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**From:** Cindy Squires  
**Sent:** Tue 11/7/2017 10:26:47 PM  
**Subject:** TSCA Formaldehyde Composite Wood Lawsuit  
[Formaldehyde in Wood Products Complaint.pdf](#)  
[N.D. Cal. 17-cv-06293 dckt 000008 000 filed 2017-11-02.pdf](#)

Mr. Jackson,

Thank you very much for today's meeting with the Administrator. I wanted to follow up on the item I mentioned to you briefly -- the lawsuit and motion that was filed last week in the Northern District of California by the Sierra Club (attached).

Sierra Club is challenging the extension of time that EPA granted on the compliance dates in the Formaldehyde composite wood rule. This is one of the midnight rules that were automatically paused when the Trump Administration began. Later EPA extended the dates after notice and comment, in part to ensure that there was adequate time for all the necessary steps to take place before compliant product can be produced. In the meanwhile, there have been a number of critical technical issues that have been addressed by EPA. One of those technical issues (small chamber lab correlation) is currently open for comment under a direct final rule / proposed rule.

We would like an opportunity to discuss with EPA our deep concerns if the Sierra Club litigation is successful. Put simply, if the court vacates the compliance date extension and the compliance date reverts back to Dec. 12, 2017 the industry will be unable to adjust. First, we must have the technical lab correlation issue corrected to be able to label product as TSCA compliant; and second, imported composite wood products are already on their way to the US and shipments without TSCA labels will land after Dec. 12<sup>th</sup> which puts importers, distributors, manufacturers and retailers in a very difficult position. We are hopeful that EPA will be vigorously defending its compliance date extension and stand ready to explain how this lawsuit will impact industry.

Our members are keen to purchase TSCA compliant panels and products. We are carefully working through the regulation to ensure our suppliers are ready. Most are already producing products that meet the TSCA and CARB emission limits. However, all the pieces must be in place before panel producers and fabricators can label their product as TSCA compliant. IWPA requested and EPA agreed to allow for early compliance so that firms could change over products in an orderly manner. Thus, we support getting product properly labeled and produced as TSCA compliant as soon as feasible. We just need to have time to make that happen.

Please let me know when we might have a phone call or meeting to discuss further.

**Cindy L. Squires, Esq**

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*IWPA's mission is to build acceptance and demand in North America for globally sourced wood products from sustainably managed forests.*

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18  
19 UNITED STATES DISTRICT COURT  
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
21 SAN FRANCISCO DIVISION

21 SIERRA CLUB, and A COMMUNITY VOICE- ) Civ. No. \_\_\_\_\_  
22 LOUISIANA )

23 Plaintiffs, )

24 v. )

25 ) **COMPLAINT FOR DECLARATORY**  
26 ) **AND VACATUR RELIEF**

25 SCOTT PRUITT, in his official capacity as )  
26 Administrator of the United States Environmental )  
27 Protection Agency, )

27 Defendant. )  
28 )

COMPLAINT FOR DECLARATORY  
AND VACATUR RELIEF

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## INTRODUCTION

1. This action concerns two rules recently promulgated by the Environmental Protection Agency (“EPA”) implementing the Formaldehyde Standards in Composite Wood Products Act. 15 U.S.C. § 2697 (the “Formaldehyde Act,” codified as Title VI of the Toxics Substances Control Act (“TSCA”)). The first rule established emission standards for formaldehyde in composite wood products and associated testing and compliance mechanisms. 81 Fed. Reg. 89674 (Dec. 12, 2016) (the “Formaldehyde Rule”). EPA signed this rule in July 2016 and published it in the Federal Register on December 12, 2016. The second rule extended the Formaldehyde Rule’s compliance dates so that the first compliance deadline is December 12, 2018, one year later than the December 12, 2017 deadline in the Formaldehyde Rule and more than three years after the Formaldehyde Act directed EPA to require compliance. 82 Fed. Reg. 44533 (Sept. 25, 2017) (the “Formaldehyde Delay Rule”).

