

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

THREE RIVERS BOARD
OF EDUCATION
92 Cleves Avenue
Cleves, Ohio 45002,

Plaintiff,

v.

INEOS ABS (USA) CORPORATION,
c/o CT Corporation System,
Registered Agent
1300 East Ninth Street
Cleveland, Ohio 44114

and

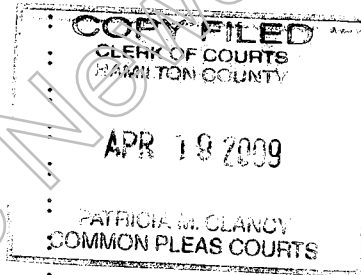
LANXESS CORPORATION,
c/o CSC-Lawyers Incorporating
Service, Registered Agent
(Corporation Service Company)
50 West Broad Street, Suite 1800
Columbus, Ohio 43215,

Defendants.

A0911137

Case No. _____

**COMPLAINT WITH
JURY DEMAND**



Now comes the plaintiff, the Three Rivers Board of Education, and for its complaint against defendants, INEOS ABS (USA) Corporation and LANXESS Corporation, allege as follows.

INTRODUCTION

1. Scientists have long known that children – who breathe more air in proportion to their weight than adults do, and whose bodies are still developing – are especially susceptible to toxic chemicals. Indeed, long exposures to some chemicals can exacerbate asthma, trigger learning disabilities or lead to cancer years later.

2. On December 5, 2005, the Director of the Ohio EPA contacted Rhonda Bohannon, Ph.D., Superintendent of the Three Rivers Board of Education, and advised her that air monitors on the roof of the Meredith Hitchens Elementary School had revealed that two chemicals from the LANXESS Corporation's plastics plant across the street were drifting over the school at levels that made the risk of cancer fifty times higher than what the state considers acceptable. He further recommended that Three Rivers evacuate the students and staff from Hitchens immediately.

3. Three Rivers followed the director's recommendation and immediately evacuated the students and staff from Hitchens. Hitchens remains vacant, to this day, because emissions from the plant continue to exceed designated EPA standards. Meanwhile, the other two elementary schools in the Three Rivers School District are bursting at the seams.

THE PARTIES

4. Plaintiff, the Three Rivers Board of Education ("Three Rivers") is now, and at all relevant times has been, a school district in Hamilton County, Ohio.

5. Plaintiff brings this action for the damages suffered relating to environmental contamination at the Meredith Hitchens Elementary School, which is located at 120 Main Street, Addyston, Ohio 45001 ("Hitchens"), across U.S. Route 50 from the chemical plant now known as INEOS ABS (USA), 356 Three River Parkway, Addyston, Ohio 45001 (the "Addyston Facility").

6. Defendant, LANXESS Corporation ("LANXESS"), is a corporation organized and existing under the laws of the State of Delaware, and its corporate

headquarters in the Commonwealth of Pennsylvania. LANXESS is a former owner and operator of the Addyston Facility.

7. In 1996, the Bayer Corporation (“Bayer”) purchased the Addyston Facility. Upon information and belief, on July 1, 2004, Bayer transferred ownership of the Addyston Facility to LANXESS AG of Germany, at which point, LANXESS AG owned and operated the Addyston Facility.

8. Upon information and belief, LANXESS AG transferred the Addyston Facility to LANXESS and, as a result of the terms of the transfer of the Addyston Facility from Bayer ultimately to LANXESS, LANXESS succeeded to or assumed certain liabilities associated with the Addyston Facility’s operations, including the liabilities of Bayer at issue in this civil action.

9. INEOS ABS (USA) Corporation (“INEOS”) is an owner and the current operator of the Addyston Facility, and has been an owner and the operator since October 1, 2007.

10. INEOS is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Addyston, Ohio, and its corporate headquarters in the State of Delaware. Upon information and belief, INEOS is a joint venture between LANXESS and the INEOS Group of the United Kingdom, which is owned 49% by INEOS Group and 51% by LANXESS.

