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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

17 SIERRA CLUB, a non-profit organization,	)	
18 and IMPROVING KIDS' ENVIRONMENT,	)	Case No.:
19 a non-profit organization	)	
20	)	
21 Plaintiffs,	)	
22	)	<b>COMPLAINT FOR DECLARATORY</b>
23 vs.	)	<b>AND INJUNCTIVE RELIEF</b>
24	)	
25 STEPHEN L. JOHNSON, in his official	)	
capacity as Administrator of the United	)	
States Environmental Protection Agency	)	
26	)	
27 Defendant.	)	
28	)	
29	)	
30	)	
31	)	
32	)	

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**INTRODUCTION**

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1. Plaintiffs SIERRA CLUB and IMPROVING KIDS’ ENVIRONMENT bring this suit against Defendant STEPHEN L. JOHNSON, in his official capacity as Administrator of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (“EPA”), to compel him to promulgate regulations pursuant to the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, regarding lead in toy jewelry and other consumer products to which children and adults may be exposed consistent with Plaintiff’s April 21, 2006 petition. Plaintiffs takes this action to protect the interests of their members and their children who may be exposed to lead in toy jewelry and other consumer products to reduce the likelihood of their exposure to lead and their risk of lead poisoning by consumer products.

**JURISDICTION AND VENUE**

2. Sierra Club files this civil action seeking to compel the Defendant, hereinafter referred to as EPA, to initiate a rulemaking proceeding as requested in the Sierra Club’s petition to EPA on April 21, 2006 pursuant to Section 21 of the Toxic Substances Control Act, 15 U.S.C. § 2620. On July 20, 2006, EPA responded to the Sierra Club’s petition by denying all requests in the petition.

3. Sierra Club has a right to bring this action pursuant to TSCA, 15 U.S.C. § 2620(a)(4)(A), which authorizes petitioners to commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such action shall be filed within 60 days after the Administrator’s denial of the petition.

1 4. Based on EPA's denial of the petition on July 20, 2006, Sierra Club may commence civil  
2 action on or before September 18, 2006. Sierra Club commenced this civil action before  
3 September 18, 2006.

4  
5 5. IKE files this civil action to compel the EPA to initiate a rulemaking proceeding as  
6 requested in IKE's petition mailed to EPA on April 20, 2006 pursuant to Section 21 of the Toxic  
7 Substances Control Act, 15 U.S.C. § 2620. IKE's petition supported the Sierra Club's petition  
8 and made the same requests as the Sierra Club's petition. It was mailed several days after Sierra  
9 Club. EPA has never responded to or acknowledged receipt of this petition.

10  
11 6. EPA's failure to respond to IKE's petition leads IKE to conclude that EPA treated the  
12 petitions as similar. Therefore, EPA effectively denied IKE's petition when it rejected the Sierra  
13 Club's petition. Based on EPA's denial of the petition on July 20, 2006, IKE may commence  
14 civil action on or before September 18, 2006. IKE commenced this civil action before  
15 September 18, 2006.

16  
17 7. In the alternative, if EPA did not treat IKE's petition as separate from Sierra Club's  
18 petition, then IKE is entitled to review pursuant to Section 21 of the Toxic Substances Control  
19 Act, 15 U.S.C. § 2620. In this situation, EPA's failure to respond to the petition was not certain  
20 until it denied the Sierra Club's petition.

21  
22 8. The Court has jurisdiction pursuant to 15 U.S.C. § 2620(a)(4)(A) and 28 U.S.C. §§ 1331.

23  
24 9. The Court has authority to award the relief sought pursuant to 15 U.S.C. § 2620(a)(4).

1 10. Pursuant to Civil Local Rule 3-2(c), Plaintiff states that it bases venue in this district and  
2 assignment to the San Francisco Division on the following: 1) Plaintiff Sierra Club is  
3 incorporated in California and resides and maintains its headquarters in San Francisco County in  
4 this judicial district; 2) this action seeks relief against a federal official acting in his official  
5 capacity; and 3) 28 U.S.C §§ 1361 and 1391(e) provide for venue in the judicial district of a  
6 plaintiff's residence, including the San Francisco Division.  
7

8 11. The Plaintiff IKE resides in the Southern District of Indiana. It defers to the venue  
9 established by Sierra Club.  
10