2. The Formaldehyde Delay Rule violates and exceeds EPA’s statutory authority. In 2010, Congress enacted the Formaldehyde Act directing EPA to promulgate a rule setting emission standards for formaldehyde in composite wood products and associated testing and certification procedures. 15 U.S.C. § 2697. Congress limited EPA’s discretion by prescribing and establishing mandatory deadlines for the core emission standards. EPA had until January 1, 2013 to promulgate the emissions standards and 180 days after the rule’s promulgation to require compliance for three types of wood products. By extending the compliance deadlines for these wood products far beyond 180 days of promulgation of the Formaldehyde Rule and years after the congressional 2013 deadline, the Formaldehyde Delay Rule is in blatant violation of 15 U.S.C. § 2697(b)(1), exceeds EPA’s statutory authority, and is unlawful.



1 ways to reduce their risks. It devoted organizational resources to performing functions that the  
2 government should be, but was not performing. It conducted extensive advocacy to compel the  
3 government to protect people from formaldehyde emissions from wood products. This advocacy  
4 included petitioning EPA to adopt limits on formaldehyde emissions from composite wood  
5 products and submitting numerous comments to EPA in support of the proposals to adopt such  
6 standards.  
7

8 6. The Sierra Club files this lawsuit on behalf of itself and its members. The Sierra  
9 Club has more than 829,000 members nationwide, including many thousands of members who  
10 are particularly susceptible to harm from formaldehyde emissions and who live in areas recently  
11 impacted by natural disasters.  
12

13 7. Plaintiff A Community Voice-Louisiana (“ACV”) is a non-profit community  
14 organization dedicated to fighting for social and economic justice for low to moderate income  
15 families in southern Louisiana. The organization conducts training sessions, runs campaigns,  
16 and undertakes other outreach efforts to assist its members and raise broader public awareness  
17 about the concerns of southern Louisiana’s lower income families. ACV has been actively  
18 engaged in helping lower income neighborhoods in the area recover from the impacts of  
19 Hurricane Katrina and avoid further threats to their health and well-being. Many of ACV’s  
20 members were housed in FEMA trailers in the wake of the storm and were exposed to elevated  
21 levels of formaldehyde.  
22

23 8. ACV files this lawsuit on behalf of itself and its members. ACV has many  
24 members who have young children, are elderly, have previously been exposed to elevated levels  
25 of formaldehyde, and have respiratory ailments and therefore are particularly susceptible to  
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1 exposure to additional formaldehyde emissions. ACV's members also all live in an area that still  
2 is struggling to rebuild after Hurricane Katrina.

3 9. Plaintiffs' members include people who are sensitive to formaldehyde exposures  
4 because of past harm to their health from formaldehyde exposures, existing health conditions like  
5 asthma, or being in vulnerable populations like children and the elderly. Plaintiffs' members  
6 who live in areas impacted by natural disasters will be exposed to construction, rebuilding, and  
7 new furnishings that contain composite wood products. Plaintiffs' members include people who  
8 live in housing, work in buildings, or whose children attend day care or school in buildings that  
9 are having repairs or new construction or new furnishings using composite wood products.  
10

11 10. If EPA had required compliance with limits on formaldehyde emissions from  
12 composite wood products in accordance with the Formaldehyde Act, newly manufactured or  
13 imported composite wood products would need to comply with the emissions standards by  
14 December 12, 2017. While finished goods could use wood products manufactured prior to  
15 December 12, 2017, the existing stocks of wood products with higher formaldehyde emissions  
16 would be fixed and start to be depleted.  
17

