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June 20, 2006

Friends of Hudson, Earthjustice, Other Groups Challenge New EPA Rule That Gives Refineries, Chemical Plants Free Pass for Toxic Air Pollution

Environmental, public health coalition challenges illegal rule in federal court

Washington, D.C. – Environmentalists and community organizations late yesterday filed litigation in federal court challenging an illegal rule adopted by the Environmental Protection Agency that allows refineries, chemical plants, and other industrial facilities to evade pollution control requirements whenever equipment malfunctions, and whenever they start up or shutdown operations. At these times toxic emissions can increase ten times allowable levels, and many companies routinely operate in “malfunction” mode to avoid compliance with pollution limits.

“It’s as if EPA is sending the message that protecting public health is secondary to protecting polluters’ right to pollute,” said Susan Falzon, executive director of Friends of Hudson, a New York-based community environmental organization. “The general public believes that the EPA protects both the environment and public health. Polluting industries benefit unfairly from this public trust when the EPA fails to hold them accountable.”

“Chemical plants, refineries, and other manufacturers routinely dump thousands of pounds of toxic pollution in the air when equipment breaks down, or when plants are undergoing maintenance,” said Eric Schaeffer, director of the Environmental Integrity Project. “EPA should close this loophole, instead of making it harder for the public to know when the Clean Air Act is being violated.” In August 2004, EIP issued a report, “Gaming the System: How the Off-the-Books Industrial Upset Emissions Cheat the Public Out of Clear Air,” which concluded that loopholes in the law are threatening public health. A copy of the report is available at <http://www.environmentalintegrity.org/pub238.cfm>.

Last September, three major oil refineries in Wilmington, CA – Shell, ConocoPhillips and Valero – belched black and yellow smoke for over eight hours after pollution and safety controls failed during a power outage. Their pollution controls were run with electricity, so when the power went out, so did the controls. This massive toxic release could have been avoided had the refineries been required to prepare an adequate contingency plan that included a backup power source during a blackout. Unfortunately, EPA’s rules

encourage such reckless lack of planning by exempting plants from toxic emission limits during malfunctions and allowing plant owners to keep their backup plans secret from the public.

“The people living near these facilities should be protected from breathing carcinogenic and toxic fumes at all times, not just when it is convenient for plant owners,” said Jesse Marquez, executive director for the Coalition for a Safe Environment. “These refineries are responsible for poisoning our air and causing public health problems and they get away with it because it was deemed a malfunction. We should not be forced to breathe this toxic air pollution or be in fear of our lives from a potential fire or explosion simply because there’s no plan in place.”

“Equipment malfunctions, start up or shutdown operations are responsible for much of the twenty million pounds of air toxics emitted annually in our area,” said Marylee Orr, executive director of Louisiana Environmental Action Network. “When the big flares at one of the local facilities go off it can cause significant problems in the surrounding communities.”

EPA’s rule not only allows facilities to avoid compliance with pollution limits, it also blocks local residents’ ability to see or evaluate a company’s measures for preventing malfunctions. “If we knew there was no plan in place to prevent such emissions during a power failure or equipment failure, we could have asked for some mandatory public safety contingency plan to be put in place,” Marquez said. “The lack of mandatory public safety precautions, emergency plans and legal consequences for these facilities during malfunctions is an absolute sham.”

“This rule just removes the public’s right to know what will be done to protect them from exposure to harmful, poisonous chemicals,” said Jane Williams, a Sierra Club activist and clean air expert.

Some facilities evade clean air protections by claiming that they are in startup, shutdown, or malfunction mode during much of their operating time. In 2003, for example, one facility in Texas released over 91,000 pounds of benzene and 83,000 pounds of butadiene – both known carcinogens – during SSM periods. This rule not only allows more pollution into the air, it also relieves refineries, chemical plants and other industrial facilities from notifying nearby communities, schools, hospitals and neighbors of what will happen should some problem occur.

“Even with respect to the general duty to minimize emissions, we can’t know what the plants intend to do to protect us during a malfunction because they get to keep the plans secret,” said Earthjustice attorney Keri Powell. “It’s only after we find ourselves breathing their toxic fumes that they tell us what they did to minimize them, and by that time, it’s just too late.”

Earthjustice is representing Friends of Hudson, Louisiana Environmental Action Network, Coalition for a Safe Environment, Sierra Club, and Environmental Integrity Project in the litigation, which was filed in the U.S Court of Appeals for the District of Columbia Circuit.