11 **PARTIES**  
12

13 12. Plaintiff SIERRA CLUB was founded in 1892 and is the nation's oldest grassroots  
14 environmental organization. The SIERRA CLUB is a national nonprofit organization of  
15 approximately 750,000 members nationwide, including over 191,000 members in California,  
16 dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and  
17 promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting  
18 humanity to protect and restore the quality of the natural and human environment; and to using  
19 all lawful means to carry out these objectives. One of the Sierra Club's national initiatives is to  
20 build safe and healthy communities, free of toxic poisons that threaten public health and safety.  
21 The Sierra Club has a national Toxics Committee dedicated to protecting public health from the  
22 dangers of toxic exposure, including protecting children from the hazards associated with lead  
23 exposure.  
24  
25

1 13. For the foregoing reasons, the EPA’s denial of Sierra Club’s petition challenged in this  
2 case has caused, is causing, and unless this Court grants the requested relief, will continue to  
3 cause Sierra Club and its members injuries for which they have no adequate remedy at law.  
4

5 14. Improving Kids’ Environment (“IKE”) is a non-profit, §501(c)(3) organization  
6 incorporated in Indiana whose mission is to reduce environmental threats to children’s health.  
7 Reducing the risk of lead poisoning has been one of IKE’s foremost efforts in its five year  
8 history. In Indiana in 2004, 2.7% of the children whose blood lead level was tested had a result  
9 of 10 µg/dL or higher, thus exceeding the Centers for Disease Control and Prevention action  
10 level.  
11

12 15. For the foregoing reasons, the EPA’s effective denial of IKE’s petition challenged in this  
13 case has caused, is causing, and unless this Court grants the requested relief, will continue to  
14 cause IKE’s members and staff injuries for which it has no adequate remedy at law.  
15

16 16. The EPA is an agency of the United States.  
17

18 17. Defendant STEPHEN L. JOHNSON is the Administrator of the EPA and, in that role, is  
19 charged by Congress with the duty to respond to petitions submitted pursuant to Section 21 of  
20 the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2620, and adopt regulations pursuant  
21 to Section 6 of TSCA, 15 U.S.C. § 2605, and Section 8 of TSCA, 15 U.S.C. § 2607. Defendant  
22 JOHNSON is named solely in his official capacity.  
23

24 **FACTS**  
25

18. Sierra Club and IKE re-allege the preceding paragraphs and incorporates them herein.

1 CONSUMER PRODUCT SAFETY COMMISSION  
2 GUIDANCE, RECALLS AND RELATED EVENTS

3 19. The U.S. Consumer Products Safety Commission (“CPSC”) published its “Codification  
4 of Guidance Policy on Lead in Consumer Products” (hereinafter referred to as Guidance) in the  
5 December 22, 1998 *Federal Register*, 63 Fed. Reg. 245 at 70648. CPSC issued the Guidance on  
6 December 17, 1998.

7  
8 20. In its Guidance, CPSC concluded that “[Y]oung children are most commonly exposed  
9 to lead in consumer products from the direct mouthing of objects, or from handling such objects  
10 and subsequent hand-to-mouth activity. The specific type and frequency of behavior that a child  
11 exposed to a product will exhibit depends on the age of the child and the characteristics and  
12 pattern of use of the product. The adverse health effects of lead poisoning in children are well-  
13 documented and may have long-lasting or permanent consequences. These effects include  
14 neurological damage, delayed mental and physical development, attention and learning  
15 deficiencies, and hearing problems. Because lead accumulates in the body, even exposures to  
16 small amounts of lead can contribute to the overall level of lead in the blood and to the  
17 subsequent risk of adverse health effects. Therefore, any unnecessary exposure of children to  
18 lead should be avoided.”  
19

20  
21 21. In its Guidance, CPSC identified six major factors it uses on a case-by-case basis to  
22 evaluate the potential hazard from lead in a consumer product. The six factors are:

- 23 a. The total amount of lead contained in a product;  
24 b. The bioavailability of the lead;  
25 c. The accessibility of the lead to children;

- d. The age and foreseeable behavior of the children exposed to the product;
- e. The foreseeable duration of the exposure; and
- f. The marketing, patterns of use, and life cycle of the product.