18 11. Plaintiffs' members depend on this regulation being in place to protect themselves  
19 and their families from formaldehyde emissions above the EPA standards in their homes,  
20 workplaces, schools, and day cares. Plaintiffs' members do not control which composite wood  
21 products will be used in construction, rebuilding, furnishings, and cabinetry to which they are  
22 exposed. They do not receive notice that wood products with higher emissions have been used  
23 or installed in their rental housing, their workplaces, or where their children go to school or day  
24 care.  
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1 12. Delaying compliance with the Formaldehyde Rule beyond the timeline allowed  
2 by Congress has injured and continues to injure both the Sierra Club and A Community Voice  
3 and their members. Granting the requested relief would redress these injuries by stopping the  
4 manufacture and import of wood products with higher emissions and fixing and starting the  
5 depletion of the supply of wood products used in finished goods and other products in  
6 widespread distribution.

8 13. Defendant Scott Pruitt is the Administrator of the United States Environmental  
9 Protection Agency, the federal agency charged with issuing regulations to implement the  
10 Formaldehyde Act and that is constrained by the Act's mandatory provisions and limitations on  
11 that authority.

13 **JURISDICTION AND VENUE**

14 14. This Court has jurisdiction over this action pursuant the 28 U.S.C. § 1331(federal  
15 question jurisdiction). Venue is proper because Sierra Club is incorporated in California and has  
16 its principal place of business in this district. 28 U.S.C. § 1391(e)(1).

18 **BACKGROUND**

19 I. THE HEALTH RISKS OF FORMALDEHYDE AND THE HARMFUL EXPOSURES  
20 EXPERIENCED BY PEOPLE HOUSED IN EMERGENCY TRAILERS AFTER  
HURRICANE KATRINA.

21 15. Formaldehyde is a colorless, flammable gas at room temperature with a strong  
22 odor.

24 16. Formaldehyde is classified as a known human carcinogen by the National  
25 Toxicology Program based on evidence in animal and human studies. It is known to cause  
26 cancer in the upper respiratory tract, specifically nasopharyngeal cancer. The National  
27 Toxicology Program and the National Research Council have identified formaldehyde as causing  
28

1 myeloid leukemia, and the International Agency for Research on Cancer conducted an  
2 assessment concluding that formaldehyde causes leukemia.

3 17. Formaldehyde is a sensory irritant. Eye, nose, and throat irritations, even from  
4 formaldehyde exposures of relatively short duration, have been documented in a range of  
5 epidemiology and human studies.

6  
7 18. Formaldehyde exposure is associated with a range of respiratory effects. It can  
8 irritate the respiratory tract, decrease pulmonary function, increase the risk of asthma and allergic  
9 conditions, especially in children, and increase the severity of childhood asthma attacks.

10  
11 19. Epidemiology studies document an association between formaldehyde exposure  
12 and adverse reproductive outcomes in women, including reduced fertility.

13 20. Formaldehyde is produced on a large scale worldwide. One major use includes  
14 the production of wood binding adhesives and resins used in the manufacture of composite wood  
15 products (*i.e.*, hardwood plywood, medium-density fiberboard, and particleboard). Composite  
16 wood products are widely used in paneling, flooring, cabinets, furniture, countertops, molding,  
17 and door skins.

18  
19 21. The hazards of formaldehyde emissions from composite wood products came to  
20 the fore when people displaced by Hurricane Katrina and other disasters were housed in trailers  
21 provided by the FEMA. Many of the occupants of the FEMA trailers experienced nosebleeds,  
22 headaches, eye and skin irritation, and other ailments. Testing by the Centers for Disease  
23 Control (“CDC”) documented higher levels of formaldehyde than are typical indoors in the  
24 United States. Because of serious health concerns, most of the displaced people were eventually  
25 moved out of the FEMA trailers, although the trailers continue to be used as housing in other  
26 parts of the country.  
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1           22.     In 1992, the California Air Resources Board (“CARB”) designated formaldehyde  
2 as a toxic air contaminant with no safe level of exposure. This designation requires CARB to  
3 take action to reduce human exposure to this toxic air contaminant. Spurred by the FEMA  
4 trailers debacle, CARB initiated a formal rulemaking in which it found that formaldehyde is a  
5 respiratory irritant and carcinogen and that one of the major sources of exposure is from  
6 inhalation of formaldehyde emitted from composite wood products containing urea-  
7 formaldehyde resins.

