

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

|                              |   |                              |
|------------------------------|---|------------------------------|
| _____                        | ) |                              |
| UNITED STATES OF AMERICA,    | ) |                              |
|                              | ) |                              |
| Plaintiff,                   | ) |                              |
|                              | ) |                              |
| v.                           | ) | Civil Action No. 1:21-cv-640 |
|                              | ) |                              |
| ALTIVIA PETROCHEMICALS, LLC. | ) |                              |
|                              | ) |                              |
| Defendant.                   | ) |                              |
| _____                        | ) |                              |

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action brought against ALTIVIA Petrochemicals, LLC (“ALTIVIA” or “Defendant”) pursuant to Clean Air Act (CAA) Section 113(b), as amended, 42 U.S.C. § 7413(b), to obtain injunctive relief and civil penalties for violations of CAA Section 112, 42 U.S.C. § 7412, and the implementing regulations at: (1) 40 C.F.R. Part 63, Subpart F (National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry); (2) 40 C.F.R. Part 63, Subpart G (National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and

Wastewater); (3) 40 C.F.R. Part 63, Subpart H (National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks); (4) EPA Reference Method 21 at 40 C.F.R. Part 60, Appendix A; and (5) 40 C.F.R. Part 70, Title V Permit Program. The violations alleged in the complaint occurred and continue to occur at Defendant's petrochemical manufacturing facility in Haverhill, Scioto County, Ohio ("Haverhill Facility").

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and under CAA Section 113(b), 42 U.S.C. § 7413(b).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395 and under CAA Section 113(b), 42 U.S.C. § 7413(b), because Defendant resides within this District and because the violations that constitute the basis of this complaint occurred and are occurring at Defendant's facility located in the District.

### **NOTICE**

4. The United States provided notice of the commencement of this action to the State of Ohio as required by CAA Section 113(b), 42 U.S.C. § 7413(b).

### **AUTHORITY**

5. The United States has authority to bring this action on behalf of the Administrator of EPA under 28 U.S.C. §§ 516 and 519 and CAA Section 305, 42 U.S.C. § 7605.

### **DEFENDANT**

6. ALTIVIA is a limited liability company incorporated in Delaware and headquartered in Houston, Texas. ALTIVIA owns and operates the Haverhill Facility, a

petrochemical manufacturing facility located at 1019 Haverhill-Ohio Furnace Road, Haverhill, Ohio.

7. ALTIVIA acquired the Haverhill Facility in 2015 from Haverhill Chemicals LLC through an asset purchase agreement approved by the United States Bankruptcy Court for the Southern District of Texas, as part of Haverhill Chemicals' Chapter 11 bankruptcy proceedings. The asset purchase agreement requires ALTIVIA to assume all liability under assigned permits, including the then existing Title V permit for the Haverhill Facility.

8. On November 22, 2015, ALTIVIA restarted operations at the Haverhill Facility, which had been shut down since June 2015.

9. ALTIVIA is a "person," as defined in CAA Section 302(e), 42 U.S.C. § 7602(e).

## **CLEAN AIR ACT**

### **I. STATUTORY AND REGULATORY BACKGROUND**

10. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air, so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

#### **A. National Emission Standards for Hazardous Air Pollutants**

##### **1. General Provisions**

11. Under CAA Section 112(b), 42 U.S.C. § 7412(b), Congress established a list of hazardous air pollutants (HAPs) believed to cause adverse health or environmental effects.

12. Under CAA Section 112(c), 42 U.S.C. § 7412(c), Congress directed EPA to publish a list of all categories and subcategories of, *inter alia*, major sources of HAPs.

13. "Major source" is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to

emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

14. “Stationary source” is defined as any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7412(a)(3) (incorporating the definition of “stationary source” found at 42 U.S.C. § 7411(a)(3)).

15. Under CAA Section 112(d)(1), 42 U.S.C. § 7412(d)(1), Congress directed EPA to promulgate regulations establishing emission standards for each category or subcategory of, *inter alia*, major sources of HAPs listed under Section 112(c). These emission standards must require the maximum degree of reduction in emissions of hazardous air pollutants that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for the new or existing sources in the category or subcategory to which the emission standard applies. *See* 42 U.S.C. § 7412(d)(2).

16. Under CAA Section 112(h), 42 U.S.C. § 7412(h), to the extent that it is not feasible to prescribe or enforce an emission standard for control of a HAP, Congress authorized EPA to promulgate “design equipment, work practice, or operational” standards, which are to be treated as emission standards.

17. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories or maximum achievable control technology (MACT) standards.

## **2. National Emission Standards for Organic Hazardous Air Pollutants**

18. Pursuant to CAA Section 112(c), 42 U.S.C. § 7412(c), EPA identified synthetic organic chemical manufacturing as a source category of HAPs. 57 Fed. Reg. 31576, 31591

(Table 1) (July 16, 1992). The Synthetic Organic Chemical Manufacturing Industry source category generally is referred to as SOCMCI.

19. Pursuant to CAA Section 112(d), 42 U.S.C. § 7412(d), EPA promulgated the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry. 59 Fed. Reg. 19402 (April 22, 1994). These standards are commonly referred to as the “Hazardous Organic NESHAP” or the HON.

20. The HON consists of four subparts in Part 63 of Title 40 of the Code of Federal Regulations: Subparts F, G, H, and I.

21. Subpart F, in general, provides the applicability criteria for SOCMCI sources, requires that owners and operators of SOCMCI sources comply with Subparts G, H, and I, and specifies general recordkeeping and reporting requirements. Subpart G generally sets forth regulations governing process vents, storage vessels, transfer racks, and wastewater streams at SOCMCI sources. Subparts H and I generally set forth work practice standards relating to equipment leaks.

**a. HON Subpart F**

22. The requirements of Subpart F apply to chemical manufacturing process units that, *inter alia*: (1) manufacture as a primary product one or more chemicals listed in Table 1 of Subpart F; (2) use as a reactant or manufacture as a product, or co-product, one or more of the organic HAPs listed in Table 2 of Subpart F; and (3) are located at a plant site that is a major source as defined in CAA Section 112(a). 40 C.F.R. § 63.100(b).

23. A “chemical manufacturing process unit” is defined, *inter alia*, as the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product. 40 C.F.R. § 63.101(b).

# 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.