**JURISDICTION
AND VENUE**

11. At all times mentioned herein, defendants were doing business in the State of Ohio at the Addyston Facility.

12. Plaintiff alleges damages in excess of the jurisdictional amount, exclusive of interest and costs.

BACKGROUND FACTS

13. The Addyston Facility manufactures ABS (acrylonitrile, butadiene, styrene) plastics and resins, using different formulas of acrylonitrile, 1,3-butadiene, styrene, and other chemicals not at issue, to create various forms of plastic pellets that can be molded into various products such as motor vehicle consoles, medical devices, and lawn and garden equipment.

14. Ohio Rev. Code § 3704.05(G) provides, in relevant part, that no person shall violate any rule of the Director issued, adopted, or made under Ohio Rev. Code Chapter 3704.

15. Ohio Admin. Code § 3745-15-07 provides, in relevant part:

the emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit, or maintain any such public nuisance.

16. Ohio Rev. Code § 3704.05(1)(2) provides, in relevant part, that no person shall violate any applicable requirement of a Title V permit or any permit condition.

17. On August 30, 2004, the Ohio EPA issued a Title V permit to LANXESS.

18. LANXESS's Title V permit prohibits air contaminants emitted by the emissions units covered by the Title V permit from causing a public nuisance in violation of Ohio Admin. Code § 3745-15-07.

19. Hazardous air pollutants (“HAPs”) are defined, by Ohio Admin. Code § 3745-31-01(WW), as “any air pollutant listed in, or pursuant to, Section 112(b) of the Clean Air Act.”

20. The Addyston Facility is a source of many HAPs, including acrylonitrile, 1,3-butadiene, and styrene.

21. On various occasions from at least May 10, 2005 and continuing to the present, the emissions of HAPs from the Addyston Facility caused elevated ambient air concentrations of HAPs beyond the fence line of the Addyston Facility’s property as determined by air monitoring results from a monitor located on the rooftop of Hitchens, approximately 300 feet from the Addyston Facility’s fence line.

22. Because they endanger the health, safety, or welfare of the public, the emissions of HAPs from the Addyston Facility constitute an air pollution nuisance for public health.

23. 1,3-butadiene is classified by the U.S. EPA as carcinogenic to humans through inhalation.

24. The emissions of 1,3-butadiene from the Addyston Facility have caused elevated ambient air concentrations of 1,3-butadiene in the vicinity of the Addyston Facility, resulting in a cancer risk calculation – as calculated by the governmental agencies – of approximately 1.6 in 10,000 excess cancer risk to the surrounding affected population.

25. Hitchens is located directly across U.S. Route 50 from the Addyston Facility, and has been on the same site since the early 1930s. The school has served the children of Addyston in some capacity of grade levels throughout its operating history.

In more recent years, leading up to December 2005, it served all students in the Three Rivers School District in grades pre-school through first grade. Some staff members worked their entire careers (thirty plus years) at the school, and some of the district's most vulnerable students (students identified for services in a multiple-handicap classroom) attended the school between the ages of three and seven years.

26. On December 5, 2005, plaintiff received telephone notification from the Ohio EPA that the results of a six-month-long air monitoring study indicated that the toxic air emissions were at unacceptable levels for adults and that there were no studies on the impact of such levels of toxic air emissions on children, but that children were at greater risk. The recommendation from the Director of the Ohio EPA was to evacuate the students and staff from Hitchens immediately.

27. Specifically, the levels of carcinogens found by the Ohio EPA were fifty times higher than the State considers acceptable. The 2005 testing showed that the highest concentrations recorded were 33.18 micrograms per cubic meter (15 ppb by volume) for 1,3-butadiene, and 16.71 micrograms per cubic meter (7.7 ppb) for acrylonitrile. The Ohio EPA found those results to far exceed Ohio EPA's acceptable levels.

28. After Three Rivers convened and agreed to a temporary evacuation, the students and staff left Hitchens on or about December 6, 2005.

