INTRODUCTION

1. This action is brought under the Toxic Substances Control Act, 15 U.S.C. §§ 4321 et seq. (TSCA), and its implementing regulations; the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (NEPA), and its implementing regulations; the National Maritime Heritage Act, 16 U.S.C. §§ 5401 et seq. (NMHA); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (RCRA), and its implementing regulations; and the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. (APA). Plaintiffs challenge Defendants’ violations of TSCA, NEPA, the NMHA, RCRA and the APA related to the imminent and costly export by Defendant Maritime Administration (MARAD) of several defunct naval vessels for disposal in the United Kingdom. These vessels contain approximately 698 tons of polychlorinated biphenyls (PCBs) in concentrations of at least 50 parts per million (ppm), and approximately 1,400 tons of asbestos, among other toxic and hazardous wastes. The export of these vessels constitutes a major Federal action significantly affecting the quality of the human environment.

2. Defendant Maritime Administration (MARAD) is carrying out a plan to export a total of thirteen defunct naval vessels from the National Defense Reserve Fleet (NDRF) for disposal. Four of these have already been exported to the United Kingdom. These
thirteen waste vessels contain as much as 698 tons of polychlorinated biphenyls (PCBs), the export of which is prohibited by the Toxics Substances Control Act, as well as significant quantities of asbestos. Likewise, these ships contain hazardous and other wastes, the export of which is strictly regulated by the Resource Conservation and Recovery Act, including waste fuel oil, oil contaminated bilge waters, hydraulic oil, chlorofluorocarbons, halons, treated wood, asbestos, mercury, PCBs, cadmium, and chromium and lead based paints. Additionally, these vessels are in very decrepit condition.

3. MARAD plans to tow these vessels in tandem across the rough waters of the North Atlantic. There is a well-documented history of accidents and sinkings during such towing operations. Due to the presence of large quantities of hazardous materials on board the vessels, and towing risks, the export of these ships poses serious risks to human health and the environment. Defendants’ failure to ensure that all required permits are in place so that the recovery facility is authorized to receive these wastes and operate under the importing country’s laws, and Defendants’ failure to ensure that the receiving country’s consent to import the vessels is in place, exacerbates these risks. Furthermore, several Federal laws require that MARAD and EPA assess these impacts and solicit public input prior to taking these actions, and that EPA determine that these actions do not pose an unreasonable risk to health or the environment. These obligations have not been satisfied.

4. TSCA prohibits these PCB exports without an exemption granted by Defendant Environmental Protection Agency (EPA) following a formal petition from MARAD and based upon a formal rulemaking in which EPA concludes that the proposed export of PCBs does not pose an unreasonable risk to health or the environment. MARAD has not petitioned EPA for such an exemption by rule or received such an exemption, and its program to export PCBs thereby violates TSCA. EPA has not granted any exemption by rule or made the requisite finding regarding risk. Instead, EPA has promised MARAD, in a letter, that it would not enforce the TSCA PCB export ban with respect to the Pilot
Program. EPA has thereby violated TSCA by ignoring its non-discretionary duty to prohibit PCB exports unless it has granted an exemption by rule based upon certain specific findings. EPA has moreover violated TSCA by ignoring its non-discretionary duty to engage in a rulemaking before granting an exemption to the TSCA PCB-export prohibition.

5. NEPA requires that prior to undertaking these actions, MARAD and EPA conduct an environmental assessment (EA) or prepare an environmental impact statement (EIS) to determine whether the actions pose a potentially significant risk to the environment, and what those potentially significant risks are. NEPA is designed to ensure that MARAD and EPA base their decision-making on complete information subject to public input and scrutiny. Neither MARAD nor EPA has conducted any such EA or EIS relating to the proposed exports. Nor has MARAD or EPA conducted any study that is functionally equivalent to an EA or EIS regarding the export of the nine vessels currently proposed for export.

6. The NMHA requires that MARAD use the best value alternative in disposing of these vessels. This statute further requires that in a case where towing presents environmental risks, higher cost alternatives should be used. MARAD has ignored lower cost disposal options that do not require trans-Atlantic towing, in violation of the NMHA.

