

BRACEWELL

March 31, 2025

BY E-MAIL
AIRACTION@EPA.GOV

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Re: Presidential Exemption: *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins (HON Rule)*: Denka Performance Elastomer LLC's Neoprene Production Facility in LaPlace, Louisiana

As outside counsel to Denka Performance Elastomer LLC ("DPE"), I am submitting this request on behalf of DPE. DPE respectfully requests a Presidential Exemption under Section 112(i)(4) of the Clean Air Act ("CAA") related to the rule entitled *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins*, 89 Fed. Reg. 42932 (May 16, 2024) ("HON Rule" or the "Rule"). Specifically, DPE requests that the President use his authority under Section 112(i)(4) to extend by two years the dates by which DPE must come into compliance with the CAA Section 112 standards and limitations in the HON Rule that apply to DPE's Neoprene Production Facility in LaPlace, Louisiana (the "Facility").²

DPE's Facility is the only Neoprene production plant in the U.S. It produces Neoprene by first synthesizing and then polymerizing a chemical called chloroprene. Under the auspices of "Environmental Justice," the Biden EPA launched a series of investigations and enforcement actions

¹ In the HON Rule, the Biden EPA singled out DPE by giving the Facility only 90 days to come into compliance. In accordance with the CAA, DPE requested and obtained from the Louisiana Department of Environmental Quality (LDEQ) an extension until July 15, 2026 (the deadline that applies to all other facilities covered by the Rule) by showing that it met the statutory criteria for such an extension. The Biden EPA determined that the LDEQ's extension was "ineffectual" – forcing DPE to seek and obtain a stay from the Fifth Circuit that prohibited EPA from taking any action in contravention of the LDEQ extension. *Denka Performance Elastomer v. EPA*, No. 24-60351, Doc. No. 57 (July 31, 2024). LDEQ participated in that Fifth Circuit action as an intervenor in support of DPE. *Id.* Doc. No. 37 (granting LDEQ's motion to intervene). Currently, DPE must begin complying with the HON Rule by July 15, 2026—the generally applicable compliance deadline for all facilities to comply with the Section 112 requirements under the Rule. DPE requests that this deadline be extended to July 15, 2028.

Mr. Jeffrey R. Holmstead
Partner

Mr. Jeffrey R. Holmstead is a partner in the New York City office of Bracewell & Rasmussen LLP, where he is a member of the firm's Environmental, Energy, and Infrastructure Law Department. Mr. Holmstead is also a member of the New York City Bar Association and the New York State Bar Association.

AUSTIN DALLAS DUBAI DULLES EASTON LONDON NEW YORK PARIS SAN ANTONIO SEATTLE WASHINGTON, DC

ED_018388_00000137-00001

Sierra Club FOIA -
2025-EPA-04883

SC_EVERSPLIT0012465

BRACEWELL

March 31, 2025

Page 2

against DPE, even while the Agency was developing the rule at issue here. These actions have imposed enormous costs on DPE and threatened the future viability of the business.

The HON Rule's standards and limitations for chloroprene apply only to DPE's Facility and were a part of the Biden EPA's misguided and politically motivated campaign against DPE. The Rule imposes a variety of costly new regulatory requirements on the Facility under Sections 112(f)(2) and 112(d)(6) of the CAA (the "Section 112 standards and limitations"). In addition to requiring that low-concentration emission streams from many different pieces of equipment and operations be captured and routed to a costly new control device, the Rule requires DPE to (1) meet a one-ton-per-year cap on emissions from maintenance activities and (2) install and operate a comprehensive fence-line monitoring system and ensure that fence-line concentrations of chloroprene in the ambient air meet a specified "action level." Neither EPA nor DPE has been able to identify control technologies or other emission reduction measures that could be employed to meet these standards. DPE believes that these requirements are unlawful and has challenged them in the U.S. Court of Appeals for the District of Columbia Circuit. See *Denka Performance Elastomer LLC, et al. v. EPA*, No 24-1135.

As discussed below, the technology necessary for DPE to meet the Section 112 standards and limitations by the current deadlines is not available, and extending the deadline is in the national security interests of the United States. To provide DPE sufficient time to (i) evaluate the worker safety concerns associated with meeting the Section 112 standards and limitations, (ii) design and install the necessary enclosures and thermal oxidizer, (iii) to investigate technologies that might allow DPE to comply with the Rule's cap on maintenance emissions and meet the Rule's action level for chloroprene—and then integrate all these things into a very complex chemical manufacturing plant—DPE will need at least two additional years to comply with the Section 112 standards and limitations.

