

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**THE AMERICAN TRADITION INSTITUTE
ENVIRONMENTAL LAW CENTER**
0033 Brook Ford Rd.
Burke, VA 22015

Plaintiffs,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and
LISA P. JACKSON, ADMINISTRATOR**
1200 Pennsylvania Ave., N.W.
Washington, DC 20460,

Defendants.

Civil Action 1:12-cv-01066-AJT-TCB

PROPOSED TEMPORARY RESTRAINING ORDER

On October 26, 2012, at 10:00 a.m. the court conducted a hearing on the application of plaintiff American Tradition Institute (ATI) for a temporary restraining order (TRO) against defendant United States Environmental Protection Agency (EPA) and its Administrator Lisa P. Jackson. The ATI appeared and EPA appeared / failed to appear.

I

Based on the evidence submitted by ATI, the court makes the following findings of fact and conclusions of law:

1. EPA has used human experimentation consent forms that fail to state that subjects will be at risk of death and at risk of exposure to carcinogens when participating in the PM_{2.5} experiments on human subject.

2. EPA uses its Human Studies Facility to conduct research to gain information they intend to use to develop PM_{2.5} regulations.
3. EPA has no authority to engage in human experimentation for the purpose of discovering the fundamental causes and mechanism of disease and is barred from justifying human experimentation on the need to determine long-range effects of applying any knowledge they might gain for public policy purposes such as regulatory development.
4. EPA is bound by law and regulation to minimize risks to human experimentation subjects and not unnecessarily expose those subjects to risk.
5. EPA has exposed its PM_{2.5} experimentation subjects to risks greater than those ordinarily encountered in their daily life, risks unreasonable in relation to the anticipated benefits to these subjects or otherwise as cognizable at law, unnecessary risks and risks greater than minimized risks.
6. The University of North Carolina Institutional Review Board failed to adequately review the EPA PM_{2.5} human experimentation proposal when it approved the proposal despite the fact that the studies impose on the subjects risks greater than those ordinarily encountered in their daily life, risks unreasonable in relation to the anticipated benefits to these subjects or otherwise as cognizable at law, unnecessary risks and risks greater than minimized risks.
7. ATI represents members who have suffered by being exposed to PM_{2.5} risks without being informed that they were at risk of death and exposure to carcinogens.
8. ATI represents members who suffer irreparable loss of opportunity to participate

in professional activities at the Ariel Rios building and on the campus of the University of North Carolina at Chapel Hill.

9. EPA's human experimentation has materially changed the aesthetic value to an ATI member who can no longer visit the University of North Carolina at Chapel Hill campus, irreparably limiting his opportunity for academic interaction and aesthetic pleasure on that campus while PM_{2.5} human experimentation is ongoing.
10. EPA will suffer no irreparable harm from abstaining in PM_{2.5} human experimentation during pendency of this order.
11. The public interest in informed consent to human experimentation and barring exposure of subjects to carcinogens and the risk of death weighs in favor of halting human experimentation until the issues raised in this case are adequately addressed by the parties or the court.
12. Based on the evidence offered in the complaint, its exhibits and supplemental declarations, plaintiffs are likely to suffer irreparable harm without an injunction, there is no likelihood of harm to the defendant with an injunction, plaintiff are likely to succeed on the merits and the public interest is served by an injunction.

Based on the findings of fact and conclusions of law above, the count concludes that a TRO is necessary and appropriate to prevent recurrence of the proscribed conduct discussed above.

II

It is therefore ordered that EPA, its Administrator Lisa P. Jackson, her officers, agents, servants, employees and contractors and all those in active concert or participation with her or the Agency who receive actual notice of this order by personal service or otherwise, are

temporarily restrained and enjoined from:

1. Continuing the CAPTAIN study and any other EPA human experimentation which intentionally exposes human subjects to fine particulate matter (PM_{2.5}); and
2. Continuing use of the University of North Carolina Medical Institutional Review Board (IRB);
3. Misrepresenting any of the terms of this order.

This TRO expires on October 19, 2012 unless extended for good cause. Because this case is brought by a public interest plaintiff, ATI is not required to post security in order for the TRO to take effect.

SO ORDERED.

October 5, 2012 at _____.

JUDGE