22. In its Guidance, CPSC stated that “to avoid the possibility of a Commission enforcement action, a manufacturer who believes it necessary to use lead in a consumer product should perform the requisite analysis before distribution to determine whether the exposure to lead causes the product to be a ‘hazardous substance.’ If the product is a hazardous substance and is also a children’s product, it is banned. If it is a hazardous household substance but is not intended for use by children, it requires precautionary labeling. This same type of analysis also should be performed on materials substituted for lead.”

23. Consistent with its Guidelines, CPSC has issued recall orders or entered into voluntary recall agreements for lead in consumer products, such as crayons, toys, candles, mini-blinds, and metal toy jewelry.

24. On July 8, 2004, CPSC announced the voluntary recall by four firms that had imported 150 million pieces of toy jewelry sold in vending machines. CPSC reported that about 75 million of the pieces contained lead and acknowledged that it is difficult to distinguish lead jewelry from non-lead jewelry.

25. CPSC’s July 8, 2004 voluntary recall followed an incident in which a child had life-threatening blood lead levels after ingesting a necklace with high lead content.

1 26. On March 23, 2006, CPSC announced a voluntary recall of 300,000 charms attached to  
2 metal bracelets provided as a free gift with the purchase of shoes manufacturers by Reebok  
3 International.

4  
5 27. CPSC's March 23, 2006 voluntary recall followed an incident in which a child died from  
6 acute lead poisoning caused by ingestion of a heart-shaped charm on the model of Reebok shoes  
7 described in Paragraph 21.

8  
9 28. The U.S. Centers for Disease Control and Prevention ("CDC") reported in a March 23,  
10 2006 Dispatch of its *Morbidity and Mortality Weekly Report*, 55(Dispatch);1-2, that the charm  
11 that caused the child's death was 99.1% lead. It reported that other charms from Reebok shoes  
12 had concentrations of lead by weight of 0.004%, 0.044%, 0.07% and 67%.

13  
14 29. In its March 23, 2006 Dispatch, CDC stated that the "variation in lead content revealed in  
15 these products, indicates, alternatives to lead are available. Restriction or elimination of  
16 nonessential uses of lead in consumer products should be part of a proactive strategy that  
17 prevents exposure to these products and is preferable to relying on case finding to identify lead-  
18 exposure hazards."

1 NATIONAL POLLUTION PREVENTION AND  
2 TOXICS ADVISORY COMMITTEE GUIDANCE TO EPA  
3

4 30. EPA established the National Pollution Prevention and Toxics Advisory Committee  
5 (“NPPTAC”) to provide advice, information, and recommendations on the overall policy and  
6 operations of programs undertaken by the Office of Pollution Prevention and Toxics (“OPPT”)   
7 pursuant to the Federal Advisory Committee Act, 5. U.S.C. 2 § 9(c).  
8

9 31. In NPPTAC’s charter, one objective EPA set for NPPTAC was to recommend the  
10 establishment of policies to guide National Program Chemicals risk management activities for  
11 chemicals such as asbestos, lead, polychlorinated biphenyls, dioxin, and mercury.  
12

13 32. On November 22, 2005, NPPTAC set to EPA Administrator Johnson a letter and  
14 NPPTAC’s formal recommendations on lead poisoning prevention from sources other than lead-  
15 based paint.  
16

17 33. NPPTAC’s first recommendation stated that the “Office of Pollution Prevention and  
18 Toxics should, pursuant to its authorities and in cooperation with other federal, state, and local  
19 agencies, as well as Tribal governments, undertake to prevent lead exposure to children from  
20 uses other than lead-based paint. OPPT should use TSCA authorities and other means to identify  
21 sources of potential exposure to children from uses of lead other than lead-based paint. Based on  
22 the information gathered, EPA should develop areas for action and should prioritize these, based  
23 on the likelihood of lead exposure to children and opportunities for risk reduction and pollution  
24 prevention considering the lifecycle of products.”  
25

1 NPPTAC went on to state that “Having identified and prioritized these sources, act on  
2 situations where OPPT can contribute to the restriction or elimination of sources of exposure to  
3 children from lead, other than lead-based paint, for example:

