

NO. 10CI 02081

JEFFERSON CIRCUIT COURT
DIVISION _____ ()
JUDGE _____

CHERIE WENTWORTH
Individually, as parent and guardian of
CALVIN NOE, and on behalf of all others
similarly situated known and unknown;
141 Gillette Avenue
Louisville, Kentucky 40214

PLAINTIFFS

JEFFERSON CIRCUIT COURT
DIVISION EIGHT (8)

-and-

ROGER AND CAROL SCHAF
Individually and on behalf of all others
similarly situated known and unknown;
142 Gillette Avenue
Louisville, Kentucky 40214

FILED IN CLERKS OFFICE
DAVID L. NICHOLSON, CLERK
MAR 26 2010
By _____
DEPUTY CLERK

vs.

CLASS ACTION COMPLAINT

NUPLEX RESINS, LLC
4730 Crittenden Drive
Louisville, Kentucky 40209

DEFENDANTS

SERVE: CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

-and-

AKZO NOBEL COATINGS, INC.
2031 Nelson Miller Parkway
Louisville, KY 40223

SERVE: CT Corporation System
4169 Westport Road
Louisville, Kentucky 40207

* * * * *

Come the Plaintiffs, by and through counsel, who bring this civil action on their own behalf and on behalf of a class of persons defined below, against the Defendants, Nuplex Resins, LLC and Akzo Nobel Coatings, Inc., and for their Class Action Complaint allege upon information and belief and based on the investigation to date of counsel, as follows:

NATURE OF ACTION

1. This is a class action complaint that contains causes of action of the Plaintiffs against Defendants, Nuplex Resins, LLC and Akzo Nobel Coatings, Inc. arising from the defendants' discharge and release of hazardous chemicals, hazardous substances, pollutants, contaminants, odors and wastewater containing volatile organic compounds from their chemical plant located at 4730 Crittenden Drive in Louisville, Jefferson County, Kentucky that has been occurring since *at least* 2001 and which continue through the present.

PARTIES

2. Plaintiff Cherie Wentworth, on behalf of herself, as parent and guardian of her minor son Calvin Noe, and on behalf of all other similarly situated persons known or unknown, was at all times relevant to this Complaint a resident of Jefferson County, Kentucky.

3. Plaintiffs Roger and Carol Schaf, on behalf of themselves, and on behalf of all other similarly situated persons known or unknown, were at all times relevant to this Complaint residents of Jefferson County, Kentucky.

4. Defendant, Nuplex Resins, LLC ("Nuplex") is a foreign limited liability company registered with the Office of the Kentucky Secretary of State with its principal place of business in Louisville, Jefferson County, Kentucky. Nuplex operates a plant at 4730 Crittenden Drive in Jefferson County, Kentucky that manufactures resins.

5. Defendant, Akzo Nobel Coatings, Inc. ("Akzo") is a foreign corporation, which is registered with the Office of the Kentucky Secretary of State. Akzo operated a plant at 4730 Crittenden Drive in Jefferson County, Kentucky and currently operates an Industrial Finishes Technology Center at that location.

VENUE AND JURISDICTION

6. All of the events and occurrences alleged in this Complaint occur in Jefferson County, Kentucky.

7. The amount in controversy in this action exceeds, exclusive of interest and costs, the minimum jurisdictional requirements of this Court and that required for federal diversity jurisdiction.

CLASS ACTION ALLEGATIONS

8. Pursuant to Rules 23.01 and 23.02 of the Kentucky Rules of Civil Procedure, Plaintiffs bring this action individually and on behalf of all other persons similarly situated (the "Class"), defined as follows:

9. All individuals who have owned or reside on real property within a one and six-tenths of a mile radius of the perimeter of the Defendants' plant, located at 4730 Crittenden Drive in Jefferson County, Kentucky, at any time from March 27, 2005 until March 26, 2010.

10. The Class does not include Defendants or their officers or directors.

11. The Class is comprised of thousands of persons, making joinder of such cases impracticable. Disposition of the claims in a class action context will provide substantial benefits to the parties and the Court.

