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**BEFORE THE ADMINISTRATOR**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C.**

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St. James Citizens for Jobs & the \*  
Environment, Louisiana Environmental \*  
Action Network, St. John Citizens for \*  
Environmental Justice, St. Charles \*  
Environmental Coalition, Gulf Coast \*  
Tenants Organization, Southern \*  
Christian Leadership Conference, \*  
Louisiana Citizen Action, Concerned \*  
Citizens of Iberville Parish, Action \*  
Against Waste and to Restore the \*  
Environment, Ascension Parish \*  
Residents Against Toxic Pollution, \*  
River Area Planning Group, Save Our \*  
Selves, North Baton Rouge \*  
Environmental Association, Neighbors \*  
Assisting Neighbors, Delta Greens, \*  
Louisiana Coalition for Tax Justice, \*  
League of Women Voters of \*  
Louisiana, and Sierra Club, \*  
\*  
joined by Greenpeace, \*  
\*  
PETITIONERS \*

PETITION UNDER TITLE V  
OF THE CLEAN AIR ACT,  
42 U.S.C. §7661d(b)(2) and  
40 C.F.R. §70.8(d)

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The Tulane Environmental Law Clinic on behalf of the following organizations, joined by Greenpeace, hereby files this public petition under Title V of the Clean Air Act, 42 U.S.C. §7661d(b)(2), and its implementing regulations at 40 C.F.R. §70.8(d), requesting that the Environmental Protection Agency (EPA) object to the proposed Title V permits for the Shintech polyvinyl chloride (PVC) complex to be located in Convent, Louisiana.<sup>1</sup> The St. James Citizens for Jobs & the Environment, Louisiana Environmental Action Network, St. John Citizens for Environmental Justice, St. Charles Environmental Coalition, Gulf Coast Tenants Organization, Southern Christian Leadership Conference, Louisiana Citizen Action. Concerned Citizens of Iberville Parish, Action Against Waste and to Restore the Environment, Ascension Parish Residents Against Toxic Pollution, River Area Planning Group, Save Our Selves, North Baton Rouge Environmental Association, Neighbors Assisting Neighbors, Delta Greens, Louisiana Coalition for Tax Justice, League of Women Voters of Louisiana, the Sierra Club (collectively “Citizen Groups”) as well as Greenpeace oppose the proposed Shintech permits submitted to the EPA by the Louisiana Department of Environmental Quality (LDEQ). The Title V proposed permits are currently being reviewed by the EPA pursuant to its oversight authority under Title V of the Clean Air Act (42 U.S.C. §7661d) and 40 C.F.R. §70.8.

The proposed permits and underlying permit applications submitted by Shintech, Inc. and Its Affiliates (“Shintech”) fail to satisfy certain provisions of the Clean Air Act and federal policies on environmental justice. A decision by EPA not to object to the Shintech Title V permits would be contrary to sections 42 U.S.C. §§7412, 7661b-d, 7470, and 7475 of the Clean

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<sup>1</sup> The Tulane Environmental Law Clinic submits this petition as the representative of the listed organizations, not on behalf of Tulane University.

Air Act. Moreover, an EPA decision in favor of Shintech's Title V permits would have the result of increasing the level of pollution in the predominantly African American and poor population of Convent and, therefore, violate the very purpose of the President's Executive Order: to prevent federal agency actions that have the effect of disproportionately burdening minority populations with increased levels of pollution.<sup>2</sup>

The Citizen Groups and Greenpeace oppose the siting and permitting of Shintech's proposed facility in St. James Parish, Louisiana, where approximately 82% of the population is African American and 40% of the population lives below poverty level. Citizen Group and Greenpeace members have raised valid objections to the Shintech Title V permits during public hearings, in written comments, and in complaints to the regional and federal offices of the EPA. This petition is a reiteration of those objections that includes references to relevant environmental statutes and environmental justice policies that warrant an objection to the Shintech Title V permits.

Pursuant to 42 U.S.C. §7661d(b)(2), EPA must object to the Title V proposed permits for Shintech for the following reasons: (1) the proposed Shintech facility is a new major source that would further increase the disproportionately high health and environmental risks that are adverse to the predominantly African American and low-income community of Convent, Louisiana; (2) the Shintech Title V permit applications and proposed permits fail to meet technical and regulatory standards imposed by the Clean Air Act and imposed by virtue of the Executive Order on Environmental Justice; (3) as written and applied, the Shintech Title V proposed permits demonstrate LDEQ's dubious commitment to compliance and enforcement of

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<sup>2</sup> Executive Order, number 12898, FEDERAL ACTION TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND IN LOW-INCOME POPULATIONS, February 11, 1994 ("Executive Order on

the Clean Air Act, which exacerbates the disproportionate environmental risks borne by the community of Convent; and (4) LDEQ's handling of the public participation process violates the purpose of the Clean Air Act.

**I. THE OBLIGATION OF EPA TO REDUCE OR PREVENT DISPROPORTIONATE POLLUTION BURDENS ON RACIAL MINORITY AND LOW-INCOME POPULATIONS MANDATES OBJECTION TO THE PROPOSED TITLE V PERMITS FOR SHINTECH.**

The purpose of President Clinton's Executive Order number 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," is to prevent or reduce the disproportionately high pollution burden on racial minority and low-income populations. The Executive Order directs all federal agencies, including the EPA, to implement environmental justice in all policies, programs, and activities. Therefore, the EPA is obligated to integrate strategies for preventing or reducing disproportionate pollution burdens in its regulatory activities as well as all other agency functions.

Pursuant to the President's Executive Order, the EPA determined to review its legislation and regulations in order to "address environmental justice concerns" and adopted the novel "common sense" approach of controlling pollution by managing multi-chemical exposures through air, water, waste, and pesticides.<sup>3</sup> Additionally, the EPA developed the "Environmental Justice Implementation Plan," which sets out a strategy for integrating environmental justice in regulatory review of permits and other activities pursued through compliance assurance and enforcement.<sup>4</sup> In the context of EPA's regulatory function, the goal of the Environmental Justice Implementation Plan is to

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Environmental Justice").

3 EPA, Draft Environmental Justice Strategy for Executive Order 12898, January 1995, pp. 23-24.

4 EPA, Environmental Justice Implementation Plan, EPA/300-R-96-004, April 1996.

ensure that EPA's enforcement and compliance assurance activities include a focus on minority communities and low-income communities which suffer from disproportionately high and adverse human health and environmental effects.<sup>5</sup>

It is noteworthy that prior to the President's Executive Order, the EPA published "Environmental Equity: Reducing Risk for All Communities," which explained how provisions of the 1990 Clean Air Act Amendments, in addition to other environmental statutes, served as tools for protecting racial minority and low-income communities that were "surrounded by multiple sources of air pollution" and other serious environmental and health risks.<sup>6</sup> The report was based on health studies that identified racial minority and low-income individuals as being sensitive to the adverse health effects of air pollution and several demographic analyses on the concentration of air pollutants in predominantly racial minority and poor communities.<sup>7</sup> The report identifies and analyzes key environmental laws that govern permit issuance and enforcement as a means to target environmental protection on "problems [that] pose the greatest risks nationwide to human health and the environment."<sup>8</sup> Pursuant to this environmental protection strategy, EPA set a priority for protecting racial minority and low-income communities that are disproportionately burdened with the adverse environmental and health effects of pollution.

In accordance with these emerging strategies for protecting communities burdened with pollution, EPA conducted a study of Louisiana's "Cancer Alley," the name for the Mississippi River region between Baton Rouge and New Orleans where over 100 petrochemical industries are located in close proximity to communities that have complained of a high incidence of

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5 Id. at 16.

