

NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

RISE ST. JAMES, LOUISIANA BUCKET	*	
BRIGADE, SIERRA CLUB, CENTER	*	
FOR BIOLOGICAL DIVERSITY,	*	
HEALTHY GULF, EARTHWORKS, and	*	
NO WASTE LOUISIANA,	*	Case No.: 694,029
	*	
Petitioners,	*	
	*	Section: 27
	*	
VERSUS	*	
	*	Judge: Trudy White
	*	
LOUISIANA DEPARTMENT OF	*	
ENVIRONMENTAL QUALITY,	*	
	*	
Defendant	*	
	*	

PETITION IN INTERVENTION

For her Petition joining with the Plaintiffs/Petitioners in seeking judicial review of the Louisiana Department of Environmental Quality’s (LDEQ’s) issuance of air permits to FG LA LLC (“Formosa Plastics” or “Formosa”), Beverly Alexander makes the following allegations:

INTRODUCTION

These air permits authorize the construction and operation of a massive chemical complex which will emit millions of tons of air pollutants each year into St. James Parish’s Fifth District, an area of the Parish which has seen an explosion of petrochemical facilities in recent years. Permitting the Formosa complex in this over-industrialized area of the Parish will result in a disproportionate impact on the communities in the Fifth District, including majority African American communities. Yet in its analysis of this environmental justice issue, LDEQ arbitrarily picked and chose data, wrongly represented data, and relied on metrics which did not account for the very emissions the analysis was designed to address: the Formosa emissions. LDEQ did not even reach a conclusion about whether permitting the Formosa complex would result in disproportionate environmental impacts for the surrounding minority communities and did not

reflect the demographics of the surrounding communities. As a result, LDEQ violated its public trustee duty and acted arbitrarily in addressing the significant and ongoing injustice of its permitting activities on communities of color in St. James.

### **JURISDICTION**

1. Jurisdiction and venue are proper in this Court, and Ms. Alexander has a right to bring this action challenging a final decision of the LDEQ, under the Louisiana Environmental Quality Act's judicial review provision, La. R.S. § 30:2050.21(A), and La. Code Civ. Proc. article 1091's provisions on intervention. La. Code Civ. Proc. art. 1091(1).

2. The Environmental Quality Act's judicial review provision allows an aggrieved person to appeal devolutively a final permit action to the Nineteenth Judicial District Court. La. R.S. § 30:2050.21(A).

3. A third person having an interest "may intervene in a pending action to enforce a right related to or connected with the object of the pending action . . . by joining with [the] plaintiff in demanding the same or similar relief against the defendant." La. Code Civ. Proc. art. 1091(1).

4. As a resident of the Fifth District of St. James Parish who would be directly impacted by the Formosa complex, Ms. Alexander is aggrieved by the LDEQ's decision to issue the Formosa permits and is a party in interest in these proceedings. She joins with the Plaintiffs/Petitioners in demanding relief that reverses and vacates the LDEQ's decision to issue the Formosa air permits, enjoins all activities authorized by the air permits, and remands the matter to LDEQ.

5. LDEQ mailed Ms. Alexander notice of its decision to issue the Formosa permits on January 23, 2020. Pursuant to La. R.S. § 30:2050.23(D), Ms. Alexander has timely sought judicial review.

### **PARTIES**

6. Beverly Alexander lives at 7177 Edwards Street in the town of St. James in St. James Parish, Louisiana, within 4 miles of the permitted Formosa site and within 5 miles of the center of the toxic portion of the Formosa site.

7. Ms. Alexander is aggrieved by LDEQ's decision to issue air permits authorizing the construction and operation of a chemical complex that will drastically increase the amount of toxic and harmful air pollutants emitted into the surrounding air.

8. Ms. Alexander is particularly concerned about the disproportionate health, environmental, aesthetic and other negative impacts of the planned Formosa Plastics complex on nearby neighborhoods, including those in St. James, particularly when added to the already existing sources of air pollution and recently permitted expansions and new facilities.

9. Ms. Alexander has a real and actual interest in LDEQ's final decision to issue air permits to Formosa and in challenging LDEQ's inadequate analysis of whether permitting the Formosa complex would result in disproportionate impacts to people of color, including Ms. Alexander, living near the Formosa site.

