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LEGAL DEPARTMENT

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MANUFACTURING ENVIRONMENTAL COMMITTEE

P. CAA/NESHAPS Eugene Steing
cc. R. Quinn, R. Price
cc: F. R. Gschweng, F&PP, B-5218
M. L. Rees, Legal, Washington
Air Pollution Control Engineers

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Environmental Conservation
Department

FEB 11 1983
January 27 1983

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CLEAN AIR ACT - ENVIRONMENTALISTS' CITIZEN SUIT
TO FORCE REGULATION OF BENZENE UNDER SECTION 112

The EDF and NRDC have served notice upon EPA that if the Agency does not promulgate four proposed emission standards for benzene and does not propose a fifth standard, they will initiate a citizens' suit to compel the Agency to take such action.

In 1977 EPA added benzene to the list of hazardous air pollutants under Section 112 of the Clean Air Act. In 1980 and 1981, the Agency proposed four separate emission standards for benzene emitted from:

1. maleic anhydride plants;
2. ethylbenzene styrene plants;
3. storage vessels with a capacity greater than four cubic meters; and
4. fugitive emission sources in petroleum refining and chemical manufacturing industries.

None of these has ever been promulgated. Nor has EPA proposed a standard for emissions from gasoline marketing. These groups are threatening to initiate a citizens' suit unless EPA takes action within 60 days, as prescribed in the Clean Air Act Citizen Suit provisions (Section 304).

We have heard informally that EPA intends to promulgate the four final benzene regulations around the end of February 1983, but we have not heard when EPA intends to propose the standard for benzene emissions from gasoline marketing.

A copy of EDF's and NRDC's letter is attached for your information.

David Modi
DAVID T. MODI

DTM:sc1
Att.

SAL 000019950



ENVIRONMENTAL DEFENSE FUND

December 23, 1982

Anne M. Gorsuch, Administrator
Environmental Protection Agency
Washington, D.C. 20460

Dear Mrs. Gorsuch:

Section 304(a)(2) of the Clean Air Act, as amended (hereinafter "the Act") authorizes citizens to commence civil actions "against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator." Section 304(b)(2) provides that citizens actions may not be commenced "prior to 60 days after the plaintiff has given notice of such action to the Administration."

Pursuant to, and in accordance with, Section 304(b)(2) of the Act and 40 C.F.R. §§ 54.2(a) and 54.3(a), the Environmental Defense Fund (EDF) and the Natural Resources Defense Council (NRDC) are hereby providing you with prior notice of intent to file suit to compel you to perform a non-discretionary duty under Section 112(b)(a)(B) of the Act. The duty which you have failed to perform is to take action on the hazardous pollutant benzene within the time period specified in that Section.

On April 14, 1977, EDF petitioned the Environmental Protection Agency (EPA) to add benzene to the list of hazardous air pollutants regulated under Section 112 of the Act. In a Federal Register notice on June 8, 1977, EPA stated: "This notice adds benzene to the list of pollutants determined to be hazardous as defined under Section 112 of the Clean Air Act, as amended. It is based on scientific reports which strongly suggest an increased incidence of leukemia in humans exposed to benzene." 42 Fed. Reg. 29337.

The Administrator subsequently stated, based on "numerous occupational studies" and other evidence, that:

"[B]enzene exposure is causally related to a number of blood disorders, including leukemia . . . the Administrator has 'made a generic determination that, in view of the existing state of scientific knowledge, prudent public health policy requires that carcinogens be considered for regulatory purposes to pose some finite risk of cancer at any exposure level above zero.' (44 FR 58646). Because of the widespread use of benzene, benzene emissions in the ambient air have been determined to result in significant human exposure. For these reasons, exposure to benzene emissions may reasonably be anticipated to result in one or more serious effects that can be expected to lead to an increase in mortality or an increase in serious, irreversible or incapacitating, reversible illness. Therefore, the Administrator concluded that benzene satisfies the definition of hazardous air pollutant under Section 112 of the Clean Air Act." 46 Fed. Reg. 1167 (January 5, 1981).

Four regulatory proposals have been issued by the Administrator in the wake of the above findings and conclusions. The proposals would set national emission standards for benzene emitted from: (1) maleic anhydride plants, 45 Fed. Reg. 26660 (April 18, 1980); (2) ethylbenzene styrene plants, 45 Fed. Reg. 83448 (December 18, 1980); (3) storage vessels with a capacity greater than four cubic meters, 45 Fed. Reg. 83952 (December 19, 1980); and (4) fugitive emission sources in petroleum refining and chemical manufacturing industries, 46 Fed. Reg. 1165 (January 5, 1981). A fifth draft proposal, gasoline marketing was never issued.

Section 112 of the Clean Air Act requires standards to be proposed with 180 days of the listing of a pollutant. Final standards are to be promulgated 180 days after the proposed standards are published. EPA's failure to propose a standard for gasoline marketing and to promulgate final standards for the other four categories is clearly a violation of a nondiscretionary duty under Section 112.

This letter is to provide you with prior notice that EDF and

NRDC will file a citizens action to compel you to prescribe such standards unless your voluntary compliance is forthcoming with 60-days--

Sincerely,

Christine C. Hall

Christine L. Hall
Counsel for the Environmental
Defense Fund

David D. Doniger

David Doniger
Counsel for the Natural Resources
Defense Council