7. RCRA governs the management of hazardous wastes in the United States, including their export to foreign countries. RCRA requires that exporters of controlled wastes, via EPA, obtain certain notifications, consents and approvals in connection with the export of hazardous wastes to foreign countries for disposal and/or recovery. Despite the fact that the vessels at issue here contain hazardous wastes regulated by RCRA, including waste fuel oil, oil contaminated bilge waters, hydraulic oil, chlorofluorocarbons, halons, treated wood, asbestos, mercury, PCBs, cadmium, and chromium and lead based paints, MARAD and EPA have failed to follow correct procedures, obtain the required consents and approvals, and ensure that the receiving facility is authorized, as required by RCRA and its implementing regulations.
JURISDICTION

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States.


10. MARAD’s request for a grant of enforcement discretion and its related plan to export several NDRF vessels to Teesside, England, for dismantling without regard for the requirements of TSCA, NEPA, the NHMA, or RCRA, EPA’s failure to comply with the requirements of RCRA, and EPA’s grant of an exemption from TSCA’s PCB export ban without an EA, EIS and/or a rulemaking, are arbitrary, capricious, and not in accordance with procedures required by law. These actions thus violate the APA and are subject to judicial review thereunder. 5 U.S.C. §§ 701 through 706.

11. MARAD’s plan to export several NDRF vessels to Teesside, England, for dismantlement without regard for the requirements of TSCA, NEPA, the NHMA, or RCRA, EPA’s failure to comply with RCRA, and EPA’s grant of an exemption from TSCA’s PCB export ban without a rulemaking, are agency actions unreasonably delayed and/or unlawfully withheld as provided by Section 706(1) of the APA and are subject to judicial review thereunder. 5 U.S.C. §§ 701 through 706.

12. MARAD’s plan to export several PCB-laden NDRF vessels to Teesside, England, for dismantling without regard for the requirements of TSCA, 15 U.S.C. § 2605(e)(1), (3); 40 C.F.R. §§ 761.20, 761.97, is actionable under 15 U.S.C. § 2619(a)(1).

13. EPA’s (i) failure to enforce the TSCA PCB-export prohibition, (ii) failure to adhere to TSCA’s nondiscretionary exemption rulemaking procedures, and (iii) arbitrary grant of a de facto exemption from TSCA’s PCB export ban without the required finding of no unreasonable risk of injury to health or the environment, violates TSCA, 15 U.S.C. § 2605(e)(1), (3); 40 C.F.R. §§ 761.20, 761.97, and is actionable under 15 U.S.C. § 2619(a)(2).
14. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e) because the events or omissions out of which the claim arises took place in this district, and the defendants are located here.

PARTIES

15. Plaintiff BASEL ACTION NETWORK, A SUB-PROJECT OF THE TIDES CENTER (BAN) is an international network of environmental activists working worldwide to prevent environmental injustice and harm perpetuated by trade in toxic wastes, toxic technologies and toxic products. BAN is administered as a project of the Asia Pacific Environmental Exchange, Seattle, which in turn is a project of the Tides Center, San Francisco, an IRS section 501(c)3 charitable organization. BAN is made up of over 30 organizations worldwide that are working to prevent toxic trade.

16. IMPACT is one participating member of BAN. IMPACT is a group of residents in Teesside, United Kingdom, the site of the proposed NDRF vessel disposal. IMPACT, on behalf of its members, works in and around Teesside to improve and protect human and environmental health by limiting the adverse impacts of industrial activities on their community.

17. Plaintiff SIERRA CLUB is a membership organization consisting of over 700,000 concerned individuals working to protect the global environment, including members living in and around the James River and greater Chesapeake Bay area. These members are gravely concerned about the risks posed by the failure of MARAD and EPA to comply with the requirements of NEPA, the NMHA, TSCA and the APA, and of the concomitant risks to human health and the environment posed by the Pilot Program.

18. Defendant MARITIME ADMINISTRATION (MARAD) is the Federal agency responsible for managing and disposing of the NDRF vessels in accordance with U.S. laws.