8  
9           23.     In 2008, California adopted an Airborne Toxics Control Measure (“ATCM”) to  
10 reduce formaldehyde emissions from hardwood plywood, particleboard, and medium-density  
11 fiberboard and finished goods (such as cabinets and furniture) made with composite wood  
12 products. It phased in the new emissions standards, requiring compliance between July 1, 2009  
13 and July 1, 2012, depending on the particular wood product. Manufacturers must demonstrate  
14 compliance with the standards through emissions tests and quality control processes certified by  
15 a third-party certifier. 17 Cal. Code Reg. §§ 93120-93120.12. CARB estimated that its emission  
16 standards would reduce formaldehyde exposures in California by 58% by 2013 and would  
17 reduce childhood cancers by 9-26 and lifetime cancer cases by 35-97 per million.  
18  
19 <https://www.arb.ca.gov/toxics/compwood/factsheet.pdf>.

20  
21           24.     In 2008, the Sierra Club, joined by 25 other organizations and about 5,000  
22 individuals, petitioned EPA to adopt the CARB standards under TSCA. EPA declined to adopt  
23 the CARB standards because it did not have sufficient information to make the stringent findings  
24 then required under TSCA to regulate exposure to chemicals. 73 Fed. Reg. 36504 (June 27,  
25 2008). EPA initiated a proceeding to begin gathering information that could provide the basis  
26 for adopting and even going beyond the CARB standards. *Id.*  
27  
28

1 II. THE 2010 LAW DIRECTING EPA TO ADOPT FORMALDEHYDE EMISSIONS  
2 STANDARDS FOR COMPOSITE WOOD PRODUCTS ON AN EXPEDITIOUS  
3 BASIS.

4 25. Congress enacted the Formaldehyde Act in 2010 to establish national limits on  
5 formaldehyde emissions from composite wood products because of the chemical's known  
6 adverse effects on human health and its wide use in a variety of consumer products made of  
7 composite wood such as cabinetry and household furnishings. S. Rep. No. 111-169, at 1 (2010)  
8 *see also* H. R. Rep. No. 111-509, pt. 1, at 7-8 (2010).

9 26. The Act directs EPA to adopt formaldehyde emissions standards for hardwood  
10 plywood, particleboard, and medium-density fiberboard manufactured, sold, or imported into the  
11 United States that must be equivalent to the standards in the CARB Airborne Toxic Control  
12 Measure. 15 U.S.C. § 2697(b)(1). The Act leaves EPA no discretion to change those standards  
13 and requires EPA to adopt implementing regulations that would ensure expeditious compliance  
14 with them.  
15

16 27. The Act directs EPA to determine based on all available and relevant information  
17 to determine whether to exempt engineered veneer and laminated products from the term  
18 "hardwood plywood," subject to the emissions standards, *id.* § 2697(a)(3)(C)(I), and to include  
19 various provisions in the implementing regulations, such as labeling, chain-of-custody  
20 requirements, sell-through provisions, third-party testing and certification, and recordkeeping  
21 requirements. *Id.* § 2697(d)(2).  
22

23 28. The Formaldehyde Act directs EPA to finalize emission standards by January 1,  
24 2013, *id.* § 2697(d)(1), and to ensure that, within 180 days after promulgation, those standards  
25 "shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied,  
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1 offered for sale, or manufactured in the United States,” except for an applicable sell-through  
2 regulation. *Id.* § 2697(b)(1).