6 EPA, Environmental Equity: Reducing Risk for All Communities, EPA230-R-92-008A, Volume 2, June 1992, p. 1.

7 Id. at 21.

8 Id. at 1.



cancers. The communities in “Cancer Alley” include the town of Convent where Shintech has sought authorization to build and construct a polyvinyl chloride complex. The EPA study supports the citizens represented in this petition, who breathe one of the highest levels of air pollution in the State of Louisiana, and stand in opposition to Shintech’s plans to build and construct a PVC complex in their residential area.

**A. Convent, Louisiana is a Community that Warrants  
Environmental Protection Against New Polluting Sources.**

Against this background of environmental justice strategies that were developed in response to the grassroots environmental justice movement, the EPA Region VI office (EPA-VI) concluded that the Shintech proposed Title V permits raise environmental justice concerns.<sup>9</sup> The Environmental Justice Index Methodology adopted by EPA-VI identifies Convent, Louisiana as an area that “is part of the ‘Environmental Justice communities that the Executive Order seeks to prevent or decrease disproportionate pollution burdens.’”<sup>10</sup>

Clearly, the EPA acknowledges the vital necessity of protecting communities like Convent as part of its mission to ensure environmental protection for all people by focusing on those who are most vulnerable to pollution. The population of Convent is 72% African American and approximately 40% of the total population lives below poverty level.<sup>11</sup> Within a one-mile radius of the proposed Shintech PVC complex, 95% of the residents are African American and nearly 50% of the residents earn annual incomes at or below \$15,000.<sup>12</sup> There are approximately 2,000 people living in Convent, which is located in St. James Parish.

According to the most recent LDEQ compilation of toxic releases in the state, St. James

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9 EPA-VI, Environmental Justice file materials through February 1997 (“Environmental Justice file materials”)

10 Id.

11 1990 U.S. Census data.

12 Environmental Justice file materials

Parish ranks third in the state for total toxic releases and transfers, with a total of 17.71 million pounds of toxic chemicals released or transferred.<sup>13</sup> Given the population of St. James Parish, there are over 4,000 pounds of TRI emissions for every person living in St. James Parish. With respect to toxic air emissions in particular, St. James ranks fourth in the state, with a total of 6,739,267 pounds of toxic air emissions.<sup>14</sup> With respect to surface water toxic emissions, St. James Parish ranks second in the state, with an overwhelming 40.96% of the total state toxic emissions to surface water.<sup>15</sup>

Perhaps of most concern, St. James ranks among the top four parishes in the state for releases of “special interest” toxic chemicals and compounds.<sup>16</sup> These are the toxic chemicals of most concern because of their known or suspected toxic effects on humans. Many are carcinogenic, some are mutagenic or teratogenic, and most can have toxic effects on the respiratory system, the skin, and other vital organs.<sup>17</sup>

**B. The Projected Emissions from the Proposed PVC Complex Would Drastically Increase the Pollution Levels in Convent and Therefore Constitute Environmental Injustice.**

Despite the clear evidence that the predominantly African American and poor population of Convent already bears a disproportionately high level of industrial pollution, Shintech has sought government authorization to construct and operate a PVC facility which will include three hazardous chemical processing plants, an on-site incinerator, and storage tanks on 3,000 acres of land. Permitting the Shintech complex would add significantly to the toxic burden already borne by St. James Parish. Shintech would add 625,916 pounds per year of toxic air

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13 1994 TRI, p. 32, 35.

14 1994 TRI, pp. 40-41.

15 1994 TRI, p. 43.

16 1994 TRI, p. 48.

17 Id.

emissions to the total St. James Parish emissions. This would constitute almost a 10% increase in the total 1994 toxic air emissions for St. James Parish. Even more alarming is the increase in special interest toxic chemicals that Shintech alone would cause. Vinyl chloride is one of only five chemicals listed as a Group A carcinogen in the TRI data.<sup>18</sup> Group A carcinogens are those for which there is sufficient evidence to support a causal association between exposure and cancer.<sup>19</sup> In addition to cancer, government studies have linked this toxic chemicals to hormone disruption and immunotoxicity.<sup>20</sup> According to the TRI data, in 1994, a total of 142,982 pounds of vinyl chloride were released or transferred in Louisiana. Shintech's proposed PVC complex will emit a total of 104,520 pounds of vinyl chloride into the air per year.<sup>21</sup> This means that Shintech's air emissions alone will represent a 75% increase in the total statewide vinyl chloride releases or transfers. Yet the entire 104,520 pounds of vinyl chloride emissions will not be spread out throughout the state: they will be confined to St. James Parish.

### **C. Shintech Plans to Produce Chemicals That Have Been Linked to Cancer and Other Health Problems.**

The toxic chemicals that Shintech plans to produce and release have been termed “hazardous air pollutants” by Congress<sup>22</sup> and have been determined by peer-reviewed scientific studies to be carcinogenic and damaging to human endocrine, respiratory and reproductive systems. Specifically, Shintech plans to annually produce and process over one billion pounds of ethylene dichloride and vinyl chloride monomer. Shintech will also produce significant amounts of chlorine, hydrochloric acid, caustic soda, carbon tetrachloride, and methanol. Other releases from the proposed PVC operations include 1,2-dichloroethane, toluene, and benzene.

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18 1994 TRI, p. 55.

19 Id.

20 US HHS (1993) Toxicological Profile for Vinyl Chloride. HHS-TP-92-20.

21 Shintech air permit applications.

Many of these chemicals are persistent and bioaccumulative and, therefore, would remain in the environment for generations and accumulate through the food chain.

Although LDEQ has artificially chosen to omit the air emissions from Shintech's proposed incinerator from its analysis of the air emissions from the proposed PVC complex, both sources of air pollution should be considered together by EPA. More particularly, the EPA must consider the potential for emissions from the incinerator and the PVC facility as a whole and the effects that these dioxins and other pollutants can have on the Convent community.

It should be noted that the EPA has deemed dioxin to be a major national problem not only for its carcinogenic effects, but also because it is persistent and bioaccumulative. As part of its ongoing Dioxin Reassessment project, EPA has concluded that there is no safe level of dioxin exposure. EPA also reports that all Americans carry a level of dioxin that is equal to the amounts known to cause a variety of cancers and other ill health effects in laboratory animals. The World Health Organization has unequivocally concluded that dioxin causes cancer in humans. In a published report, the EPA recognized that dioxin causes endocrine disruption in humans. A 1994 study indicates that people of color have nearly 33% more dioxin in their bodies than whites. The risk of higher dioxin levels is increased for people who live and/or work near industries that produce chlorinated compounds, like PVC.

**D. The Proposed Shintech PVC Complex Would Be the Newest Vinyl Facility in a State That Has Suffered From Vinyl Production.**

In every place where PVC or vinyl chloride monomer production facilities operate, Louisiana communities have suffered deaths, health problems, or the decline of their quality of

life.<sup>23</sup> Twelve of the fourteen VCM plants in the United States are located in Louisiana. The African American communities of Reveilletown and Morrisonville were eventually bought out and relocated by Georgia Gulf and Dow, respectively, after evidence of VCM contamination was found in the communities and linked to the high incidence of cancers and deaths suffered by residents.<sup>24</sup> The residents of Reveilletown and Morrisonville lost their communities and unique histories. Today there are no physical signs that Morrisonville and Reveilletown ever existed as Georgia Gulf and Dow continue to process vinyl chloride.<sup>25</sup>

In Lake Charles, Louisiana, the African American community of Mossville was recently informed that for several years PVC/Vinyl Chloride companies have contaminated well water supplies and groundwater with hundreds of tons of 1,2-Dichloroethane.<sup>26</sup> Routinely, Lake Charles residents are given Shelter-in-Place alarms that warn of accidental toxic releases into the air. Residents living close to the facilities report a high incidence of cancers and birth abnormalities. Many of them have brought lawsuits that are currently pending in courts against the PVC/Vinyl Chloride companies.<sup>27</sup> According to a National Oceanic and Atmospheric Administration (NOAA) report, vinyl companies were chiefly responsible for the high levels of contamination in the Calcasieu Estuary, a waterway system of lakes and bayous in Lake Charles. The NOAA report found vinyl related contaminants in the fish and sediment of the estuary.