10. The LDEQ is the primary agency of the State of Louisiana responsible for environmental protection. It has the power to sue and be sued, and it is the entity that issued the final action here.

### **STANDARD OF REVIEW**

11. The Louisiana Environmental Quality Act (the "Act") at La. R.S. § 30:2050.21 provides for judicial review of a final LDEQ decision to issue permits. La. R.S. § 30:2050.21(A). The Act applies the standard of review found in the Administrative Procedure Act (APA) at La. R.S. § 49:964(G) to judicial reviews of LDEQ permit decisions. La. R.S. § 30:2050.21(F).

12. The APA provides that this Court may remand the case and additionally "may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative...decisions are...(1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure...(5) Arbitrary or capricious or characterized by an abuse of discretion . . . ; or (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court." La. R.S. § 49:964(G).

13. In the review of LDEQ decisions, the Louisiana Supreme Court has stated that where an LDEQ decision "was reached procedurally, without individualized consideration and balancing of environmental factors conducted fairly and in good faith, it is the courts'

responsibility to reverse.” *Save Ourselves, Inc. v. La. Env’tl. Control Comm’n*, 452 So. 2d 1152, 1159 (La. 1984).

### **ALLEGATIONS**

14. On April 23, 2018, Louisiana Governor John Bel Edwards announced Formosa Plastics’ selection of St. James Parish for its chemical complex, euphemistically named “The Sunshine Project.”

15. On May 28, 2019, LDEQ issued a public notice announcing its proposal to issue fourteen Part 70 air operating permits and one Prevention of Significant Deterioration (PSD) air permit to Formosa Plastics (collectively, “air permits”) and opened a public comment period on the proposal.

16. LDEQ received thousands of comments in opposition to issuance of air permits to Formosa.

17. Many of the commenters, including Beverly Alexander, focused on the issue of environmental justice and the disproportionate impact on people of color and in the surrounding communities that would result from permitting Formosa.

18. On January 6, 2020, LDEQ issued its final decision to issue the air permits to Formosa (“Decision”).

19. The Formosa complex would cover 2400 acres in St. James Parish’s Fifth District, and would be located approximately 1 mile from the majority African American communities of Welcome and Union and within 5 miles of several other majority African American communities, including St. James.

20. The Formosa complex is permitted to emit over 6,000 tons per year of criteria pollutants, 800 tons per year of toxic air pollutants, and 13 million tons per year of greenhouse gas equivalents.

21. Among the criteria air pollutants that Formosa will discharge are particulate matter (PM<sub>2.5</sub>), nitrogen dioxide (NO<sub>2</sub>), volatile organic compounds (VOC’s), and carbon monoxide (CO).

22. Among the toxic and carcinogenic air pollutants that Formosa will discharge are ethylene oxide, benzene, formaldehyde, and 1,3 butadiene.

23. In its Decision and in its Response to Comments, LDEQ purported to address environmental justice issues.

24. Nowhere in LDEQ's discussion of environmental justice or elsewhere in its Decision did the agency make any determination or reach any conclusion about the demographics of the communities near the Formosa site, including communities within 5 miles of the site.

25. Nowhere in LDEQ's discussion of environmental justice did the agency make any determination or disclose the health effects of the pollutants Formosa will emit, including toxic and carcinogenic substances.

26. Nowhere in LDEQ's discussion of environmental justice or elsewhere in its Decision did the agency analyze or address whether the majority African American communities within 5 miles of the Formosa site are particularly vulnerable or sensitive to health effects from criteria, toxic, or carcinogenic air pollutants.

27. Nowhere in LDEQ's discussion of environmental justice or elsewhere in its Decision did the agency analyze the current status of toxic air emissions in the area of Formosa's site.

28. LDEQ's conclusion that residents closest to the Formosa site do not bear a disproportionate share of the negative environmental consequences of industrial operations omitted consideration of the Formosa emissions and was based on outdated information from 2014 that omitted numerous new and expanded sources of air pollution in the area.

29. LDEQ reached no conclusion about whether the permitting the Formosa complex would result in disproportionate impacts to people closest to the site, including communities within 5 miles of the toxic portion of the site.