19. Defendant CAPTAIN WILLIAM G. SCHUBERT is the Maritime Administrator and is sued in his official capacity.
20. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) is the Federal agency responsible for enforcing the provisions of the Toxic Substances Control Act at issue here.

21. Defendant MIKE LEAVITT is the Acting Administrator of the EPA and is sued in her official capacity.

FACTS

22. Pursuant to the NMHA, 16 U.S.C. § 5405(c), by September 30, 2006, MARAD must dispose of vessels listed in the National Defense Reserve Fleet (NDRF) “non-retention” category (consisting of defunct government naval vessels), “in the manner that provides the best value to the Government, except in any case in which obtaining the best value would require towing a vessel and such towing poses a serious threat to the environment.” 16 U.S.C. § 5405(c) (emphasis added).


24. The 1997 EA explicitly states that it “is programmatic and does not analyze specific ships or particular ship breaking/recycling facilities,” and that “foreign ship breaking/recycling locations are expected to be on the Mexican Gulf coast, the coast of China, or the Northwestern coast of India.” EA at 1; see also EA at 26.

25. The 1997 EA identifies a series of potential environmental risks related to the proposed export of NDRF vessels, including harms to air and water quality, risks associated with the disposal and transport of hazardous and toxic substances, harms to visual and biological resources, and noise pollution. 1997 EA at 9-15.
26. In September 1998, President Clinton placed a moratorium on overseas vessel scrapping that lasted until October 1, 1999. To Plaintiffs’ knowledge, no NDRF vessels were exported for disposal as envisioned by the 1997 EA until the four vessels mentioned in paragraph 2, above, were exported in October 2003.

27. In December 2002, Congress passed the National Defense Authorization Act for Fiscal Year 2003, P.L. 107-314, Sec. 3501(3) (Dec. 2, 2002). This act appropriated $20 million to MARAD to pay for a “pilot program” to dispose of “a total of not more than four” NDRF non-retention vessels (Pilot Program). Congress explicitly stated that the program “shall be carried out in accordance with applicable provisions of law and regulations.” Id. at Sec. 3501(3)(c)(1)(B).

28. MARAD has not conducted a programmatic EIS or a site- or vessel-specific EA of the Pilot Program as required by NEPA. Moreover, despite significant new information related to disposal of the NDRF fleet (e.g., a tripling in the number of vessels to be scrapped, specific information on which ships will be exported, new information about the towing method and season, and specific information about the disposal site), MARAD has failed to conduct any supplement to the 1997 EA as required by NEPA. Pursuant to a joint motion filed in this proceeding on October 17, 2003, MARAD must prepare a NEPA-compliant supplemental environmental assessment related to the export program before exporting any additional vessels.

29. The Toxic Substances Control Act (TSCA) and its implementing regulations prohibit the export for disposal of PCBs in concentrations greater than 50 ppm. 15 U.S.C. § 2605(e)(1), (3); 40 C.F.R. §§ 761.20, 761.97. TSCA provides, however, that an exporter may petition EPA for an exemption from the prohibition and that EPA “may grant by rule such an exemption” if it finds that “an unreasonable risk of injury to health or environment would not result.” 15 U.S.C. § 2605(e)(3)(B); 40 C.F.R. § 761.20 (emphasis added).

30. By letter dated May 7, 2003 (MARAD Letter), MARAD requested EPA to “exercise its enforcement discretion under [TSCA] to allow the export of thirteen MARAD owned
vessels, located in the James River Reserve Fleet (JRRF), to the AbleUK facility in Teesside, England for dismantling and recycling.” The MARAD Letter stated that “some or all of the vessels may contain, within the components and/or structure of the vessel, non-readily removable, solid polychlorinated biphenyls (PCBs) in amounts greater than or equal to 50 parts per million (ppm).”

31. By letter dated May 22, 2003 (EPA Letter), EPA granted MARAD’s request. EPA neither conducted a rulemaking prior to agreeing not to enforce the PCB export ban, as required by TSCA’s requirement that it grant exemptions only “by rule,” nor found that the proposed export did not pose an unreasonable risk to health or the environment. Nor did EPA prepare an EA related to its illegal decision not to enforce the PCB-export ban.