The failure of both the EPA and the LDEQ to protect the health of citizens and the environment from PVC-related chemicals would only be exacerbated by issuing the Shintech

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23 Lake Charles American Press, Feb. 3, 1976; Lake Charles American Press, Dec. 5, 1995 p. A1 and Feb. 1, 1995, p. A1.

24 Jon Bowermaster, "A Town Called Morrisonville," AUDUBON, July-August 1993, pp. 42-51; The Battle for Environmental Justice in Louisiana . . . Government, Industry, and the People. Louisiana Advisory Committee to the U.S. Commission on Civil Rights, September 1993.

25 *Id.*

26 Lake Charles American Press, Dec. 5, 1995, p. A1, and Feb. 1, 1995, p. A1.

Title V permits. Moreover, as the EPA, through its ongoing Dioxin Reassessment, has identified dioxin as a national environmental threat and links dioxin to PVC production, it is unreasonable to issue a permit that would result in the construction of what is reportedly one of the largest PVC complexes in the world.

Permitting the Shintech PVC complex would constitute environmental injustice and, therefore, must be denied. The clear environmental justice issues involved in this present case will test the commitment of EPA in its Title V permit oversight function to carry out its affirmative duty under the President's Executive Order to protect the health and environment of Convent residents from increased pollution loading that includes dioxin, a substance that was banned from production by the United States.

## **II. TECHNICAL AND REGULATORY DEFICIENCIES IN SHINTECH'S PERMIT APPLICATIONS AND PROPOSED PERMITS MANDATE IMMEDIATE EPA OBJECTION.**

Shintech's air permit applications and Shintech's proposed permits issued by the LDEQ reflect numerous serious technical deficiencies. These deficiencies render the proposed permits objectionable for two reasons: 1) the technical deficiencies constitute violations of provisions in the Clean Air Act, and 2) the technical deficiencies will increase the disproportionate impact of Shintech's emissions on the African American, low income population of Convent, Louisiana, in violation of Executive Order 12898.

### **A. EPA Must Object to Shintech's Proposed Permits Because They Are Not in Compliance with the Requirements of the Clean Air Act Due to Technical Deficiencies**

The proposed Shintech air permits issued by the LDEQ are not in compliance with the requirements of the Clean Air Act because they contain numerous technical deficiencies. Under

the provisions of Title V of the Clean Air Act, the Administrator “shall issue an objection” if it is demonstrated that the permit is not in compliance with the requirements of the Clean Air Act.<sup>28</sup>

Therefore, the Administrator must object to Shintech’s proposed air permits for the reasons discussed in detail below.

1. **Shintech’s PVC Permit Applications and Proposed Permit  
Do Not Incorporate the Requisite Control Technology**

In Shintech’s permit application it states that NSPS control requirements of 40 CFR §60.110b do not apply to storage tank P-11 because the tank is 12,000 gallons and therefore exempt. Rather, Shintech would apply the control requirement contained in LAC 33:III.2103.A, which consists only of the requirement of a submerged fill pipe. The proposed permit likewise applies the standard contained in LAC 33:III.2103.A and not the control requirements of 40 C.F.R. §60.110b. However, Shintech’s stated basis for an exemption from the NSPS control requirement is incorrect. Shintech states that the NSPS standard applies to tanks holding greater than 10,000 gallons and states that P-11 holds 12,000 gallons. By Shintech’s own language the exemption would not apply, yet both Shintech and LDEQ illogically conclude that it is exempt. Therefore, Shintech must comply with the NSPS standard contained in 40 CFR §60.112b. EPA must object to the proposed permit for failure to comply with the required federal standards.

2. **Shintech’s VCM Permit Application and Proposed Permit  
Do Not Incorporate the Required Control Technology**

- a. **Shintech Applied MACT Standards Only to Vinyl Chloride and Ethylene Dichloride Emissions in the VCM Plant Whereas All of the Emissions from the Plant Should Fall Under the MACT Requirement**

Shintech's entire VCM unit falls under the definition of a major new source of air pollutants. 42 U.S.C. §7412(a)(1). In its Part 70 Operating Permit Application, Shintech proposes that it be permitted to emit significant quantities of the following five (5) hazardous

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<sup>28</sup> 42 U.S.C. §7661d(b)(2).

chemicals as defined in 42 U.S.C. §7412(b)(1) from its VCM plant. The five major hazardous air pollutants are:

<u>CHEMICAL</u>	<u>CAS No.</u>	<u>COMMENTS</u>
Vinyl Chloride	75014	known human carcinogen, teratogen, cytotoxin, explosion and fire hazard, sensitizer
Ethylene dichloride	107062	suspected human carcinogen, explosion and fire hazard,
Methanol	67561	causes blindness, liver damage, acute toxin, fire hazard,
Chlorine	7782505	asphyxiant, lung damage, acute toxin, highly corrosive
Hydrochloric acid	7647010	highly corrosive, acute toxin

Shintech's Part 70 application also states that it will emit nominal quantities of chloroform, carbon tetrachloride and trichloroethylene and benzene. All three of these chemicals are hazardous chemicals as defined by 42 U.S.C. §7412(b)(1).

The Clean Air Act requires that all of these hazardous pollutants be either eliminated or be abated to the maximum degree that is achieved in practice by the best controlled similar source. However, Shintech's Part 70 proposed operating permit incorrectly states that the VCM plant is not required to meet MACT for chlorine and hydrochloric acid, and it does not address the emissions of any of the other hazardous chemicals. It is Shintech's position that MACT only applies to the vinyl chloride and ethylene dichloride emissions, and that Class 2 and Class 3 toxic air pollutants are exempted from MACT. However, the Clean Air Act clearly defines a major source as:

[M]eans any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the **aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.**



42 U.S.C. §7412(a)(1) (emphasis added). Further, 42 U.S.C. §7412(d) requires that emissions of these hazardous air pollutants meet MACT standards. The MACT definition is incorporated by reference into 40 CFR §63, and the provisions do not permit an applicant to omit or exclude any of the various hazardous pollutants that are expected to be emitted from the facility. 40 CFR §63.1. Under the Clean Air Act, the entire VCM unit must meet MACT standards. The unit is a major source and must be constructed to meet MACT standards set forth in 40 CFR §63, Subparts F, G, H, I. (HON). Shintech must install process equipment that enables it to meet MACT standards for all of these chemicals, not merely vinyl chloride and ethylene dichloride. By definition each and every emission point source in the Shintech VCM unit including, but not limited to, those sources that emit vinyl chloride, chloroform, ethylene dichloride, methanol, carbon tetrachloride, and/or any other hazardous chemical listed in 42 U.S.C. §7412 (b)(1) will have to meet the requirements for control, monitoring, and reporting set forth in 40 CFR §63, Subparts F, G, H, and I.

This critical error in the Shintech Part 70 Permit Application for the VCM unit is valid grounds for permit objection. At the very least, Shintech must submit a new Part 70 Operating Permit Application that would be subject to notice and comment, public hearing, and oversight review, reflecting the incorporation of MACT standards for all sources within the VCM unit before a permit can be granted.

b. The Thermal Oxidizer Scrubbers in Shintech's VCM Plant Do Not Meet the Efficiency Mandated by 40 CFR §63, and the Application Does Not Contain the Necessary Information to Evaluate Scrubber Efficiency

Shintech did not include all the necessary information in its permit application concerning the efficiency of the thermal oxidizer scrubbers. Specifically, Shintech has not provided the necessary calculations or an adequate description for emission sources M-4 and M-5 which are described as thermal oxidizers with scrubbers. This requirement is set forth in 40

CFR §63, LAC 33:III.517(D)(3)(a), 517(D)(3)(f), 517(D)(6), 517(D)(9), and 517(D)(13).