3 29. The EPA Administrator may adopt sell-through regulations governing composite  
4 wood products and finished goods that contain regulated composite wood products, including  
5 recreational vehicles, manufactured homes, and modular homes. Such regulations can provide  
6 that any inventory of such products or finished goods are not subject to the emissions standards if  
7 they are manufactured before a specified date of manufacture, rather than based on the date of  
8 sale. *Id.* § 2697(d)(3)(A). Sell-through regulations must prohibit the stockpiling of inventory to  
9 be sold after the date of manufacturing. *Id.* § 2697(d)(3)(B). Stockpiling is defined as the  
10 manufacture or purchase of a composite wood product or finished good between July 7, 2010  
11 and 180 days after promulgation of the regulations that is greater than the rate prior to July 7,  
12 2010. *Id.* § 2697(d)(3)(C).

15 30. Under TSCA, the term “manufacture” includes import. *Id.* § 2602(9). The  
16 Formaldehyde Act directs EPA, in coordination with the Commissioner of the U.S. Customs and  
17 Border Protection to revise regulations related to imported products as necessary to ensure  
18 compliance with the Act no later than July 1, 2013. *Id.* § 2697(b)(4).

20 31. Congress set tight timelines for compliance because the regulated industry had  
21 represented that a significant portion of the domestic industry is complying with the California  
22 standards. H. R. Rep. No. 111-509, pt. 1, at 15 (2010); Cong. Budget Office, Cost Estimate of S.  
23 1660 Formaldehyde Standards for Composite Wood Products Act (January 7, 2010),  
24 <https://www.cbo.gov/publication/41906>. Congress sought to eliminate the competitive  
25 advantage that foreign suppliers not subject to the California standards had in the market and  
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1 prevent lower-cost imports with high formaldehyde emissions. H. R. Rep. No. 111-509, pt. 1, at  
2 7-9, 14-15; 156 Cong. Rec. H4704 (daily ed. June 23, 2010) (statement of Rep. Matsui).

3 III. PROMULGATION OF THE FORMALDEHYDE RULE ESTABLISHING  
4 FORMALDEHYDE EMISSION STANDARDS AND THIRD-PARTY  
5 CERTIFICATION .

6 32. In June 2013, EPA proposed two rules. One of the rules proposed formaldehyde  
7 emissions standards and implementing measures. 78 Fed. Reg. 34820 (June 10, 2013). The  
8 other proposed a framework for the third-party certification program. 78 Fed. Reg. 34796 (June  
9 10, 2013).

10 33. On July 27, 2016, EPA signed the Formaldehyde Rule combining and finalizing  
11 both of the proposed rules. EPA issued a press release in which the EPA Assistant Administrator  
12 for the Office of Chemical Safety and Pollution Prevention heralded issuance of the final rule to  
13 protect the public from exposure to formaldehyde, stating:  
14

15 We are carrying out important measures laid out by Congress to protect the public from  
16 harmful exposures of this widely used chemical found in homes and workplaces. . . . The  
17 new rule will level the playing field for domestic manufacturers who have a high rate of  
18 compliance with the California standard and will ensure that imported products not  
19 subject to California's requirements will meet the new standard and thus, not contain  
20 dangerous formaldehyde vapors.

21 EPA News Release, EPA Issues Final Rule to Protect the Public from Exposure to Formaldehyde:  
22 Agency Implements Congressionally Enacted Formaldehyde Emission Standards (July 27, 2016)  
23 (available at [https://www.epa.gov/newsreleases/epa-issues-final-rule-protect-public-exposure-  
24 formaldehyde](https://www.epa.gov/newsreleases/epa-issues-final-rule-protect-public-exposure-formaldehyde)).

25 34. The Formaldehyde Rule codifies the California standards as directed by the 2010  
26 Formaldehyde Act. EPA decided not to exempt various wood veneer laminated products in  
27 which wood veneer is glued to the composite wood products that are subject to the emissions  
28

1 standards. The rule also established testing, certification, recordkeeping, and other implementing  
2 mechanisms.