32. The EPA Letter states that it “does not eliminate legal requirements which may be applicable to the actions covered by the letter.”

33. Paragraph 10 of the EPA letter states that EPA’s exercise of enforcement discretion is conditioned upon several explicit conditions, including that “[c]onsent of the UK Environment Agency to the import of ships must be provided to EPA.” See EPA Letter, Para. 10(e). In October and November 2003, the U.K. Environment Agency informed MARAD that the required consent was lacking. Specifically, MARAD was informed that (i) the U.K. disposal facility does not have permission to engage in trans-frontier shipment of waste, (ii) a required modification to the waste management license for the importing facility is invalid, and (iii) the required local authority planning permission for the creation of a dry dock is not in place, and is currently the subject of court proceedings.

34. Paragraph 7 of the EPA letter states that “[m]ost of the obsolete NDRF vessels contain PCBs in concentrations above 50 ppm, therefore their export for scrapping may constitute a violation of TSCA.”

35. MARAD’s pleadings in this matter indicate that the 13 vessels listed in the May 7, 2003, MARAD Letter to EPA contain approximately 698 tons of PCBs, all of which will be disposed of as part of the proposed ship scrapping and recovery operation.
36. By letters dated September 8 and 17, 2003, respectively, Plaintiffs notified EPA and MARAD of their intent to seek judicial relief in 60 days pursuant to 15 U.S.C. § 2619. Those letters describe TSCA’s prohibition on the export for disposal of PCBs in concentrations of 50ppm or greater in the absence of a valid waiver from EPA, and set forth the requirements for petitioning EPA for such waiver. The 60 day notice period set forth in 15 U.S.C. § 2619 has run with respect to both Defendants and Plaintiffs hereby amend their complaint to include the TSCA claims as summarized in their September 8 and 17, 2003 letters.


38. Pursuant to RCRA’s statutory and regulatory provisions, export of certain hazardous wastes from the United States to the United Kingdom are governed by regulations promulgated by EPA pursuant to RCRA which implement decisions taken by the Organization for Economic Cooperation and Development (OECD), a treaty-based organization to which both the United States and the United Kingdom are party. See 42 U.S.C. § 6938; 40 C.F.R. § 262.58; 61 FR 16290 (1986). Pursuant to these regulations, RCRA-regulated waste may not be exported by the United States to the United Kingdom without compliance with certain procedures, and notification and consent requirements. 40 C.F.R. § 262.83.

39. In addition to these notification and consent requirements, these RCRA regulations permit export of hazardous wastes only if destined to a foreign recovery facility that is “operating or is authorized to operate in the importing country.” 40 C.F.R. §262.82(b)(1). “Recovery facility” is defined as “an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.” 40 C.F.R. §262.81(j).
40. The 1997 EA concedes that there are a number of hazardous substances on the vessels “virtually all of which will become hazardous waste under RCRA.” 1997 EA at 12. NDRF vessels contain a number of substances that are classified as hazardous waste pursuant to RCRA, including lead, mercury, arsenic, chromium and cadmium. *See* 1997 EA at 12; 40 C.F.R. 261.24(b).

41. Despite the fact that the vessels contain a number of hazardous wastes the export of which is regulated by RCRA, Defendants have not ensured that the proposed U.K. recovery facility is authorized to receive and perform recovery operations on the wastes at issue here, as required by 40 C.F.R. §262.82(b)(1). *See supra,* ¶34.

42. Nor have Defendants obtained the necessary consent from the United Kingdom for the shipment or import of these RCRA wastes as required by 40 C.F.R. § 262.83.

**FIRST CAUSE OF ACTION**

**TSCA:** By Exporting PCBs in Concentrations of 50ppm or greater, and by Planning Further Such Exports Without Petitioning for or Receiving an EPA Exemption, MARAD is in Ongoing Violation of TSCA’s Prohibition of PCB Exports

43. Plaintiffs hereby reallege and incorporate paragraphs 1 through 42 above.

44. The Toxic Substances Control Act (TSCA) and its implementing regulations prohibit the export for disposal of PCBs in concentrations greater than 50ppm. 15 U.S.C. § 2605(e)(1), (3); 40 C.F.R. §§ 761.20, 761.97. TSCA provides, however, that an exporter may petition EPA for an exemption from the prohibition and that EPA “may grant by rule such an exemption” if it finds that “an unreasonable risk of injury to health or environment would not result.” 15 U.S.C. § 2605(e)(3)(B); 40 C.F.R. § 761.20 (emphasis added).