Technology to Implement the Standards Is Not Available

The HON Rule requires DPE to capture emissions from process vents, storage vessels, and wastewater "in chloroprene service" and route them through a closed vent system to a non-flare control device with a destruction removal efficiency of at least 98 percent. EPA has acknowledged that "the only viable way to meet [these requirements] is to enclose all of the polymer batch reactors, emulsion storage vessels, strainers, and wash belt dryers and route the vapors to a thermal oxidizer. 88 Fed. Reg. at 25117. However, because these sources have air flows that are more than 4.3 times higher than the Facility's existing regenerative thermal oxidizer (RTO), DPE will also be required to design, purchase, and install a new thermal oxidizer to control the flow from all these sources, as EPA has acknowledged. 89 Fed. Reg. at 42986 (EPA "anticipate[s] that the facility will still need to install an additional thermal oxidizer in order to comply with the final performance standard for process vents and storage vessels in chloroprene service.").

In the attached declarations prepared for DPE's challenge to the HON Rule, DPE's Environmental Affairs Manager describes the challenges (including the worker safety challenges) associated with designing and installing the permanent total enclosures, new duct work, and thermal oxidizer that are needed to

AUSTIN DALLAS DUBAI DULLES GASTON LONDON NEW YORK PARIS SAN ANTONIO SEATTLE WASHINGTON, DC

ED_018388_00000137-00002

Sierra Club FOIA -
2025-EPA-04883

SC_EVERSPLIT0012466

BRACEWELL

March 31, 2025

Page 3

comply with the Rule—and the time that will be needed to do so. He estimates that this will take 30-36 months. Decl. Chris Meyers in Support of Extension Request (Jul. 26, 2024) (“2024 Declaration”) (attached) at p. 8; *see also* Supplemental Declaration of Chris Meyers (Feb. 13, 2025) (attached). Importantly, it was not prudent for DPE to begin this process until EPA agreed to dismiss its “emergency” lawsuit against DPE that was filed in February 2023 under Section 303 demanding an immediate shutdown of the Facility. This Section 303 action was not dismissed until March 10, 2025. Order, *United States v. Denka Performance Elastomer*, 2:23-cv-735, Doc. No. 207 (Mar. 10, 2025) (dismissing case). Thus, the technology to implement these requirements will not be available by the current compliance deadline.

The Rule also imposes a one-ton-per-year cap on chloroprene emissions from maintenance activities, but EPA did not identify any feasible control technology or control measures for meeting this limit. As Mr. Meyers explains in his declarations, DPE has already evaluated several possible options, including those recommended by EPA enforcement officials, but none of them is technically feasible. 2024 Declaration at pp. 12-14. Thus, the technology needed to implement this standard is not available.

In addition, the Rule requires DPE to install and operate a comprehensive fenceline monitoring system and take all steps needed to ensure that fenceline concentrations of chloroprene in the ambient air meet a specified “action level,” as determined by the fenceline monitors. In the rulemaking, EPA conducted air quality modeling which found that, once the Facility complies with all the specific control requirements in the Rule, ambient concentrations around the fenceline will correspond with an action level of 0.8 µg/m³. *See* 89 Fed. Reg. at 42999. Yet EPA set the action level for chloroprene at 0.3 µg/m³—not based on any analysis of whether it would be possible for the Facility to achieve this level but because of EPA’s desire to set the level “as low as possible” based on the detection limit of the required monitors. *Id.* at 42300, 43002. Thus, the technology needed to implement this standard is not available.²

An Exemption is in the National Security Interests of the United States

Granting an extension to DPE is in the national security interests of the United States, as the Facility is the only Neoprene production facility in the country. Neoprene is a synthetic rubber used to make military and medical equipment as well as a wide array of additional products, including car parts, adhesives, wetsuits, and many consumer products. If the DPE Facility were forced to shut down, the U.S. would have to rely on countries like China to provide the Neoprene necessary for certain military and medical equipment. Therefore, a Presidential Exemption is in the national security interests of the U.S. and will aid in maintaining a strong domestic supply chain network aligned with President Trump’s America First Trade and Investment Policy. *See e.g.*, White House Memo, *American First Trade Policy* (Jan. 20, 2025); White House Memo, *America First Investment Policy* (Feb. 21, 2025).

² Some requirements related to the fenceline monitoring program come into effect after the monitoring system has been operating for 12 months. DPE requests that all these requirements be pushed back by two years from the dates set forth in the HON Rule.

BRACEWELL

March 31, 2025

Page 4

Extension Request

For the above reasons, DPE respectfully requests that the President use his authority under Section 112(i)(4) to extend by two years the dates by which DPE must come into compliance with the CAA Section 112 standards and limitations in the HON Rule that apply to DPE's Neoprene Production Facility in LaPlace, Louisiana.

Best regards,



Mr. Jeffrey R. Holmstead
Partner

AUSTIN DALLAS DENV. HOUSTON LONDON NEW YORK PARIS SAN ANTONIO SEATTLE WASHINGTON, DC