Shintech has also impermissibly coupled the incinerator and scrubber into one control device and has provided only the composition of the inlet stream to the oxidizer and the composition of the outlet from the scrubber. A key requirement of 40 CFR §63.113(c)(1)(i) is that the scrubber reduce chlorine by 99% or 0.45 kg/hr, whichever is less stringent. Shintech's Part 70 permit application clearly does not meet this requirement, and therefore the application must be revised and resubmitted. In its revised Part 70 application, Shintech must include sufficient information to demonstrate that the scrubbers alone meet the efficiency requirement of 40 CFR §63.113(c)(1)(i). To make such a demonstration, Shintech must state the composition of the inlet streams to the scrubbers. Without such an identification, the scrubber efficiency cannot be demonstrated and the application is per se deficient.

c. Shintech's VCM Permit Application and the  
Proposed Permit Contain Improper Control  
Standards for Process Vent M-13

Shintech's Part 70 application does not meet MACT or any other standard for point source M-13. The M-13 stream, which emits as much as twenty (20) tons of hazardous pollutants each year, contains vinyl chloride, ethylene dichloride and other chlorinated hydrocarbons. Shintech contends this vent is an analyzer vent, not a process vent, and therefore is not subject to control standards. Shintech's contention that this is an analyzer vent is premised on the fact that the stream passes through an analyzer before being emitted to the atmosphere. Although the LDEQ offered no explanation for accepting this claim, it can be presumed that LDEQ's acceptance was grounded on the fact that the hazardous gas vented from the process passes through an analyzer before being released to the atmosphere. When challenged about the soundness of this interpretation, the LDEQ wrote into the permit that M-13 is exempt from abatement because it emits less than 100 pounds per day of hazardous air pollutants. The LDEQ is wrong on both points.

Emission point M-13 is a process vent because it originates from process equipment, and it releases a stream of process gas to the atmosphere. It is actually a combination of five vent streams originating from various process units which include reactors and distillation units with a concentration of hazardous materials greater than 0.005% by weight. This is the definition of a process vent stream as set forth in 40 CFR §63.101, and thus M-13 is subject to control under 40 CFR §63.113. The fact that it passes through an analyzer before being vented does not change the origination or character of the stream.<sup>29</sup> Approving Shintech's interpretation of what constitutes a process vent would allow the LDEQ, or any other regulatory agency, to re-characterize a process vent of literally any size to a non-process vent by simply running it through an analyzer before releasing the materials to the atmosphere.

Moreover, the LDEQ is also wrong concerning the size of the vent. M-13 will emit over 120 pounds of hazardous air pollutants each day, not less than 100 pounds per day as the LDEQ alleges. Had the LDEQ permit writer taken a minute to sum up the constituent numbers in the permit, it would have been clear that **under no circumstances** should this vent be unabated.

Were the analyzer absent, there would be no dispute that this is a process vent. The mere presence of an analyzer does not convert M-13 from a process vent to something different. Unlike the maiden whose kiss turned a frog into a prince, an analyzer does not change or convert an M-13 process vent. The M-13 process vent, with or without an analyzer, remains subject to control standards. Perhaps most disturbing is the fact that this vent can easily be abated by sending it to one of the thermal oxidizers that must be installed in the VCM unit.

d. **Shintech's VCM Permit Must Not Be Issued as Written Because It Contains Process Units That Are Extraordinarily Dangerous to the Environment and to the Citizens of St. James Parish**

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29. An analyzer merely measures the concentration of the constituents in the stream; it does not cause a chemical reaction that changes the nature of the stream nor does it reduce the amount of hazardous material in the stream.

Shintech incorrectly categorizes the VCM cracking furnaces, emission points M-1, M-2, and M-3, as boilers and/or fired electrical generation units for emission control purposes. While these two furnaces seem to meet the both the definition of a process heater and of a process unit under 40 CFR §63.111, the cracking furnaces do more than provide heat transfer. Shintech's own process flow diagrams indicate that the ethylene dichloride process streams **enter** the furnaces where heat is applied, and the ethylene dichloride is converted to vinyl chloride and hydrochloric acid. Shintech also acknowledges that purified ethylene dichloride will be thermally cracked in the furnaces. This is a classic example of an indirect fired chemical process reactor and thus, this equipment fits the definition of a process unit set forth in 40 CFR §63.111. Furthermore, these reactors are located in the VCM unit, which is subject to MACT provisions for a Synthetic Organic Chemical Manufacturing Industry (SOCMI) process, and thus are subject to all of the regulations set forth in 43 CFR §63, Subparts F, G, H, and I.

As important as the fact that these reactors were improperly characterized and do not meet the MACT requirements set forth for venting process units in 43 CFR §63, Subparts F, G, H, and I, these cracking reactors also present a special danger to the environment and to the community. Should a leak develop in these reactors, the ethylene dichloride, hydrochloric acid, and vinyl chloride mixture present will leak into the fired side of the reactor and may be subjected directly to the gas flame. The exposure of chlorinated hydrocarbons to a direct flame is known to produce toxic dioxins as well as partially oxidized chlorinated hydrocarbons. Many thousands of pounds of these materials could be discharged directly to the atmosphere before the leak is detected and appropriate measures taken. Because of the volatility and concentration of these materials, the presence of water vapor, the stack height, and the cooling effect a leak would have on the stack temperature, these materials would form relatively stable, toxic vapor clouds which have the potential to migrate several miles from the site before they disperse. Given such a scenario, the residents of St. James Parish would be exposed to the toxic and potentially explosive vapor clouds.

Shintech has provided no protection on these units in the event of a leak. At least one such release of this type has already occurred within the industry which resulted in over fifteen thousand pounds of a highly toxic vinyl chloride, ethylene dichloride, and hydrochloric acid mixture being released to the atmosphere. Shintech's permit application, which incorrectly characterizes these cracking reactors as furnaces, masks the danger posed by these reactors. No Part 70 operating permit should be issued until Shintech addresses this problem and provides adequate protection for both the environment and the St. James Parish citizens.

e. Shintech and the LDEQ Have Applied the Wrong Standard for Fugitive Emissions Control for Pumps and Compressors in Vinyl Chloride Service in the VCM Unit

LDEQ's effort to "expedite" Shintech's air permits through the permitting process has resulted in the application of the wrong fugitive emissions standards for pumps and compressors in vinyl chloride service in the VCM unit. The Part 70 proposed permit issued by the LDEQ for the VCM unit applies LAC 33:III.2111, which is loosely based on the standard set forth in 40 CFR Subpart V. Conversely, the proposed PSD permit states that the pumps and compressors in the VCM plant must meet 40 CFR §63, Subpart H which includes 40 CFR §63.164.<sup>30</sup> 40 CFR §63.164 sets forth an express set of standards for pumps and compressors and for pumps and for compressors in VCM service.<sup>31</sup>

Although there is no indication which of the two conflicting permit requirements takes precedence, 40 CFR §63.164 is clearly the correct standard.<sup>32</sup> This inconsistency was not as much of a problem originally because the draft permit contained a clause stating that, in the event the provisions contained in the Part 70 permit differed from those of the PSD permit, the PSD permit provisions would govern. However, at the request of Shintech, that clause was

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30. 40 CFR §63.164 is contained in 40 CFR §63, Subpart H, which governs fugitive emissions for VCM plants.