12. There are questions of law or fact common to the class, including but not limited to the following:

- a. Whether Defendants' conduct constitutes actionable negligence;
- b. Whether Defendants' conduct constitutes negligence *per se*;
- c. Whether Defendants' conduct constitutes private nuisance;
- d. Whether Defendants' conduct constitutes trespass and intentional trespass;
- e. Whether Plaintiffs' and the members of the Class are entitled to injunctive relief;
- f. Whether Plaintiffs' and the members of the Class are entitled to compensatory damages, and, if so, the nature of such damages;

- g. Whether Plaintiffs and the members of the Class are entitled to punitive or exemplary damages and, if so, the nature of such damages; and
 - h. Whether Plaintiffs and members of the Plaintiffs' Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, post-judgment interest and costs of suit.
13. Plaintiffs' claims are typical of the claims of the Class they seek to represent.
14. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests that are antagonistic to or that irreconcilably conflict with those of other Class members. In addition, Plaintiffs have retained counsel competent and experienced in the prosecution of class action litigation.
15. Questions of law or fact common to the Class predominate over any questions effecting only individual Class members.
16. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiffs' and Class members' claims.
17. Plaintiffs and Class members have suffered similar harm as a result of Defendants' conduct. Certification of a class action to resolve these disputes will reduce the possibility of repetitious litigation involving thousands of Class members.
18. Class certification is appropriate under Rule 23.01 and 23.02, as the Class satisfies the requirements found therein. Class certification is also appropriate under Rule 23.02(b) with respect to injunctive relief.

FIRST CAUSE OF ACTION

NEGLIGENCE

19. Plaintiffs reallege, restate and incorporate by reference the allegations in averments 1-18.
20. It was a duty of the Defendants to exercise reasonable care to control and abate fugitive release of hazardous chemicals, hazardous substances, pollutants, contaminants, odors and volatile organic compounds into the air, water, and soil to a degree of skill and expertise expected of large, sophisticated industrial plants under the same or similar circumstances.

21. It was a duty of Defendants to install, maintain, and operate pollution control equipment and institute work practices at their industrial plant located at 4730 Crittenden Drive in Jefferson County, Kentucky, necessary to comply with federal, state and local environmental laws and regulations.

22. It was a duty of Defendants to exercise reasonable care to: prevent hazardous chemicals, hazardous substances, pollutants, contaminants, odors and volatile organic compounds from their plant activities and operations from crossing the property lines, entering public sanitary and storm-water sewer lines, and trespassing upon and entering into and onto Plaintiffs' property; and to install, use, and maintain pollution controls to prevent and abate the fugitive release and discharge of harmful and offensive substances which substantially and adversely interfere with the Plaintiffs' use and enjoyment of their property, cause loss of value to their property, cause physical injury, and inflict mental pain and suffering to the Plaintiffs and the Class.

23. As a direct and proximate result of the negligence, individually or jointly, of Defendants, Nuplex and Akzo, the Plaintiffs and the Class have suffered property damage, annoyance, discomfort, sickness, physical injury and emotional distress for which they are entitled to be compensated.

SECOND CAUSE OF ACTION

NEGLIGENCE PER SE

24. Plaintiffs reaffirm, reallege, and incorporate by reference the allegations in averments numbered 1-23.

25. KRS Chapter 77 and the administrative regulations promulgated thereto, prohibit Defendants from causing or allowing the release of objectionable odors, gases and vapors that are foul, unpleasant, offensive and repulsive; prohibit the Defendants from releasing visible fugitive air emissions beyond the Defendants' lot line of their plant; and prohibit air emissions that cause a nuisance to the local community and/or otherwise violate a regulation of the Louisville Metro Air Pollution Control District.

26. Jefferson County's Metropolitan Sewer District ("MSD") Wastewater/Stormwater Discharge Regulations, specifically the sections of Article 2, prohibit the discharge of certain chemicals and other hazardous substances into the sewer system.

27. Beginning in *at least* 2001 and continuing to the present, the Defendants violated and continue to violate KRS Chapter 76 and MSD's Wastewater/Stormwater Discharge Regulations, and the chapters contained therein, by discharging wastes from their plant operations that enter the public sewer system and cause potential explosive hazards and strong offensive odors and produce malodorous, harmful air pollution that trespasses into and onto the Plaintiffs' property and persons.

28. It was a duty of Defendants to install, maintain, and operate pollution control equipment and institute work practices at their industrial plant located at 4730 Crittenden Drive in Jefferson County, Kentucky, necessary to comply with federal, state and local environmental laws and regulations.

29. Plaintiffs and the Class are within the class of persons that the cited statutes and regulations are intended to protect.

30. As a direct and proximate result of Defendants' negligence *per se*, the Plaintiffs and the Class suffered injury, destruction, damage and loss of their personal and real property, substantial interference with plaintiffs' property, and the substantial loss of the use and enjoyment of their property for which the Plaintiffs and Class are entitled to be compensated in an amount exceeding the minimum jurisdiction of this Court, the exact amount of which will be proven at trial.