3 35. The Formaldehyde Rule signed in July 2016 specified an effective date of 60 days  
4 after publication of the rule in the Federal Register and a compliance deadline for the composite  
5 wood product emissions standards of one year after publication. Compliance with import  
6 certification requirements would be required two years after publication and laminated wood  
7 products would be required to comply with the emissions standards seven years after publication.

8 36. Even though the Formaldehyde Rule was signed in July 2016, it was not  
9 published in the Federal Register until December 12, 2016. As published, it had an effective  
10 date of February 10, 2016, and required compliance with the emission standards for composite  
11 wood products by December 12, 2017. 81. Fed. Reg. 89674 (Dec. 12, 2016.)

14 IV. VARIOUS MANEUVERS TO DELAY THE FORMALDEHYDE RULE.

15 37. On inauguration day, the newly installed President directed agencies to freeze  
16 regulations that had been published in the Federal Register, but had not yet gone into effect.  
17 Following that directive, EPA issued an omnibus final rule delaying the effective dates of 30  
18 listed regulations until March 21, 2017. 82 Fed. Reg. 8499 (Jan. 26, 2017). The table listing the  
19 rules included the Formaldehyde Rule. *Id.* at 8500. EPA did not comply with notice-and-  
20 comment rulemaking requirements in issuing this rule delaying the effective dates.  
21

22 38. On March 20, 2017, EPA published another final rule delaying the effective dates  
23 of a series of rules, including the Formaldehyde Rule, for another 60 days until May 22, 2017.  
24 82 Fed. Reg. 14324 (Mar. 20, 2017). EPA again sidestepped notice-and-comment rulemaking  
25 procedures in issuing this second delay rule.  
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1           39.     EPA issued no further rules delaying the Formaldehyde Rule’s effective date, and  
2 the rule went into effect on May 22, 2017.

3           40.     With the Formaldehyde Rule in effect, EPA turned its attention to delaying the  
4 compliance deadlines. On May 24, 2017, EPA published both a direct final rule and a proposed  
5 rule proposing to extend the Formaldehyde Rule’s compliance deadlines by an amount of time  
6 equal to the delay in the effective date of the Formaldehyde Rule, a delay of a little more than  
7 three months. 82 Fed. Reg. 23735 (May 24, 2017); 82 Fed. Reg. 23769 (May 24, 2017). The  
8 direct final and proposed rules justified this delay to allow regulated entities time to establish  
9 business relationships, reduce compliance burdens, and prevent disruptions in the supply chain.  
10

11           41.     EPA pursued a direct final rule because it believed the extension of the  
12 compliance deadlines would be noncontroversial and would generate no adverse comments.  
13 After EPA received adverse comments, EPA withdrew the direct final rule.  
14

15           42.     Some importers of wood products urged EPA to extend the compliance deadlines  
16 beyond the proposed three months. *See* Comments of International Wood Products Association  
17 (represents importers of wood and wood products), available at  
18 <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0244-0011>; Furniture Values  
19 International, LLC (furniture importer), available at  
20 <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0244-0005>.  
21

22           43.     On September 25, 2017, EPA published the Formaldehyde Delay Rule delaying  
23 the compliance deadlines in the Formaldehyde Rule. 82 Fed. Reg. 44533 (Sept. 25, 2017). EPA  
24 delayed some of the compliance deadlines by a period of time commensurate with the amount of  
25 time the Formaldehyde Rule’s effective date had been delayed, a period of slightly more than  
26 three months. For one set of deadlines, however, it went further. EPA delayed all of the  
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1 compliance deadlines associated with the formaldehyde emissions standards for hardwood  
 2 plywood, particleboard, and medium-density fiberboard for an entire year beyond the December  
 3 12, 2017 compliance deadline in the Formaldehyde Rule. The Formaldehyde Delay Rule  
 4 reiterated EPA's desire to reduce compliance burdens, provide regulatory flexibility to regulated  
 5 entities, and prevent disruptions in the supply chain. *Id.* at 44533. It called the new compliance  
 6 deadlines "a balanced and reasonable timeline" and stated that it "believes extending this  
 7 compliance date reflects Congressional intent under TSCA Title VI that the agency implement  
 8 provisions to ensure compliance with the formaldehyde emissions standards as soon as possible  
 9 while enabling regulated entities to achieve compliance." *Id.* at 44534. EPA never mentioned  
 10 the Formaldehyde Act's direction to require compliance within 180 days of promulgating the  
 11 Formaldehyde Rule.  
 12  
 13