31. *See id.* To minimize the possibility of leaks and fugitive emissions, 40 CFR §63.164 requires that compressors in VCM service be equipped with double mechanical seals surrounding a barrier fluid. LAC 33:III.2111 states no such requirements.

32. 40 CFR §63.100 clearly states that VCM manufacturing units fall under 40 CFR §63 which includes 40 CFR §63 Subpart H and 40 CFR §63.164.

removed from the proposed permit, leaving this set of permits with conflicting and erroneous provisions and no means of sorting them out. This will make enforcement of these permits difficult, if not impossible.

3. **Shintech's Permit Applications and Proposed Permits Contain Numerous Errors Regarding the Standards the Various Emission Points Must Meet**

Both the VCM and PVC permit applications and proposed permits contain so many inconsistencies and inaccuracies as to which standards are applicable that it would be impossible to enumerate them. Because of these inconsistencies in the tables and charts, the permit applications and proposed permits can only be termed a mess. Offered merely as an example, Table I of the Part 70 proposed permit for the VCM unit correctly states that M-12, M-13, and M-14 must meet 40 CFR §63 Subparts G, H, and I. The remainder of the proposed permit erroneously states that M-12, M-13, and M-14 do not require control technology. These inconsistent positions are clearly confusing in that all these vents must be controlled to MACT standards as set forth by 40 CFR §63, Subparts G, H, and I.

**B. EPA Must Object to Shintech's Proposed Air Permits Because Allowing the Deficient Permits to Go Forward Would Violate EPA's Duty to Assure Environmental Justice.**

The result of an EPA decision to allow the Shintech proposed permits to proceed without objection despite their many deficiencies is obvious: the proposed Shintech PVC plant emissions will have even more of a negative impact on the African American, low income community of Convent than a properly permitted, best controlled PVC plant has. By allowing Shintech to choose less stringent emission control equipment and technology than what is available, EPA would be allowing Shintech to emit more pollutants than what the best controlled sources emit. The inequities felt by the already disproportionately-impacted Convent

community would be exacerbated as the Shintech PVC plant not only introduces the vast amount of pollution in compliance with emissions standards, but would also release contaminants in excess of emission limits. For this reason, the EPA cannot allow the Shintech air permits to proceed forward containing all of the deficiencies discussed above. A decision not to object to the proposed permits would be in violation of the Clean Air Act and the Executive Order on Environmental Justice.

Additionally, because of the EPA's added duty under the Executive Order on Environmental Justice to ensure that the programs it administers do not have a disproportionate impact on African American and low-income populations, the EPA must broaden its assessment of the Shintech proposed air permits. The Citizen Groups and Greenpeace discussed above their primary contention that permitting this PVC plant at all would constitute a violation of EPA's duty to assure environmental justice. However, if EPA does not agree that it should object to the facility in its entirety, it cannot end its review with an evaluation of whether the Shintech proposed permits violate the express requirements of the Clean Air Act. The agency must go further to determine whether Shintech's proposed permits not only comply with the letter of the law, but require Shintech to reduce its impact on the Convent community to the maximum extent possible. As discussed below, Shintech's proposed air permits do not ensure the minimal amount of emissions and impact and, therefore, the EPA must object.

1. Shintech's PVC Plant Must Use the Maximum Achievable Control Technology to Control Emissions.

To ensure that its proposed facility will have the least amount of impact possible, Shintech must use the Maximum Achievable Control Technology in its PVC plant. Louisiana air regulations even provide that "[t]he owner or operator of any major source that emits or is permitted to emit a Class I or Class II toxic air pollutant at a rate equal to or greater than the

minimum emission rate for that pollutant . . . shall control emissions of such toxic air pollutants to a degree that constitutes the Maximum Achievable Control Technology (MACT) . . . .”<sup>33</sup>

Shintech’s PVC plant will be a major source and will emit several Class I and Class II pollutants above the minimum emission rate. Therefore, Shintech must apply MACT to those emissions

2. Shintech’s PVC Permit Application and Proposed Permit  
Fail to Require Emission Controls That Constitute  
the Maximum Achievable Control Technology.

Shintech’s PVC permit application and proposed permit erroneously apply inferior and outdated Best Achievable Control Technology (BACT) standards to its PVC plant emissions. Neither Shintech nor the LDEQ ever demonstrate how this chosen standard can be considered to be MACT. MACT for new sources is defined in the federal regulations as:

[T]he emission limitation which is **not less stringent** than the emission limitation achieved in practice by the best controlled similar source, and which reflects **the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable)** that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies.

40 C.F.R. §63.51(emphasis added). Shintech has stated that the PVC unit in its proposed St. James Parish facility will meet the standards set forth in LAC 33:III.5121. However, neither LAC 33:III.5121 nor its federal analog, 40 CFR §61, Subparts F and V, from which LAC 33:III.5121 was derived, contain standards that meet the MACT definition. As evidence, the EPA is currently in the process of defining MACT standards for PVC production units and expects to have them ready by the year 2000.

The absence of an EPA-set MACT standard, however, does not relieve Shintech from applying the maximum achievable control technology to emissions. Until these specific standards have been promulgated by the EPA, Shintech, the LDEQ and the EPA should employ

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33 Louisiana Administrative Code Title 33, Chapter 51, §5109.A.



MACT standards from a closely related chemical manufacturing unit. The PVC unit must be built to MACT standards as set forth in 40 CFR §63 governing Synthetic Organic Chemical Manufacturing Industries (SOCMI). These emission standards for vinyl chloride production units, which have superseded the less stringent standards set forth in 40 CFR §61 and which have been acknowledged as being required for Shintech's VCM unit, should serve as the proper MACT standard for the PVC unit.<sup>34</sup>

Shintech's proposed PVC plant will handle exactly the same amount of vinyl chloride, 1.5 billion pounds per year, as the VCM unit. If Shintech wants to build the PVC unit incorporating the old BACT standard set forth in 40 CFR 61 Subpart V and LAC 33:III.5121.F, it must offer justification for doing so and demonstrate that these standards afford the same protection as 40 CFR §63. The fact that a specific MACT standard governing new PVC production units has not been completed should not preclude the application of a general MACT governing SOCMI to the PVC unit.

History also demonstrates the inadequacy of Shintech's proposed BACT standard set forth in 40 CFR §61 Subpart V and LAC 33:III.5121.F. PVC units built under the older and less protective BACT and RACT standards pose substantial dangers to both the plant workers and the surrounding community as a result of fugitive and uncontrolled emissions as well as higher emission rates of toxic materials such as VCM. There have been some more than fifteen (15) documented releases of VCM from PVC and VCM production units in Louisiana and more than two hundred (200) reported releases of VCM nationwide over the past three years. Each one of these PVC production units were built to inferior BACT or RACT control standards. Shintech's PVC unit, which will be one of the largest PVC production units in the world, must not be permitted to be built in Louisiana incorporating these demonstrably inferior standards.

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<sup>34</sup> 40 CFR §63 is particularly applicable in this case because the PVC unit stores and handles significant quantities of highly toxic vinyl chloride in much the same manner as the VCM unit.

Given that Shintech will handle and process all 1.5 billion pounds of vinyl chloride it produces in the VCM unit into PVC within the PVC unit each year and that the associated risks to the environment and personnel from the Class I and Class II Toxic Air Pollutants will be virtually identical to those risks posed by the VCM processing unit, it would be unconscionable to permit Shintech's PVC unit to be built using lower emission standards than the VCM unit. Further, considering that there appropriate and more protective standards available, Shintech must resubmit its Part 70 operating permit application for the PVC unit to incorporate the standards set forth in 40 CFR §63, Subparts F, G, H, and I.

