



Denka Performance Elastomer LLC
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Federal judge dismisses a lawsuit targeting Denka Performance Elastomer

LAPLACE, LA – A lawsuit filed against Denka Performance Elastomer alleging harm caused by emissions from its facility in St. John the Baptist Parish was dismissed February 10 by a federal district court judge in New Orleans.

Judge Martin Feldman of the Eastern District of Louisiana found Mr. David W. Acosta and 22 other plaintiffs failed to sufficiently plead their case against DPE, and that the case bore “unmistakable similarity”¹ to a previous suit against the company dismissed last year (Butler v. Denka). In his ruling, Judge Feldman cited plaintiffs’ “failure to state a plausible claim”² against the company.

According to the ruling, the same attorney representing plaintiffs in the Butler suit filed this “identical petition in Louisiana state court less than two months after his client’s loss in Butler.”³

Both suits relied on a number developed by the U.S. Environmental Protection Agency in 2010 as a “threshold for safe exposure” to chloroprene, a chemical used in the production of Neoprene rubber at the facility. However, as Judge Feldman states, by quoting a part of his ruling in Butler, “Even the federal agency that announced this measure disclaims its regulatory or enforcement value: the EPA warns against using NATA results as an absolute risk measure, cautioning that ‘NATA is a screening tool, not a refined assessment,’ and it ‘wasn’t designed as a final means to pinpoint specific risk values at local levels.’”⁴

DPE regards Judge Feldman’s ruling as correctly reflecting the science surrounding chloroprene. EPA has said the NATA, or National Air Toxics Assessment, isn’t designed to “pinpoint specific risk values in small areas such a census tract”⁵ or “determine exactly how many people are exposed to precise levels of risk or if a certain area is ‘safe’ or not,”⁶ and that “you should avoid using NATA results as an absolute measure of your risk from air toxics.”⁷

The risk suggestion the suit relied on is contradicted by decades of objective health data collected by the state’s Louisiana Tumor Registry. It shows the risks suggested by that

¹ Page 2, Doc. 62 (Order and Reasons Granting Defendants’ Motions to Dismiss), Acosta v. Denka

² Page 2, Doc. 62 (Order and Reasons Granting Defendants’ Motions to Dismiss), Acosta v. Denka

³ Page 3, Doc. 62 (Order and Reasons Granting Defendants’ Motions to Dismiss), Acosta v. Denka

⁴ Page 11, Doc. 62 (Order and Reasons Granting Defendants’ Motions to Dismiss), Acosta v. Denka

⁵ EPA: <https://www.epa.gov/national-air-toxics-assessment/nata-overview>

⁶ EPA: <https://www.epa.gov/national-air-toxics-assessment/nata-frequent-questions>

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number to be nonexistent. In fact, St. John the Baptist Parish regularly exhibits average or below-average rates of the illnesses described in the report compared with the state average.

Since purchasing the facility in 2015, DPE has reduced its chloroprene emissions by 85 percent. The company developed a voluntary reduction program with the Louisiana Department of Environmental Quality in 2016 and completed the projects outlined in the program in 2017 at a final cost of over \$35 million.

In addition, ambient air monitoring conducted by the company and the U.S. Environmental Protection Agency has shown a dramatic reduction in chloroprene emissions concentrations measured at sites around the facility as a result of the company's reduction efforts.

"DPE is focused on being a good neighbor in St. John the Baptist Parish, and strives to reduce its environmental footprint wherever possible," company spokesperson Jim Harris said. "DPE will continue to look for ways to improve its operations as the company moves forward."

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About Denka Performance Elastomer

Denka Performance Elastomer LLC acquired DuPont's Neoprene manufacturing operations at the Pontchartrain Works site in LaPlace in November 2015. DPE employs around 240 manufacturing jobs associated with the Pontchartrain Works production site.

DPE intends to make strategic investments in the Pontchartrain Works facility while adhering to a key DPE guideline to develop and supply products that are safe and environmentally friendly. DPE considers the careful handling of materials and products and the prevention of their unauthorized release into the environment as its most important mission as a chemical manufacturer.