31. As a direct and proximate result of the negligence *per se* of Defendants, Nuplex and Akzo, the Plaintiffs and the Class have suffered annoyance, discomfort, sickness and emotional distress for which they are entitled to be compensated.

THIRD CAUSE OF ACTION

PRIVATE NUISANCE

32. Plaintiffs reallege, restate and incorporate by reference the allegations in averments numbered 1-31.

33. Plaintiffs have ownership interests and possessory rights in their real property.

34. Defendants' conduct in allowing hazardous chemicals, malodorous gases, offensive odors, air pollution, and volatile organic compounds to enter into and about the air, soil, and sewer lines is wrongful, and has resulted in a loss and a substantial interference with the Plaintiffs' ability to use and enjoy their land and homes.

35. The Defendants' conduct has caused the Plaintiffs and the Class substantial discomfort, fear and annoyance, as well as a loss and substantial interference with the use and enjoyment of the plaintiffs' property.

36. The nuisance to the Plaintiffs and the Class caused by the Defendants' discharge and release of hazardous chemicals, malodorous gases, offensive odors, air pollution, wastes, and volatile organic compounds can be abated at reasonable expense, but Defendants' wrongful conduct is not likely to be abated voluntarily, and will require a court order enjoining said wrongful conduct.

37. Defendants' substantial interference of the use and enjoyment of the Plaintiffs' property was negligent and/or reckless, and/or intentional and created a hazard to the Plaintiffs and the Class, harm to the natural flora and fauna of the area, and diminishes the utility, value and function of the plaintiffs' property for many purposes and uses – all for which the plaintiffs are entitled to recover monetary damages.

FOURTH CAUSE OF ACTION

TRESPASS AND INTENTIONAL TRESPASS

38. Plaintiffs reallege, restate and incorporate by reference the allegations in averments numbered 1-37.

39. Defendants, without Plaintiffs' permission or consent and without legal right, willfully and recklessly discharged hazardous chemicals, malodorous gases, offensive odors, air pollution, wastes, and volatile organic compounds upon and about their property thereby causing injury and damage to the Plaintiffs' property.

40. Defendants' unauthorized invasion of the Plaintiffs' property by the aforementioned hazardous chemicals, malodorous gases, offensive odors, air pollution, wastes, and volatile organic compounds constitutes "trespass" for which the Plaintiffs and the Class are entitled to be compensated in an amount exceeding the minimum jurisdiction of this Court, the exact amount of which will be proven at trial.

41. Defendants, Nuplex and Akzo, without the Plaintiffs' permission or consent and in violation of law, intentionally released hazardous chemicals and solvents upon Plaintiffs' property. Such unauthorized invasion of the plaintiffs' property as a direct result of the defendants' conduct, acts and omissions under these circumstances constitutes an

intentional trespass for which the Plaintiffs and the Class are entitled to be compensated.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

42. Plaintiffs reallege, restate and incorporate by reference the allegations in averments numbered 1-41.

43. The conduct of Nuplex and/or Akzo constitute a nuisance, trespass and a continuing threat of harm, annoyance, interference, and damage to the Plaintiffs, the Class, and to other members of the local community.

44. Plaintiffs therefore seek a permanent injunction against the defendants prohibiting Nuplex from discharging and releasing hazardous chemicals, malodorous gases, offensive odors, air pollution, wastes, and volatile organic compounds into air, soil, and public sewer lines, and to take the needed steps to remedy and abate the nuisance in the community.

SIXTH CAUSE OF ACTION

PUNITIVE DAMAGES

45. Plaintiffs reallege, restate and incorporate by reference the allegations in averments numbered 1-44.

46. Defendants Nuplex and Akzo, individually or jointly, acted maliciously, wantonly, recklessly, willfully and with gross negligence towards Plaintiffs and the Class and therefore, said defendants are liable for punitive damages pursuant to common law principles and KRS §411.184, in an amount to be set by the jury at trial.

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court enter an Order:

A. Certifying the proposed Class under Kentucky Rules of Civil Procedure 23.01 and 23.02 and appointing Plaintiffs and Plaintiffs' counsel to represent the Class;

- B. Finding that Defendants are liable under all legal claims asserted herein;
- C. Awarding damages to the Plaintiffs and the Class under the common law and statutory theories alleged herein, including compensatory and consequential damages, punitive damages, and any other damages provided under the law;
- D. Ordering injunctive relief as set forth above;
- E. Awarding attorneys' fees and litigation costs;
- F. Awarding any other legal or equitable relief as justice so requires; and
- G. For a trial by jury on all issues so triable.