3. Shintech's Part 70 Operating Permit Must Not be Granted Because the PVC Unit Does Not Meet MACT Fugitive Emissions Standards

The fugitive emissions standards proposed by Shintech for emission source P-16 in the PVC unit are deficient in that they do not meet MACT standards. Shintech and the LDEQ have applied a lower fugitive emissions standard to equipment storing and handling toxic vinyl chloride if such equipment is designated as being installed in the PVC unit as opposed to being in the VCM unit. The permit application and the proposed permit issued by the LDEQ proposes that 40 CFR §61 Subpart V and LAC 33:III.5121 be employed.

However, as any competent professional engineer would attest, a consideration of the environmental and personal danger presented by leaks and fugitive emissions is predicated solely on the chemical being handled and the standards to which the equipment handling the chemical is built and maintained. The physical or geographical location of said process equipment is immaterial. Shintech's wholly artificial designation ignores the fact that there is no less a danger of vinyl chloride leaks and fugitive emissions from the process equipment, such as pumps, pipe joints, and valves, which will handle vinyl chloride merely because it draws an artificial boundary around the perimeter of its operating units and designates one of them PVC and the other a VCM unit. Yet the proposed permits approved by the LDEQ would allow Shintech to install VCM-handling equipment in the PVC plant that will leak more often and have a higher

level of fugitive emissions. According to the proposed permits, the VCM-handling equipment in the PVC plant will also be subject to less monitoring and a less stringent repair schedule simply because it is located in the PVC unit. This heightening of form over function is a prime example of how important it is for a permit writer to develop an understanding of what is really being permitted.

There is simply no reason to expose the citizens of St. James Parish to a heightened danger because Shintech appears to believe its construction costs will be lower if it can comply with lower standards.<sup>35</sup> The PVC processing unit must meet MACT standards, and neither of these regulations Shintech and the LDEQ propose to apply contain MACT standards. Shintech must resubmit its Part 70 operating permit application for the PVC unit to reflect the requirement that fugitive emissions meet 40 CFR §63, Subpart H.

#### 4. Sources P-1 and P-2 Do Not Meet MACT.

Shintech describes P-1 and P-2 as scrubbers; however, they are actually vents from a dryer that pass through a scrubber. Table 4.2 in the Application states that emissions of vinyl chloride for these sources will be controlled by stripping to less than 150 ppm prior to this source and that this is considered MACT. This is not MACT for these sources. DEQ's own internal memoranda indicates that 35 ppm is considered MACT on a quarterly average.

### **III. EPA SHOULD CONSIDER THE LDEQ'S DISMAL ENFORCEMENT RECORD WHEN ASSESSING THE POSSIBLE IMPACTS OF THE SHINTECH COMPLEX ON THE AFRICAN AMERICAN, LOW INCOME POPULATION OF CONVENT**

As part of a consideration of the impacts of the Shintech PVC complex on the Convent community, EPA must consider and factor in the extremely lax and ineffective enforcement program conducted by the LDEQ, particularly under the current administration. An analysis

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35. Ironically, Shintech will probably save money if it complies with 40 CFR §63, Subpart H for all equipment handling vinyl chloride. As it now stands, Shintech must maintain two separate sets of replacement parts and two sets of records. A uniform parts inventory and monitoring and reporting system will mean lower parts inventory and less confusion and errors in maintain the necessary records.

prepared by the Tulane Environmental Law Clinic and submitted to Carol Browner by one of the Citizen Groups, the Louisiana Environmental Action Network, reveals the disturbing decline in enforcement by LDEQ and current all-time low. More particularly, LDEQ issued penalties in only 5% of the enforcement actions and has collected less of the penalties assessed than ever before. The signal which this sends to polluting industries is obvious: violations are unlikely to result in negative consequences. In fact, Louisiana Governor Foster has been quoted as saying: "I believe DEQ should not be policemen."<sup>36</sup> Aside from what this reveals about LDEQ's attitude toward industry and the citizens whom it is supposed to protect, this situation exacerbates the effect that the Shintech facility will have on the low income, African American population of Convent. These statistics only record what these citizens have felt for quite some time: their ability to protect themselves and to be protected from the harmful effects of facilities like Shintech is severely limited. Along with the other issues raised in this petition, this mandates that EPA abide by its environmental justice duty and object to the Shintech permit.

#### **IV. THE SHINTECH PROPOSED PERMITS ARE UNENFORCEABLE AS WRITTEN**

As discussed above, the Shintech proposed air permits are riddled with inconsistencies as to which standards apply to the various emission points. Tables containing a checklist for applicable requirements in countless incidents conflict with tables listing the applicable standards and exceptions. As stated, it would be literally impossible for the Petitioners to list them all, although in the course of the comments we have pointed out many. However, it is the duty of the EPA under both the Clean Air Act and the Executive Order on Environmental Justice to review the proposed permits and disclose all of the inconsistencies.

The result of all of these inconsistencies is a permit that is quite literally unenforceable.

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<sup>36</sup> Baton Rouge *Advocate*, Jan. 7, 1996; New Orleans *Times-Picayune*, Jan. 6, 1996.

**V. THE PROPOSED SHINTECH PERMITS DEMONSTRATE A CALLOUS DISREGARD FOR THE LIVES OF PREDOMINANTLY AFRICAN AMERICAN AND POOR RESIDENTS BY SUBJECTING THEM TO SEVERE RISKS OF TOXIC EXPOSURE IN VIOLATION OF SECTION 112(r) OF THE CLEAN AIR ACT.**

In an area that has the highest concentration of African Americans in Convent, Shintech proposes to process, store and transport its hazardous chemicals and incinerate toxic substances.

As part of its application for Title V permits, Shintech submitted documents that detailed storage of 53 million pounds of vinyl chloride. Within one mile of the proposed PVC operations, 95% of the residents are African American, and nearly half earn incomes that are no more than \$15,000 per year. On 3,000 acres of land that is located between and across from residential areas, Shintech proposes to build its PVC complex on the far west side of the property. The Romeville Elementary School, where nearly 100% of the students are African American, is located less than a mile away from the western property boundary line of the proposed facility. There is a dense concentration of residents who live on the west side of the proposed PVC complex and directly across from the planned facility on the west bank of the Mississippi River. Shintech plans to load its hazardous chemicals on ships that will navigate through congested commercial traffic on the Mississippi River where a record number of hazardous chemical spills and ship accidents have occurred. Shintech also plans to load toxic chemicals on trucks whose routes will be the main road of Convent and on board freight trains that will travel through residential areas.

Nowhere in its submittals has Shintech identified the hazards that could and will result from an accidental release nor has it adequately addressed how it will meet its duty to minimize the consequences of a release. Instead, in its Title V permit application, Shintech stated that "St.

James Parish has an excellent emergency response center and warning system . . . .”<sup>37</sup> This statement is patently false and attempts to narrowly focus the risk management analysis to prevention at the facility by ignoring concerns about the adequacy of St. James’ emergency preparedness.

The truth is that St. James Parish government does not have the resources to manage an accidental chemical release. The Parish emergency response relies on a volunteer staff who are neither equipped nor trained to handle chemical emergencies, which are becoming more frequent in the industrial corridor where St. James Parish and many other communities are located.