14 44. EPA stated that it does not believe the delay would result in any significant  
 15 increases in health risk because a majority of wood products conform to the CARB standards.  
 16 *Id.* at 44534-35. Even though both Congress and EPA have long estimated high compliance  
 17 rates among domestic manufacturers, EPA never assessed the risks posed by the non-CARB  
 18 compliant wood products, which had been the motivation for the direction in the Formaldehyde  
 19 Act.  
 20

#### 21 CAUSE OF ACTION

22 45. Both the Formaldehyde Rule and the Formaldehyde Delay Rule are final agency  
 23 actions within the meaning of the Administrative Procedure Act. 5 U.S.C. §704.  
 24

25 46. EPA promulgated the Formaldehyde Rule when it published the rule in the  
 26 Federal Register on December 12, 2016. The Formaldehyde Rule codified the emissions  
 27 standards mandated in the Formaldehyde Act, 15 U.S.C. § 2697(b)(2).  
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19 UNITED STATES DISTRICT COURT  
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
21 SAN FRANCISCO DIVISION

21 SIERRA CLUB, and A COMMUNITY VOICE- ) Civ. No. 3:17-cv-6293-SK  
22 LOUISIANA )  
23 Plaintiffs, )  
24 v. ) PLAINTIFFS' MOTION TO EXPEDITE  
25 SCOTT PRUITT, in his official capacity as )  
26 Administrator of the United States Environmental )  
27 Protection Agency )  
28 Defendant. )

PLAINTIFFS' MOTION TO EXPEDITE  
Civ. No. 3:17-cv-6293-SK

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**INTRODUCTION**

Pursuant to Northern District of California Civil Local Rule 6-3, Plaintiffs ask the Court to expedite Plaintiffs’ Motion for Summary Judgment filed concurrently with this motion. Plaintiffs’ Motion for Summary Judgment asks the Court to vacate a rule adopted by the Environmental Protection Agency (“EPA”), Compliance Date Extension; Formaldehyde Emission Standards for Composite Wood Products, 82 Fed. Reg. 44533 (Sept. 25, 2017) (the “Formaldehyde Delay Rule”), which extends the deadlines for wood products to comply with new formaldehyde emissions limits that Congress directed EPA to establish in the Formaldehyde Standards in Composite Wood Products Act, 15 U.S.C. § 2697 (the “Formaldehyde Act”). By extending those deadlines, EPA exceeded its authority and acted contrary to the plain language of 15 U.S.C. § 2697(b)(1) of the Formaldehyde Act, which required compliance in 2016. Defendant has yet to take a position on this issue. Declaration of Patti Goldman ¶ 6 (Nov. 2, 2017).

Under Local Rule 7.2 and this Judge’s Standing Order, the earliest date a hearing on the motion for summary judgment can be scheduled is December 11, 2017, one day before compliance with the formaldehyde emissions limits would have been required, but for the unlawful delay rule. This motion seeks to advance the hearing date to give the Court time to rule on the motion before the illegal extension would occur. Expediting the hearing for the motion for summary judgment would not change the briefing schedule. There have been no previous modifications of the schedule for this motion.