- 4 a. Develop a systematic approach to help ensure that manufacturers, importers,  
5 processors and retailers are aware of the potential hazards from exposure to lead  
6 and that they consider whether children may be exposed to lead hazards from the  
7 expected uses of their product.  
8
- 9 b. Work cooperatively with product manufacturers, importers and processors, as  
10 well as other federal agencies, to identify situations where uses of lead can be  
11 substituted with safer alternatives.  
12
- 13 c. Work with manufacturers, importers and processors that have experienced  
14 significant and repeated problems with unintended lead contamination in their  
15 products to institute measures to reduce the lead contamination.”  
16  
17

#### 18 SIERRA CLUB’S PETITION TO EPA

19 34. Sierra Club submitted its petition to EPA on April 20, 2006. In the petition, Sierra Club  
20 made four requests of EPA.

- 21 a. Require TSCA Section 8(d) Health and Safety Data Reporting for Lead and Lead  
22 Salts,  
23
- 24 b. Submit TSCA Section 9 Report to CPSC Regarding Lead and Lead Salts  
25
- 25 c. Issue Significant New Use Notification Regarding Lead and Lead Salts in Toy  
Jewelry

1 d. Issue Section 6(b) Quality Control Order Regarding Production of Toy Jewelry

2  
3 35. EPA denied all four requests contained in Plaintiff's petition on July 20, 2006

4  
5 36. Sierra Club disputes EPA's decision with regard to the first and fourth requests identified  
6 in its petition. These requests are identified as a) and d) in paragraph 29 above.

7  
8 37. For purposes of TSCA, a manufacturer includes a person or organization that imports a  
9 chemical substance or mixture into the United States.

10 REQUEST FOR 8(d) HEALTH AND SAFETY STUDY RULEMAKING

11  
12 38. Sierra Club's first request of EPA in its petition asked EPA to "at utmost speed require  
13 producers, importers, and processors of lead and its salts that are reasonably likely to be  
14 incorporated into consumer products to provide EPA with lists and/or copies of ongoing and  
15 completed unpublished health and safety studies related to the six factors identified by CPSC."

16  
17 39. If approved by EPA, Sierra Club's request would effectively implement NPPTAC's  
18 recommendation that EPA should use its TSCA authorities and other means to identify sources  
19 of potential exposure to children from uses other than lead-based paint.

20  
21 40. NPPTAC based its decision on an understanding that EPA did not have the information it  
22 needed to identify sources of potential exposure to children from uses other than lead-based paint  
23 and that this information was essential for EPA to develop areas for action and set priorities  
24 based on the likelihood of lead exposure to children and opportunities for risk reduction and  
25 pollution prevention.

1 41. The six factors identified by CPSC refer to those identified in Paragraph 16 above.

2  
3 42. TSCA's definition of a chemical substance and mixture at TSCA Section 2, 15 U.S.C. §  
4 2602, includes consumer products excluding for those specifically exempted in TSCA § 2(2)(B),  
5 14 U.S.C. § 2602(2)(B). Excluded consumer products include pesticides, firearms, tobacco,  
6 tobacco food, food additives, drugs, cosmetics, and medical devices. Sierra Club's petition did  
7 not address these excluded consumer products.

8  
9 43. EPA has the authority under TSCA Section 8(d), 15 U.S.C. § 2607(d) to require  
10 manufacturers of consumer products meeting the definition of a chemical substance or mixture to  
11 submit health and safety studies that are either in their possession, have been commissioned to be  
12 conducted for them, or which they know to be in existence but not in their possession.

13  
14 44. Manufacturers including importers performing the analysis recommended by CPSC  
15 would base the analysis on the six major factors identified by CPSC in its Guidance.

16  
17 45. A study that analyzes a consumer product against any or all of the six factors identified  
18 by CPSC constitutes a health and safety study as defined by the TSCA Section 3(6), 15 U.S.C. §  
19 1602(6) and 40 C.F.R. § 716.3 (September 15, 1986).

20  
21 46. EPA has not previously exercised its authorities under TSCA Section 8(d), 15 U.S.C. §  
22 2607(d) to request health and safety studies involving lead and lead salts in consumer products  
23 other than lead-based paint.

24  
25 47. EPA does not know what health and safety studies have been conducted by  
manufacturers of consumer products other than lead-based paint.

1 48. A risk from a chemical substance or mixture is based on both the toxicity of the material  
2 and the public's exposure to the material.