Moreover, a warning system for public evacuation is inadequate given the narrow roads and poor emergency resources of the parish. The residential community of Convent, Louisiana, is located on both sides of the proposed Shintech facility site. Single family residences, public housing, a head-start center for young children, Romeville Elementary School, a church, and other public places are located within one mile of the proposed Shintech site. The Fifth Ward Elementary School is only two miles from the Shintech facility boundary on the west bank of the Mississippi River.<sup>38</sup> There are approximately 2,000 people living, working, learning, and playing in very close proximity to the proposed Shintech facility.<sup>39</sup>

In addition to accidents at the proposed PVC complex, there is also the potential for accidents on trains, ships, and underground pipelines that will be transporting toxic chemicals, notably ethylene dichloride and vinyl chloride monomer. The freight train tracks are located in residential communities.<sup>40</sup> Ships carrying chemicals produced by Shintech would travel down the Mississippi River, which divides Convent into west and east banks. Residential communities

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37 Shintech permit application

38 Land Use Map.

are located along both sides of the Mississippi River.<sup>41</sup> Underground pipelines will extend for several miles beneath residential areas.<sup>42</sup>

Evacuation plans and Shelter-in-Place programs would not protect residents of Convent from the effects of an accidental release or spill. The narrow streets of Convent, which are about the width of an automobile, would prevent an emergency evacuation for most residents. The only major road in Convent is State Highway 44, also known as River Road, which is a winding two-lane highway that borders the Mississippi River. In the event of an emergency, access to the highway would be blocked by the narrow passage of intersecting streets that are heavily populated. Additionally, many of the homes of Convent are in need of structural repair. For this reason, a Shelter-in-Place program would be dangerous because air contaminants would gain access into houses through roofs, floors and walls that are in poor condition.

Recent news reports on a benzene spill from a barge on the Mississippi River near Baton Rouge and subsequent evacuations because of the resulting benzene vapor clouds demonstrate that cities and rural communities along the Mississippi River, where numerous vessels carry toxic chemicals from nearby industries, cannot adequately respond to a chemical release emergency. Prior to the benzene accident, fires at industrial plants, including the Star Enterprise (formerly Texaco) oil refinery in Convent, Louisiana, and spills on tankers and trains have been reported with an emphasis on the inability of government agencies and industries to prevent exposure to the toxic chemicals.

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39 1990 Census data, zip code 70723.

40 Land Use Map.

41 *Id.*

42 Shintech's Air Permit Materials, "Analysis of Environmental Considerations Taken Into Account in Siting & Designing the New Facility," p. 16.

Section 112(r) of the Clean Air Act requires owners and operators to minimize the consequences of accidental releases. Exposing Convent and St. James Parish residents to toxic chemicals that are accidentally released at the facility, on trains, at the dock, or on ships is a likely consequence of permitting the Shintech PVC complex, especially considering the proximity of residential areas to the Shintech site and the enormity of the proposed chemical production. The Shintech Title V permit application fails to assure prevention of accidental releases, fails to identify exactly what health effects and hazards could result from the accidental release of the various chemicals Shintech will process, and fails to minimize consequences of a release for the residents of Convent, Louisiana. In the event of a chemical accident from numerous potential sites, the predominantly African American and low-income community of Convent would suffer actual adverse health and environmental effects.

**A. The Title V Permits' Failure to Demonstrate How Shintech Will Meet Its Duty to Prevent Accidental Chemical Releases is Grounds for Objection.**

Pursuant to 42 USC §7661d (b), the Administrator shall object to the issuance of any permit that is not in compliance with the applicable requirements of the Clean Air Act. The draft Title V permit for Shintech fails to comply with 42 U.S.C. §7412(r)(1), which provides that:

[t]he owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty . . . to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

(Emphasis added.)

The argument that the chemical accident prevention regulations promulgated under section 112(r) of the Clean Air Act, 40 CFR part 68, will not be enforceable against Shintech until June 21, 1999, does not in any way excuse Shintech from the legal duty requirement to (1)



identify hazards that may result in an accidental release, (2) design and maintain a safe facility, and (3) minimize the consequences of an actual accidental release. 42 USC §7412(r)(1). The fact that the proposed Title V permits ignore this extremely important requirement is inexcusable and incurable. Moreover, the failure to demonstrate compliance with the requirement evidences a callous disregard for the people who could live, worship, learn, and play in close proximity to the Shintech facility. The crucial compliance and enforcement issues raised by the proposed permits' failure to provide for accident prevention can only be answered by objecting to the permit.

Because of the President's Executive Order on environmental justice, the duty Shintech has to prevent accidental releases extends beyond consideration of prospective employees to consideration of those who will live next to the proposed chemical facility. Certainly a priority for reducing pollution for racial minority and low-income communities would be the prevention of chemical accidents that endanger the health and lives of neighboring citizens. Given the extreme hazards of Shintech's proposed chemical operations, the high volume of chemical production levels, and the dangerously close proximity of predominantly African American residents to the proposed facility, an accidental release by Shintech is likely to have devastating consequences for the community of Convent.

**B. In Violation of Clean Air Act Provisions 42 U.S.C. §§7412(l) and 7661c(a) the LDEQ Has Submitted to EPA Unauthorized Proposed Title V Permits for Shintech Which Impermissibly Extend the Period for Compliance With Accident Prevention Duty Requirements.**

Congress explicitly prohibited states from implementing accident prevention requirements that "are less stringent than those promulgated by the Administrator under the Clean Air Act." 42 U.S.C. §7412(l). In section 112(r), the Clean Air Act sets out a clear three-

part duty for accident prevention that is effective for all new major sources, such as Shintech. However, in the “State and Federal Air Quality Requirements” of the proposed Title V permits, LDEQ set an impermissible “Compliance Method/Provision” that gives Shintech one year to comply with accident prevention requirements set out in §5902 of the Louisiana Administrative Code, which follows the three-part accident prevention requirements of 42 U.S.C. §112(r).

The LDEQ does not have the authority to grant Shintech an extension on compliance with the Clean Air Act accident prevention duty requirements. The one-year extension provides a permit that is “less stringent” and, therefore, unauthorized by the Clean Air Act.

In addition to the Congressional prohibition against less stringent state programs, §7661c provides that each Title V permit shall include all standards and conditions “necessary to assure compliance with applicable requirements of [the Clean Air Act].” 42 U.S.C. §7661c(a). For the reason that there is no demonstration of accident prevention in the proposed permits and that the proposed permits expressly set an unauthorized extension for compliance, EPA should object to the proposed Title V permits.

**VI. FROM PUBLIC HEARING TO SUBMISSION OF THE PROPOSED TITLE V PERMITS TO EPA, THE LDEQ HAS OBSTRUCTED THE VERY PURPOSE OF THE CLEAN AIR ACT, WHICH JUSTIFIES A DECISION BY THE ADMINISTRATOR TO OBJECT TO THE PERMIT.**

The Clean Air Act promotes decisions that are based on deliberate analyses on the effects of permitting new polluting sources and fair opportunities for informed public participation in permit hearings. 42 U.S.C. §§7470(5) and 7475(2). Indeed, one of the very purposes of the Clean Air Act is

to assure that any decision to permit increased air pollution in any area. . . is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision-making process.

(Emphasis added.)

**A. The LDEQ Obstruction of Meaningful Public Participation is a Violation of Preconstruction Permit Requirement and, Therefore, Warrants an Objection to the Proposed Title V Permits.**

On December 9, 1996, at 6:00 p.m., LDEQ held a public hearing on Shintech's application for a Title V permit at the Romeville Elementary School in Convent, Louisiana. Over 200 Convent residents came to the public hearing. People who wanted to speak had to complete public comment cards. Ervin Schroeder, the vice-president of Shintech, was allowed by LDEQ officials to submit a large stack of comment cards which were filled out for individuals who had not yet arrived to the public hearing to speak in favor of Shintech. Residents complained to LDEQ officials that it was unfair to allow Schroeder to bring in cards for people who were not in the building. LDEQ officials responded that the speakers would be called in the order that the comment cards were received and that they did not see anything wrong with Schroeder bringing in cards for individuals who had not yet arrived.