30. With the exception of reliance on ambient air quality standards, LDEQ's analysis of potential disproportionate impacts of the air emissions from the Formosa complex omitted consideration of the air emissions from the Formosa complex.

31. LDEQ's conclusion that National Air Toxics Assessment (NATA) data demonstrates that cancer risk in areas closest to the site are not higher than the state average is clearly erroneous. Accurate use of the NATA data demonstrates that the cancer risk for the

census tract in which Formosa would be located is at the 86<sup>th</sup> percentile, meaning that that population is in the top 14th percentile in the state for cancer risk.

32. LDEQ did not disclose its standard for determining whether its decision comports with environmental justice or what legal standard it applied in addressing environmental justice issues.

33. LDEQ arbitrarily and inadequately relied on purported compliance of the Formosa complex with ambient air quality standards in its environmental justice analysis.

34. Louisiana Constitution Article IX, Section 1, provides: “The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.”

35. Louisiana Constitution Article IX, Section 1 requires LDEQ, as public trustee of the environment, to analyze any adverse environmental impacts of a proposed project before deciding whether to authorize that project. The Louisiana Supreme Court has found that Article IX, Section 1 is a “rule of reasonableness which requires an agency or official, before granting approval of [the] proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare.” *Save Ourselves Inc. v. La. Envtl. Control Comm’n*, 452 So.2d 1152, 1157 (La. 1984).

36. LDEQ must act with diligence, fairness and faithfulness to protect the public interest, must actively and affirmatively protect the public’s interest, and cannot merely act as an umpire passively calling balls and strikes for adversaries appearing before it. *Id.*

37. LDEQ’s public trustee duty under Article IX, section 1 includes the duty to protect communities near the site of the proposed Formosa site from disproportionate impacts caused by emissions from that facility and other existing and permitted facilities.

38. LDEQ’s public trustee duty under Article IX, section 1 includes the duty to fully and carefully consider whether communities near the proposed Formosa site will be disproportionately impacted by Formosa’s permitted emissions.

39. LDEQ failed to actively and affirmatively protect the interests of the nearby communities, including those within 5 miles of the site.

40. LDEQ failed to fully and carefully consider whether communities near the proposed Formosa site will be disproportionately impacted by Formosa's permitted emissions.

41. LDEQ's analysis of environmental justice concerns was in violation of Constitutional provisions, arbitrary, capricious, and not supported by a preponderance of the evidence.

### **ASSIGNMENTS OF ERROR**

42. LDEQ's issuance of the Formosa permits has prejudiced Ms. Alexander's rights because LDEQ's decision is "[i]n violation of constitutional or statutory provisions." La. R.S. § 49:964(G)(1).

43. LDEQ's issuance of the Formosa permits has prejudiced Ms. Alexander's rights because LDEQ's decision was "[m]ade upon unlawful procedure." La. R.S. § 49:964(G)(3).

44. LDEQ's issuance of the Formosa permits has prejudiced Ms. Alexander's rights because LDEQ's decision was "[a]rbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion." La. R.S. § 49:964(G)(5).

45. LDEQ's issuance of the Formosa permits has prejudiced Ms. Alexander's rights because LDEQ's decision was "[n]ot supported and sustainable by a preponderance of the evidence." La. R.S. § 49:964(G)(6).

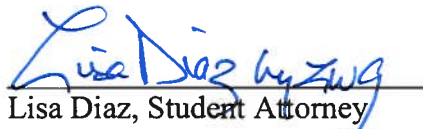
46. LDEQ's issuance of the Formosa permits was in violation of its duty as public trustee of the environment. La. Const. art. IX § 1.

### **PRAYER FOR RELIEF**

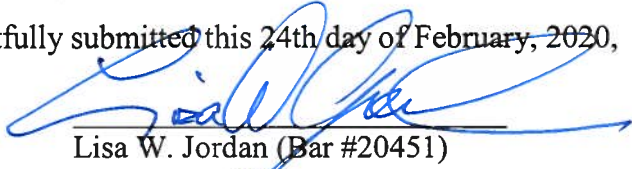
Upon consideration of the law and facts in this case, Ms. Alexander respectfully requests that this Court grant relief as follows:

1. Reverse and vacate the Decision and remand the matter to LDEQ;
2. Enjoin all activity authorized pursuant to the permits; and
3. Award all other relief as this Court finds equitable.