3  
4 49. The six major factors identified by CPSC address the potential hazards of the public's  
5 exposure to lead in a consumer product and not the toxicity or health effects of lead.

6  
7 50. If manufacturers, importers, and processors comply with the CPSC Guidance regarding  
8 lead in consumer products, they will have conducted a health and safety study.

9  
10 51. EPA has the authority under TSCA Section 8(d) to request these health and safety  
11 studies.

12  
13 52. It is unreasonable for EPA to conclude that manufacturers, importers and processors are  
14 not complying with CPSC Guidance.

15  
16 53. In its denial letter, EPA stated that it "does not consider it likely that it would gain  
17 significant new information through a section 8(d) rule requiring the types of studies identified  
18 by the petitioner."

19  
20 54. EPA's assessment of the information in its possession addresses only the toxicity of lead,  
21 the health hazards of lead, and lead's adverse health effects. EPA states that "it believes that the  
22 health effects of lead are already well known."

23  
24 55. EPA's assessment makes no statement regarding its possession of studies addressing  
25 exposure of the public to lead in consumer products.

1 56. EPA's failure to consider the benefits of obtaining health and safety studies related to  
2 public exposure and CPSC's six major factors was unreasonable, arbitrary and capricious.

3  
4 57. EPA has a reasonable basis to conclude that health and safety studies are available that  
5 contain exposure information that is necessary to protect health or the environment against an  
6 unreasonable risk of injury to children's health in light of the minimal burden a rule would  
7 impose on manufacturers, importers and processors of lead and lead salts in consumer products.

8  
9 REQUEST FOR 6(b) QUALITY CONTROL RULEMAKING

10  
11 58. In its petition, Sierra Club asked EPA to identify manufacturers, importers and processors  
12 who are handling toy jewelry containing lead. Sierra Club indicated that firms already subject to  
13 a recall should be included in this identification process.

14  
15 58. Sierra Club's fourth request of EPA asked EPA to immediately issue Section 6(b) quality  
16 control orders for manufacturers or processors that produces any toy jewelry with more than  
17 0.06% lead by weight. Sierra Club requested that EPA require the manufacturer or processor to  
18 modify its quality control procedures to the extent necessary to remedy the problem.

19  
20 59. If approved by EPA, Sierra Club's request would effectively implement NPPTAC's  
21 recommendation that EPA work with manufacturers, importers and processors that have  
22 experienced significant and, in some cases, repeated problems with unintended lead  
23 contamination in their products to institute measures to reduce the lead contamination.

1 60. If approved by EPA, Sierra Club’s request would effectively respond to variations in lead  
2 content found by CDC in a single brand of toy jewelry and implement CDC’s recommendation  
3 that nonessential uses of lead in consumer product be restricted or eliminated.  
4

5 61. If approved by EPA, Sierra Club’s request would be efficient because it would focus on  
6 those parties who have already demonstrated they have had a serious breakdown in their quality  
7 control procedures since they have already been subject to a recall or similar action.  
8

9 62. CPSC does not have the legal authority to require pre-market approval of consumer  
10 products or require any quality control requirements on manufacturers, importers or processors.  
11

12 63. By working with CPSC, EPA could identify the manufacturers, importers and processors  
13 already subject to a voluntary recall regarding lead in consumer products.  
14

15 64. By working with CPSC, EPA could identify other manufacturers, importers, and  
16 processors of lead who CPSC learned of through recalls made by state and local agencies.  
17

18 65. In its denial letter, EPA states that the “use of section 6(b) would be most beneficial when  
19 the agency can identify a small number of companies who, by their unique actions, are causing  
20 unreasonable risks to be present.”  
21

22 66. Sierra Club’s request is entirely consistent with EPA’s statement because EPA could  
23 obtain existing and easily obtainable information from CPSC at least on those firms already  
24 subject to a recall for lead in toy jewelry.  
25

1 67. EPA received public comments in response to the petition that “suggests that there may  
2 be numerous instances where toy jewelry containing lead is still available in the marketplace.”  
3

4 68. EPA’s denial letter fails to acknowledge the manufacturers, importers and processors  
5 already identified or easily identified by CPSC.  
6

7 69. EPA claims that the case-by-case approach provided for under TSCA Section 6(b), 15  
8 U.S.C. § 2605(b) would be resource intensive than holistic and proactive approaches. Yet EPA  
9 identifies no other approaches and make no specific comparison.  
10