Over the complaints of residents, LDEQ allowed numerous individuals from Texas who were Shintech employees, contractors, and associates to dominate the public hearing in Convent. The first 90 minutes of the public hearing was exclusively devoted to Shintech supporters. During the next 60 minutes a few citizens were allowed to speak, but the majority of speakers represented Shintech. As a direct result of this tactic, the citizens wanting to express their views against the Shintech application were not allowed to speak until late into the night. Citizens who arrived at the public hearing at 5:30 p.m. were not allowed to speak until after 11:00 p.m. There were approximately 20 citizens who did not get to speak at all because they had to leave due to the lateness of the hour. **The hearing lasted until after 1:00 a.m.**

In addition to allowing numerous Shintech supporters to speak early, LDEQ also allowed them to speak as long as they wanted. When Convent residents were finally given the opportunity to speak, the LDEQ began to impose a five minute limit on residents' statements. The first person against whom the LDEQ enforced the time limit was a resident opposing the facility. There was a clear bias operating in LDEQ's management of the hearing that was in favor of the Shintech permit. Schroeder could have only obtained blank comments in advance of the hearing from LDEQ. LDEQ purposely denied many citizens, who had to leave the late-night hearing out of necessity without speaking, the opportunity of meaningful public participation as required by 42 U.S.C. §7475(a)(2). The LDEQ also frustrated others who had to devote a portion of their short public comment time to complain about the bias in LDEQ's handling of the public hearing.

EPA received several letters from Convent residents and environmental organizations that complained about LDEQ's unfair treatment of residents who have the most at stake with the Shintech permit application. EPA's request to LDEQ to hold another public hearing was largely ignored because LDEQ decided to extend the written comment period. However, a written comment extension is wholly inadequate to address the improper conduct of LDEQ nor does it cure violations of the Clean Air Act.

Moreover, by preventing affected citizens, who are predominantly African American, from participating in the environmental decisions that will impact their lives for years to come, the LDEQ is subject to the anti-discrimination law of Title VI. 42 U.S.C. §2000d; 40 C.F.R. §7.34(b). According to the Clean Air Act, Shintech cannot begin construction in Convent because there was never a fair "public hearing . . . held with the opportunity for interested

persons. . . to appear and make presentations. 42 U.S.C. §7475(a)(2). For these reasons, the Administrator must object to the proposed Title V permits for Shintech.

**B. The Fast-track Permitting Process and Compliance Failures of the Proposed Title V Permits for Shintech Demonstrate a Failure of LDEQ to Carefully Evaluate the Consequences of Its Permitting Decision and, Therefore, Violates the Purpose of the Clean Air Act.**

The proposed Shintech PVC complex is an ambitious plan that endeavors to produce one of the largest quantities of hazardous chemicals used in the production of plastic materials. From safety plans to emission standards, Shintech's application for necessary permits raises a plethora of issues that have not been adequately addressed by the LDEQ. Central to the issues raised by the Shintech permit is the consideration of the people whose community has been targeted by the plastics company. Missing from the analysis of consequences are alternative sites that would favor facility locations with less adverse risks to human populations. In a rush to permit, LDEQ has ignored its obligation to follow state laws that specifically mandate an alternative sites analysis. Underlying the Title V permits is a site selection analysis that raises more questions than it answers. For example, Shintech states that deep water access is a necessity for its operations. However, it lists a number of locations as potentially qualifying sites that did not have deep water access. Other locations considered by Shintech also failed to meet additional requirements for proximity to raw materials and transportation routes, to name a few. LDEQ's tacit approval of Shintech's purported alternative sites analysis is a clear example of failure to scrutinize permit applications and irresponsibility to the citizens of Convent who contend that they have been purposefully targeted to host the PVC complex.

**VII. SHINTECH'S PERMIT APPLICATIONS DO NOT ADEQUATELY ACCOUNT FOR THE EFFECT THAT FUGITIVE EMISSIONS WILL HAVE ON AMBIENT AIR QUALITY, AND APPROVAL OF THE**

**SHINTECH APPLICATIONS WILL LIKELY RESULT IN ST. JAMES PARISH BECOMING A NON-ATTAINMENT AREA FOR OZONE**

St. James Parish was redesignated from an ozone non-attainment area to an ozone attainment area effective November 13, 1995. The EPA's granting of attainment status was conditioned on St. James Parish maintaining attainment for a period of ten (10) years, that an approved maintenance plan be implemented, and that the maintenance plan contain contingency provisions to correct any violations. Additionally, should there be more than one exceedance of the ozone National Ambient Air Quality Standard (NAAQS) within a three year period, the LDEQ must promulgate a rule change to implement offsets for VOC emissions within the parish. Given the seemingly precarious nature of St. James' attainment status and devastating effects of losing that status, no new major emission source should be built in St. James Parish without a thorough examination as to how the emissions will affect the attainment status recently achieved by St. James Parish.

The requirement that Shintech obtain a PSD permit and conduct ambient air modeling does not account for the threat Shintech's proposed facility poses to St. James' attainment status. Shintech's proposed facility will increase the routine point source VOC emissions in St. James Parish by 8%. This increase in VOC emissions will likely return St. James Parish to non-attainment status, thus depriving St. James citizens of the improved air quality.

Neither Shintech nor the LDEQ have addressed the threat to St. James' ozone attainment status in the permitting process. There has been no determination of how fugitive emissions from each of the three plants will affect ambient air quality. Shintech did not incorporate the effect that fugitive emissions from the Shintech facility will have on the ambient air quality through the use of an LDEQ or EPA-approved fugitive emission and ambient air modeling program. Additionally, neither Shintech nor the LDEQ have addressed the effect of increasing the point source VOC emissions within St. James Parish by 8%. PSD modeling and a comparison to an arbitrary benchmark that does not account for the precariousness of the attainment status is insufficient.

Thus far in the permitting process, there is no indication that the LEQ examined and approved either the proposed fugitive emissions program or Shintech's air quality assumptions and incorporation of meteorological data in light of the need to maintain St. James ozone attainment status.

This failure to address the unique circumstances regarding St. James Parish's ozone status is both negligent and inconsistent with the LDEQ's treatment of other proposed major emission sources in other areas.

At a minimum, Shintech's permit must not be approved without the issuance of a new maintenance plan for St. James Parish. The new maintenance plan should be based on the proposed new emissions inventory (including Shintech's proposed emissions) for St. James Parish, a revised contingency plan, and an assurance that VOC emissions from the proposed Shintech facility are at an absolute minimum and do not jeopardize St. James' ozone attainment status. Preferably, to insure that St. James Parish's attainment status is preserved, Shintech should be required at a minimum to offset its proposed emissions.

## **VIII. CONCLUSION**

A fair review of whether the proposed Shintech permits comply with the Clean Air Act must result in an objection. Pursuant to its oversight authority under Title V of the Clean Air Act, the Administrator of the EPA has a duty to evaluate Shintech's proposed air permits, and "shall issue an objection" if the petitioner demonstrates that the permit is not in compliance with the requirements of the Clean Air Act. The petitioners have demonstrated in this petition that the Shintech proposed permits are not in compliance with the requirements of the Clean Air Act.

A fair review of the proposed Shintech permits pursuant to the President's Executive Order on Environmental Justice must result in an objection. Under the President's Executive Order on Environmental Justice, all federal agencies must implement environmental justice in all policies, programs, and activities, including regulatory functions. Therefore, in its review of proposed Shintech permits to assure compliance with the provisions of the Clean Air Act, EPA has the affirmative duty to assure that all aspects of the proposed permits, from public participation to emission levels, do not increase the disproportionate burden already borne by Convent residents. The irreparable consequences of issuing the proposed Shintech permits, in addition to irresponsible permitting decisions, justify an objection to the proposed permits.

Respectfully submitted,

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