**FACTUAL AND PROCEDURAL BACKGROUND**

In 2010, Congress enacted the Formaldehyde Act to establish national limits on formaldehyde emissions from composite wood products because of formaldehyde’s adverse

1 effects on human health and wide use of the chemical in a variety of products such as cabinetry  
2 and household furnishings. S. Rep. No. 111-169, at 1 (2010) *see also* H. R. Rep. No. 111-509, pt.  
3 1, at 7-8 (2010). Congress enacted this law in light of serious illnesses experienced by people  
4 displaced by Hurricane Katrina who were exposed to formaldehyde-emitting composite wood  
5 products in emergency trailers provided by the Federal Emergency Management Agency.  
6

7 The Formaldehyde Act directs the EPA to adopt the formaldehyde emissions standards  
8 equivalent to the California Airborne Toxic Control Measures for composite wood products  
9 manufactured, sold, or imported into the United States by January 1, 2013. 15 U.S.C. §  
10 2697(d)(1). In addition, the Formaldehyde Act explicitly instructs EPA to ensure compliance  
11 with the enacted formaldehyde emissions standards “on the date that is 180 days after the date of  
12 promulgation of those regulations.” 15 U.S.C. § 2697(b)(1).  
13

14 In 2016, EPA eventually the Formaldehyde Rule establishing the formaldehyde emission  
15 limits and requiring compliance by December, 12, 2017. Formaldehyde Emission Standards for  
16 Composite Wood Products, 81 Fed. Reg. 89674 (Dec. 12, 2016). The rule at issue in this case  
17 delays the compliance deadline for an entire year. Compliance Date Extension; Formaldehyde  
18 Emission Standards for Composite Wood Products, 82 Fed. Reg. 44533 (Sept. 25, 2017).  
19

20 Plaintiffs filed this lawsuit on October 31, 2017, and are filing the motion for summary  
21 judgment and this motion to expedite two days later. The motion for summary judgment asks  
22 the Court to declare the delay rule illegal and set it aside because it defies the statutory  
23 requirement that EPA require compliance far sooner.  
24

### 25 **GROUND S FOR MOTION**

26 An expedited hearing on Plaintiffs’ Motion for Summary Judgment is warranted to give  
27 the Court time to rule on the motion before the illegal extension of the compliance deadline will  
28

1 occur. When EPA adopted the statutorily mandated limits on formaldehyde emissions from wood  
2 products, it set a compliance deadline of December 12, 2017, even though the Formaldehyde Act  
3 mandated earlier compliance. The challenged rule extends the compliance deadline by an entire  
4 year.  
5

6 In the Formaldehyde Act, Congress required EPA to act expeditiously to protect the public  
7 from toxic composite wood products that can cause serious adverse health effects. It set deadlines  
8 for EPA to act and require compliance. Time is of the essence to hold EPA to the statutory  
9 mandates in the Formaldehyde Act and to stop the sale and import of wood products that exceed  
10 the limits on formaldehyde emissions.  
11

12 Under the Local Rules and this Judge's Standing Order, the earliest a hearing can be  
13 scheduled is December 11, 2017, one day before compliance would be required, but for the illegal  
14 delay rule. Advancing the hearing is necessary to give this Court time to rule on the Motion for  
15 Summary Judgment before the December 12, 2017 compliance deadline.  
16

17 For these reasons, this Court should grant this motion to expedite and set the hearing on  
18 Plaintiffs' Motion for Summary Judgment at the earliest possible date.  
19

### 20 **OPPOSING COUNSEL'S POSITION**

21 Pursuant to Northern District of California Civil Local Rule 6-3, Plaintiffs' counsel  
22 conferred with an attorney in EPA's Office of General Counsel, who indicated the agency has  
23 not yet determined its position on this motion.  
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### 25 **CONCLUSION**

26 Plaintiffs respectfully request that the Court grant this motion for expediting Plaintiffs'  
27 Motion for Summary Judgment.  
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Respectfully submitted this 2nd day of November, 2017.

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