45. In the MARAD Letter, MARAD stated “some or all of the vessels may contain … solid polychlorinated biphenyls (PCBs) in amounts greater than or equal to 50 parts per million (ppm).” Moreover, according to documents submitted to this Court by Defendants on September 30, 2003, the thirteen vessels at issue in this litigation contain approximately
698 tons of PCBs. Therefore, pursuant to TSCA, no export of the vessels could take place without a valid EPA exemption from the export prohibition.

46. MARAD violated the procedures and requirements of TSCA by planning to export and by exporting PCBs in quantities prohibited by TSCA without petitioning EPA or receiving from EPA the required exemption to the PCB export prohibition. Further, even assuming the EPA Letter is valid, which it is not, MARAD is out of compliance with the conditions of the EPA Letter and is therefore violating TSCA.

SECOND CAUSE OF ACTION
TSCA: EPA Has Violated TSCA by Purporting to Exercise its Enforcement Discretion Despite Congress’s Instruction that It First Find, through a Rulemaking, that the Pilot Program Would Not Pose an Unreasonable Threat to Human Health or the Environment.

47. Plaintiffs hereby reallege and incorporate paragraphs 1 through 42 above.

48. TSCA provides that an exporter may petition EPA for an exemption from the prohibition on the export of PCBs in concentrations greater than 50ppm and that EPA “may grant by rule such an exemption” if it finds that “an unreasonable risk of injury to health or environment would not result.” 15 U.S.C. § 2605(e)(3)(B); 40 C.F.R. § 761.20 (emphasis added).

49. Although the provisions of TSCA are clear as to the actions that EPA must take to grant an exemption from the PCB export provisions of TSCA, EPA has violated TSCA by instead purporting to exercise its “enforcement discretion” to permit the export of the vessels under the Pilot Program.

50. The EPA has not granted by rule any exemption to MARAD to permit it to export the vessels in the Pilot Program, despite MARAD’s concession that the vessels likely contained concentrations of PCBs in excess of 50ppm. TSCA is clear that any such exemption must be granted pursuant to a formal EPA rulemaking, which EPA has not conducted with respect to MARAD’s proposal.
51. In addition, EPA has not determined, as required by TSCA, that the proposed PCB export would not result in “an unreasonable risk of injury to health or environment.” EPA’s failure to make such determination violates TSCA.

THIRD CAUSE OF ACTION

APA: MARAD Has Arbitrarily and Capriciously Ignored the Requirements of NEPA, the NMHA, TSCA and RCRA

52. Plaintiffs hereby reallege and incorporate paragraphs 1 through 42 above.

53. The Administrative Procedure Act, 5 U.S.C. § 701 et seq., entitles a party to seek judicial review of an agency action where a legal wrong is alleged and the party alleging the violation is adversely affected or aggrieved by the agency action. Pursuant to 5 U.S.C. § 706, a reviewing court shall hold unlawful and set aside agency action found to be arbitrary, capricious, or otherwise not in accordance with the law, and should compel agency action illegally withheld or unreasonably delayed.

54. MARAD’s program of exporting several NDRF vessels to Teesside, England, for dismantling without complying with the requirements of TSCA, NEPA, RCRA or the NHMA is arbitrary, capricious, and not in accordance with procedures required by law pursuant to the APA. 5 U.S.C. §§ 701 through 706.

55. MARAD’s failure to comply with the requirements of TSCA, NEPA, RCRA or the NHMA prior to implementing its program of exporting several NDRF vessels to Teesside, England, for disposal is an agency action unreasonably delayed and/or unlawfully withheld as provided by Section 706(1) of the APA. 5 U.S.C. §§ 701 through 706.