11 70. EPA’s denial letter states that it “is not in a position to issues such orders because it has  
12 not issued any section 6(b)(1) orders that could provide the basis for section 6(b)(2) orders.”  
13

14 71. Sierra Club requested that EPA issue TSCA 6(b) quality control orders. It asked that the  
15 orders include a requirement to modify the quality control procedures. Sierra Club  
16 acknowledges that EPA must first require that relevant quality control procedures be submitted  
17 to EPA. Asking for this requirement does not justify EPA’s denial of its request for any TSCA  
18 6(b) quality control orders.  
19

20 72. EPA’s denial letter states that the “request that EPA identify and issue section 6(b) orders  
21 to all manufacturers and processors producing toy jewelry with greater than 0.06% lead is  
22 therefore denied.”  
23

24 73. Sierra Club did not request that EPA identify *all* manufacturers and processors producing  
25 toy jewelry with greater than 0.06% lead. It asked that EPA take action against manufacturers or  
processors it actually identified.

1 74. EPA's claim that TSCA Section 6(b) quality control orders would be inefficient and  
2 resource intensive is inconsistent with the reality of a child's death and the public comments it  
3 received. It also does not account for the investment that states and localities have and will  
4 continue to invest in the absence of action by EPA. Two states, California and Illinois, have  
5 passed laws taking action regarding lead in consumer products. State and local health  
6 departments are requesting or ordering products to be removed from their jurisdictions. EPA  
7 must consider this case-by-case investment of resources when considering Sierra Club's request.  
8

9 75. EPA's denial of Sierra Club's request regarding Section 6(b) quality control orders was  
10 arbitrary and capricious.  
11

12 76. EPA has a reasonable basis to conclude that a rule consistent with Sierra Club's request is  
13 necessary to protect health or the environment against an unreasonable risk of injury to  
14 children's health in light of the identified producers of lead in toy jewelry, CDC's call for action,  
15 NPPTAC's formal recommendation, CPSC's inability to require quality control procedures, and  
16 the continued presence in the market of toy jewelry and commercial products containing  
17 dangerously high levels of lead.  
18

19  
20 IKE'S PETITION

21 77. IKE's allegations are the same as and repeat the allegations made by Sierra Club above.  
22  
23  
24  
25

1 **PRAYER FOR RELIEF**

2  
3 78. Plaintiffs Sierra Club and IKE re-allege the preceding paragraphs and incorporate them  
4 herein.

5  
6 79. Defendant EPA’s denial of Sierra Club’s petition entitles Sierra Club to relief pursuant to  
7 15 U.S.C. § 2620.

8  
9 80. Defendant EPA’s denial or refusal to respond to IKE’s petition entitles IKE to relief  
10 pursuant to 15 U.S.C. § 2620.

11 81. Wherefore, Plaintiffs pray that the Court grant Plaintiffs the following relief.

12  
13 A. Provide Sierra Club and IKE an opportunity to have their petitions considered by  
14 the Court in a de novo proceeding pursuant to 15 U.S.C. § 2620(a)(4)(B).

15  
16 B. Declare that Sierra Club and IKE have demonstrated to the satisfaction of the  
17 court by a preponderance of the evidence that there is a reasonable basis to conclude that  
18 the issuance of a rule or order consistent with Plaintiff’s petition is necessary to protect  
19 health or the environment against an unreasonable risk of injury to health or the  
20 environment pursuant to 15 U.S.C. § 2620(a)(4)(B)(ii).

21  
22 C. Order EPA to initiate rulemaking or issue an order as requested by Sierra Club’s  
23 first and fourth requests in its petition and by IKE in its petition.  
24  
25

1 D. Award Plaintiffs their costs of suit and reasonable fees for attorneys and expert  
2 witnesses pursuant to 15 U.S.C. § 2620(a)(4)(C).

3  
4 E. Grant such other relief as the Court deems just and proper.

5  
6 Respectfully submitted,

7  
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24 *pro hac vice* for Plaintiff

25 Dated: September 14, 2006

CERTIFICATE OF SERVICE

I certify that I served upon

Steven Johnson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

this filing. The service was made by first class mail on September 14, 2006.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 14, 2006.

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