29. Hitchens has been vacant since December 2005.

30. Additional data collected from Hitchens's rooftop monitor in 2006 showed that the emissions still far exceeded the Ohio EPA's acceptable levels for both 1,3-butadiene and acrylonitrile. That year, the average concentration of 1,3-butadiene

was 5.57 micrograms per cubic meter (2.52 ppb) and the average concentration of acrylonitrile was 1.97 micrograms per cubic meter (0.91 ppb).

31. According to the July 31, 2009 complaint filed by the U.S. EPA and the Ohio EPA, the Addyston Facility has violated -- and continues to violate -- the emission limitations contained in its permits. Further, the complaint states that the operators of the Addyston Facility have failed to monitor and check the equipment at the Addyston Facility for leaks of these toxic substances. These emissions and leaks have directly led to the excessive toxic ambient air concentrations beyond the Addyston Facility boundary at Hitchens.

32. To this date, neither the U.S. EPA nor the Ohio EPA have informed plaintiff that it is now, or will be in the future, safe and acceptable to return to Hitchens.

33. The relocation of the Hitchens students and staff to other schools in the Three Rivers School District has caused overcrowding in the other schools since the evacuation took place in December 2005. All available space, including storage areas, custodian/maintenance areas, and small intervention areas, has been and will continue to be used as classroom space. In addition, large classrooms were divided into two classrooms and, in one building, art classes were moved first into the hallway, then later to the cafeteria. The schools are still overcrowded and there is no storage in the district.

34. According to the complaint filed on July 31, 2009 by the United States and the State of Ohio against INEOS and LANXESS, in the matter of *United States v. INEOS ABS (USA) Corp.*, Civil Action No. 1:09-CV-545 (S.D. Ohio) (the "July 31 Complaint"), the two main air pollutants at issue are acrylonitrile and 1,3-butadiene. The United States Department of Health, Public Health Service Agency for Toxic Substance

and Disease Registry (“ATSDR”) has conducted studies regarding the health effects of these substances and found that they are reasonably anticipated to cause cancer. In addition, ATSDR has found evidence that children are much more sensitive to acrylonitrile than adults.

35. U.S. EPA includes these two chemicals in its list of HAPs. Facilities that emit HAPs are subject to stringent emission and operational requirements designed to minimize the release of and exposure to these toxic substances, including (1) taking measurements to ensure that the equipment using such substances is free from leaks, and (2) using proper control equipment to reduce and/or eliminate the release of these substances into the air. As stated in the July 31 Complaint, the Addyston Facility has failed to comply with these regulations, resulting in unacceptable levels of these toxic chemicals being released into the air breathed by the public.

36. Hitchens has been rendered useless for school purposes. School buildings are specific in purpose and usually do not sell on the open market.

37. Given overcrowding in the school district, plaintiff must build a new school to serve students, including those who would have previously attended Hitchens.

COUNT ONE
NEGLIGENCE

38. Plaintiff incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein and further alleges as follows.

39. Defendants had a duty to exercise ordinary and reasonable care in the operation of the Addyston Facility

40. Based on the foregoing, defendants failed to exercise ordinary and reasonable care in the operation of the Addyston Facility including, but not limited to:

(a) allowing emissions of 1,3-butadiene in excess of limits provided by the U.S. EPA and the Ohio EPA; (b) allowing emissions of acrylonitrile in excess of limits provided by the U.S. EPA and the Ohio EPA; (c) failing to monitor and check the equipment at the Addyston Facility for leaks of these toxic substances; (d) failing for years to bring the Addyston Facility into compliance with applicable standards; and (e) failing to properly maintain the equipment at the Addyston Facility.

41. As a direct and proximate result of defendants' negligence, plaintiff was forced to evacuate Hitchens, which has remained unoccupied for the past four years and likely will never be used as a school again, and suffered damages associated with its evacuation, loss of storage facilities, relocation of students and staff, and inability to use the Hitchens property, in an amount in excess of the jurisdictional limits of this court.