FOURTH CAUSE OF ACTION

APA: EPA Has Arbitrarily and Capriciously Ignored the Requirements of NEPA, TSCA and RCRA

56. Plaintiffs hereby reallege and incorporate paragraphs 1 through 42 above.
57. The Administrative Procedure Act, 5 U.S.C. § 701 et seq., entitles a party to seek judicial review of an agency action where a legal wrong is alleged and the party alleging the violation is adversely affected or aggrieved by the agency action. Pursuant to 5 U.S.C. § 706, a reviewing court shall hold unlawful and set aside agency action found to be arbitrary, capricious, or otherwise not in accordance with the law, and should compel agency action illegally withheld or unreasonably delayed.

58. EPA’s decision not to enforce the TSCA PCB-export prohibition without first engaging in a rulemaking, without the required finding of no “unreasonable risk of injury to health or environment,” and without complying with NEPA, is arbitrary, capricious, and not in accordance with procedures required by law pursuant to the APA. 5 U.S.C. §§ 701 through 706.

59. EPA’s decision not to enforce the TSCA PCB-export prohibition without first engaging in a rulemaking, without the required finding of no “unreasonable risk of injury to health or environment,” and without complying with NEPA, is an agency action unreasonably delayed and/or unlawfully withheld as provided by Section 706(1) of the APA. 5 U.S.C. §§ 701 through 706.

60. EPA’s failure as “competent authority” to ensure that (i) consent from the destination country exists (40 C.F.R. § 262.83) and (ii) the RCRA wastes be shipped only to a facility that is “operating or is authorized to operate in [the United Kingdom]” (40 C.F.R. §262.82(b)(1)) constitutes a failure to comply with the requirements of RCRA, is arbitrary, capricious, and not in accordance with procedures required by law pursuant to the APA, 5 U.S.C. §§ 701 through 706, and is an agency action unreasonably delayed and/or unlawfully withheld as provided by Section 706(1) of the APA. 5 U.S.C. §§ 701 through 706.

FIFTH CAUSE OF ACTION

NEPA: MARAD and EPA Have Failed to Prepare an Adequate EA or EIS

in Connection with the Pilot Program
61. Plaintiffs hereby reallege and incorporate paragraphs 1 through 42 above.

62. NEPA, 42 U.S.C. § 4332(2)(c), and its implementing regulations require all Federal agencies to prepare an EIS for all major actions significantly affecting the quality of the human environment. To determine whether an EIS is necessary, Federal agencies will typically first prepare an EA, which is less thorough.

63. MARAD has acknowledged, by preparing the 1997 EA, that NEPA applies to the export of NDRF non-retention vessels for disposal.

64. The 1997 EA does not apply to the Pilot Program and does not satisfy MARAD’s or EPA’s obligations under NEPA related to the Pilot Program because it was prepared for a different Federal action and new information and changed circumstances require environmental assessment under NEPA.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court issue:

1. A preliminary and permanent injunction, enjoining MARAD from exporting any NDRF non-retention vessel until it fully complies with the requirements of TSCA, NEPA, RCRA, the NMHA and the APA. Plaintiffs acknowledge that their request for a preliminary injunction is currently pending, and that the hearing on that request has been continued to April 5, 2004, pursuant to this Court’s minute order dated October 17, 2003;

2. A judgment declaring that MARAD’s request for enforcement discretion, EPA’s failure to enforce TSCA’s PCB export ban and exemption rulemaking requirements, and MARAD’s program to export PCB-laden NDRF vessels, fails to comply with the procedures and requirements of TSCA which prohibit the export for disposal of PCBs in concentrations greater than 50 ppm, 15 U.S.C. § 2605(e)(1), (3); 40 C.F.R. §§ 761.20, 761.97, because MARAD has not applied for an exemption to this prohibition and EPA has neither conducted a rulemaking exempting MARAD from the PCB-export prohibition nor found that the Pilot Program would not result in “an unreasonable risk of injury to health or environment.” 15 U.S.C. § 2605(e)(3)(B); 40 C.F.R. § 761.20;
3. A judgment declaring that MARAD’s plan to export PCB-laden NDRF non-retention vessels fails to comply with the procedures and requirements of NEPA, 42 U.S.C. §§ 4321-4370f, and the CEQ regulations, 40 C.F.R. §§ 1500-1517.7, because no adequate EA or EIS has been conducted by MARAD relating to the Pilot Program;