Respectfully submitted this 24th day of February, 2020,



Lisa Diaz, Student Attorney  
TULANE ENVIRONMENTAL LAW  
CLINIC  
6329 Freret Street  
New Orleans, Louisiana 70118  
*Student counsel for Beverly Alexander only*



Lisa W. Jordan (Bar #20451)  
TULANE ENVIRONMENTAL LAW CLINIC  
6329 Freret Street  
New Orleans, Louisiana 70118  
Phone (504) 865-5789  
Fax (504) 862-8721  
*On behalf of Beverly Alexander and as  
supervising attorney for Ms. Diaz's  
representation of Beverly Alexander.*

**SHERIFF PLEASE SERVE**

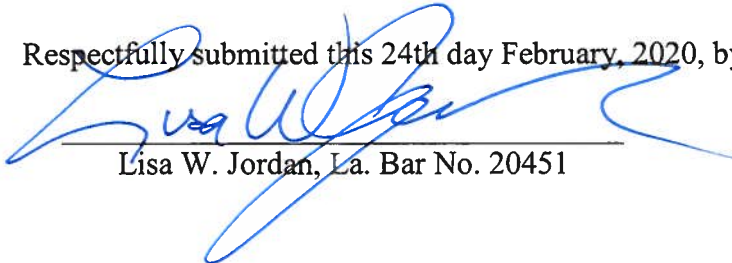
Dr. Chuck Brown, Secretary  
Louisiana Department of Environmental Quality  
602 N. Fifth Street, Galvez Building  
Baton Rouge, LA 70802

Ms. Corinne Van Dalen, Counsel for Petitioners/Plaintiffs  
Earthjustice  
900 Camp Street  
New Orleans, LA 70130

**SUPERVISING ATTORNEY'S INTRODUCTION OF STUDENT ATTORNEY**

Undersigned counsel respectfully introduces student attorney Lisa Diaz to this Court pursuant to Louisiana Supreme Court Rule XX. As the student's supervising attorney, I approve of the student attorney's appearance in this case on behalf of Beverly Alexander. I also attach Ms. Alexander's written consent to an appearance by a student attorney in this matter as Exhibit A.

Respectfully submitted this 24th day February, 2020, by:



Lisa W. Jordan, La. Bar No. 20451



NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

RISE ST. JAMES, LOUISIANA BUCKET	*	
BRIGADE, SIERRA CLUB, CENTER	*	
FOR BIOLOGICAL DIVERSITY,	*	
HEALTHY GULF, EARTHWORKS, and	*	
NO WASTE LOUISIANA,	*	Case No.: 694,029
	*	
Petitioners,	*	
	*	Section: 27
	*	
VERSUS	*	
	*	Judge: Trudy White
	*	
LOUISIANA DEPARTMENT OF	*	
ENVIRONMENTAL QUALITY,	*	
Defendant	*	
	*	

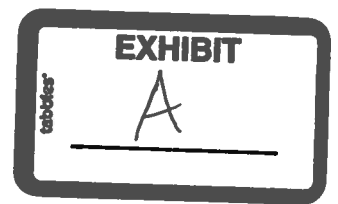
ORDER

Considering the foregoing Petition in Intervention filed by Beverly Alexander:

IT IS HEREBY ORDERED that Beverly Alexander be and is hereby granted leave to intervene as a party plaintiff in this action to enforce all rights related to or connected with the object of the pending action.

Baton Rouge, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Honorable Trudy White  
Judge, 19<sup>th</sup> Judicial District Court



**CLIENT'S WRITTEN CONSENT FOR STUDENT ATTORNEY APPEARANCE**

I hereby grant my consent for student attorneys from the Tulane Environmental Law Clinic to appear on my behalf in any matter in which the Tulane Environmental Law Clinic represents me, whether in court or before an administrative tribunal.

Dated: 02.21.2020

Signed: Beverly M. Alexander

Printed Name: Beverly M. Alexander