COUNT TWO
ABSOLUTE OR STRICT LIABILITY

42. Plaintiff incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein and further alleges as follows.

43. Defendants operated the Addyston Facility in violation of Ohio and federal laws by, among other things, emitting 1,3-butadiene and acrylonitrile in violation of emission limits set by the U.S. EPA and the Ohio EPA.

44. Acrylonitrile and 1,3-butadiene are categorized as hazardous chemicals because they present a risk of serious harm to humans.

45. As a direct and proximate result of defendants engaging in the above mentioned activities, and the resultant leaks and releases of hazardous chemicals, plaintiff was forced to evacuate Hitchens, which has remained unoccupied for the past four years and likely will never be used as a school again, and suffered damages

associated with its evacuation, loss of storage facilities, relocation of students and staff, and inability to use the Hitchens property, in an amount in excess of the jurisdictional limits of this court.

COUNT THREE
NUISANCE

46. Plaintiff incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein and further alleges as follows.

47. Defendants unreasonably interfered with the use and enjoyment of plaintiff's Hitchens property.

48. As a direct and proximate result of defendants engaging in the above mentioned activities, and the resultant leaks and releases of hazardous chemicals which unreasonably interfered with the use and enjoyment of property, plaintiff was forced to evacuate Hitchens, which has remained unoccupied for the past four years and likely will never be used as a school again, and suffered damages associated with its evacuation, loss of storage facilities, relocation of students and staff, and inability to use the Hitchens property, in an amount in excess of the jurisdictional limits of this court.

COUNT FOUR
TRESPASS

49. Plaintiff incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein and further alleges as follows.

50. Defendants negligently and intentionally allowed emissions, releases and/or leaks of hazardous chemicals into the air, which physically invaded and entered, and constitute a continuing trespass upon, plaintiff's Hitchens property. Defendants'

conduct in allowing these emissions, releases and/or leaks of hazardous materials into the air became intentional when defendants became aware of these emissions.

51. The releases of hazardous substances into the air were the result of willful misconduct and/or willful negligence within the privity and/or knowledge of defendants, and were primarily caused by violations of applicable environmental, safety or operating standards, regulations or laws.

52. As a direct and proximate result of defendants' continuing trespass and engaging in the above mentioned activities, and the resultant leaks and releases of hazardous chemicals which trespassed upon plaintiff's property, plaintiff was forced to evacuate Hitchens, which has remained unoccupied for the past four years and likely will never be used as a school again, and suffered damages associated with its evacuation, loss of storage facilities, relocation of students and staff, and inability to use the Hitchens property, in an amount in excess of the jurisdictional limits of this court.

COUNT FOUR
PUNITIVE DAMAGES

53. Plaintiff incorporates by reference the foregoing paragraphs of the Complaint as if fully set forth herein and further alleges as follows.

54. Defendants' acts and omissions as set forth above were willful, wanton and/or grossly negligent. Furthermore, defendants acted in the foregoing manner with conscious disregard for the safety and rights of plaintiff, the students and staff at Hitchens and the community, which actions had a great probability of causing substantial harm.

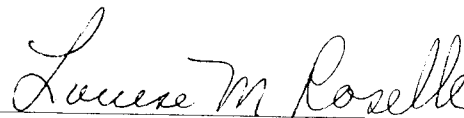
55. The releases of hazardous substances into the air were the result of willful misconduct and/or willful negligence within the privity and/or knowledge of defendants,

and were primarily caused by their violations of applicable environmental, safety or operating standards, regulations or laws.

56. As a direct and proximate result of defendants' gross, willful, reckless and wanton misconduct, plaintiff suffered those damages as hereinbefore described.

WHEREFORE, Plaintiff demands:

- (1) judgment against defendants in excess of \$25,000 in compensatory damages;
- (2) judgment against defendants for punitive damages in an amount to be determined by the trier of fact;
- (3) attorneys' fees;
- (4) interest;
- (5) costs; and
- (6) all other relief to which it may be entitled.



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