4. A judgment declaring that EPA’s grant, without a rulemaking, of MARAD’s request for an exemption from TSCA’s PCB export ban with respect to the Pilot Program fails to comply with the procedures and requirements of NEPA, 42 U.S.C. §§ 4321-4370f, and the CEQ regulations, 40 C.F.R. §§ 1500-1517.7, because no adequate EA or EIS has been conducted relating to EPA’s decision;

5. A judgment declaring that MARAD has violated the NMHA by failing to obtain the best value in complying with its duties under the NMHA, and by failing to take into account the serious threat to the environment posed by such towing in choosing a method of disposal;

6. A judgment declaring that MARAD’s export of NDRF ships laden with hazardous waste regulated by RCRA violates RCRA’s requirements that MARAD, as notifier, and EPA, as competent authority, ensure that (i) consent from the destination country is obtained, 40 C.F.R. § 262.83, and (ii) the hazardous waste be shipped only to a facility that is “operating or is authorized to operate in [the United Kingdom],” 40 C.F.R. §262.82(b)(1);

7. A judgment declaring that Defendants failed to comply with the requirements of TSCA, NEPA, and the NHPA, and that such failure is arbitrary, capricious, and not in accordance with procedures required by law pursuant to the APA, 5 U.S.C. §§ 701 through 706;

8. A judgment declaring that Defendants failed to comply with the requirements of TSCA, NEPA, and the NHPA, and that such failure constitutes agency action that is unreasonably delayed and/or unlawfully withheld as provided by Section 706(1) of the APA;

9. A judgment declaring that MARAD failed to comply with the requirements of RCRA and that such failure is arbitrary, capricious, and not in accordance with procedures required by law pursuant to the APA, 5 U.S.C. §§ 701 through 706;
10. A judgment declaring that MARAD failed to comply with the requirements of RCRA and that such failure constitutes agency action that is unreasonably delayed and/or unlawfully withheld as provided by Section 706(1) of the APA;

11. A judgment and order setting aside EPA’s illegal exercise of enforcement discretion pending Defendants’ compliance with TSCA, NEPA, the NMHA, and the APA;

12. A judgment and order for costs of suit herein, including attorneys fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or other authority; and

13. Such other and further relief as the court deems proper and just.

Respectfully submitted this 26th day of November, 2003.

/s J. Martin Wagner
J. Martin Wagner (DCB #435730)
Marcello Mollo
426 17th Street, 6th Floor
Oakland, CA 94612
Tel: (510) 550-6700
Fax: (510) 550-6740

Counsel for Plaintiffs
Basel Action Network, a Sub-Project of the Tides Center; and Sierra Club
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BASEL ACTION NETWORK, a Sub-Project of the Tides Center; SIERRA CLUB,

Plaintiffs,

v.

MARITIME ADMINISTRATION; Capt. WILLIAM G. SCHUBERT, in his official capacity as Administrator; U.S. ENVIRONMENTAL PROTECTION AGENCY; MARIANNE HORINKO in her official capacity as Acting Administrator,

Defendants.

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of California. I am over 18 years of age and not a party to this action. My business address is 426 Seventeenth Street, 6th Floor, Oakland, California, 94612.

On November 26, 2003, I served a true and correct copy of the FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF via electronic and First Class mail on the parties listed below:

Brian Toth
Environment and Natural Resources Div.
Department of Justice
PO Box 663
Washington, DC  20044-0663
brian.toth@usdoj.gov

Cynthia Morris
Environmental Defense Section
General Litigation Section
Environment and Natural Resources Div.
Department of Justice
601 D Street
Washington, DC  20004
c.j.morris@usdoj.gov

I, Alyssa Johl, declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of November, 2003, at Oakland, California.

/s Alyssa Johl
Alyssa Johl

CERTIFICATE OF SERVICE   C-03-02000 (RMC)