facility is located has been classified as “in attainment” for all Criteria Pollutants.

24. At all times relevant to this Complaint, Iberville Parrish, Louisiana, where the Plaquemine Facility is located has been classified as “in attainment” for all Criteria Pollutants.

25. At all times relevant to this Complaint, Orange County, Texas, where the Orange Facility is located has been classified as “in attainment” for all Criteria Pollutants.

26. At all times relevant to this Complaint, Brazoria County, Texas, where the Freeport Facility is located has been classified as “non-attainment” for ozone.



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