

District Administrative Court of Kyiv

st. Tithe, 4 / 6, Kyiv, 01025

Plaintiff: International Charitable Organization

"Environment People Law (EPL)

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Respondent 1: The Cabinet of Ministers of Ukraine (CMU)

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Respondent 2: Ministry of Environment and Natural

Resources of Ukraine (MEP)

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**Respondent 3: State Environmental Investment Agency of Ukraine
(Derzhkoinvestahentstvo)**

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Administrative action

recognition of illegal omissions and liabilities of defendants to actions for settlement of action to reduce greenhouse gases, which affect weather and climate

The international charitable organization Environment People Law (hereinafter EPL) - an international charity organization registered with the Ministry of Justice of Ukraine on 24 March 1999, a certificate of registration number 203 093, carries out environmental activities in accordance with its Charter. According to paragraph 2.1. EPL Charter, the establishment and activities of EPL is the protection, promotion of environment protection and development of environmental education, science and culture. According to paragraph 4/2/1915. Charter, EPL has a right to petition the government and public bodies, local authorities, other businesses and individuals on matters relating to environmental law violations in Ukraine.

Respondents Inaction is not discharging their duties and powers of legislation with regulation and governance activity that affects weather and climate by reducing greenhouse gas emissions, to ensure the implementation of enterprises, institutions, organizations, Part 2, Art. 16 of the Law of Ukraine "On protection of atmospheric air.

According to paragraph 2 of Article 16 of the Law of Ukraine "On protection of atmospheric air, enterprises, institutions, organizations and individuals - entrepreneurs are obliged under international treaties **to work on reducing emissions of substances that accumulate in the air can lead to negative climate change**. These substances under Annex A to the Kyoto Protocol ¹ is carbon dioxide (CO₂) Methane (CH₄) Nitrous oxide (N₂O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFC) Sulfur hexafluoride (SF₆) (hereinafter - the greenhouse gases, ²).

According to Article 13 of the Constitution of Ukraine "land, its subsoil, **air**, water and other natural resources located within the territory of Ukraine, the natural resources of its continental shelf, the exclusive (maritime) economic zone, are the property of the Ukrainian people. On behalf of the Ukrainian people, the owner engaged in government agencies and local governments within the limits established by this Constitution. " Civil Code of Ukraine in Article 324 defines the air property of the Ukrainian people on whose behalf the owner's rights are exercised by bodies of state authority and local self-government within the limits of the Constitution of Ukraine. Thus, under Article 13 of Constitution of Ukraine, a defendant in this case, as the bodies that carry out state administration in the field of environmental protection, are required to undertake effective management of ambient air on behalf of and for the people of Ukraine.

Preamble to the Law of Ukraine "On environmental protection" establishes the following:

"Environmental protection and rational use of natural resources, environmental safety of human life - an essential condition for sustainable economic and social development.

For this purpose Ukraine carries on its territory environmental policy aimed at preserving safe for the existence of living and inanimate nature of the environment, protect the lives and health from the negative impact caused by environmental pollution, achieving harmonious interaction between nature and society, health, rational use and reproduction of natural resources.

This Law determines legal, economic and social foundations of environmental protection **for present and future generations "**.

According to Article 4 of the Law of Ukraine "On Environmental Protection" natural resources of Ukraine are the property of the people of Ukraine who has the right to possess, use and disposal of natural wealth of the country.

Authority of the people of Ukraine in the field of environmental protection and natural resources sold on the basis of the Constitution of Ukraine, directly or through referendums or through republican authorities under the legislation of Ukraine.

State Protection and Regulation of the use in Ukraine are subject, including such natural resources as air, under Article 5 of the Law of Ukraine "On environmental protection".

Ratification of the UN Framework Convention on Climate Change (hereinafter - *UNFCCC*) ³ and the Kyoto Protocol, Ukraine has recognized climate change global problem of mankind, and that to solve this problem, reduce greenhouse gas emissions to achieve safe for present and future generations Level .

UNFCCC and the Kyoto Protocol determines that the increase in greenhouse gases in the atmosphere from human activities are the biggest cause of climate change recorded in the world. One of the key ways to tackle climate change in Ukraine and the world is to reduce greenhouse gas emissions, most of which are allocated as a result of polluting enterprises as major emission sources in Ukraine, especially in the energy sector, coal industry, district heating.

According to the Law of Ukraine "On Environmental Protection, the Law of Ukraine" On protection of atmospheric air ", the Law of Ukraine" On the Cabinet of Ministers of Ukraine, Provisions on the Ministry, the Regulations on Derzhkoinvestahentstvo, it is the defendant responsible for managing the implementation of government policy on environmental environment, including air, weather and climate for present and future generations of Ukrainian people.

Respondents Inaction is not imposed on them of the law office of the establishment of

measures (regulatory, institutional, economic) to reduce greenhouse gas emissions, and therefore there is no implementation of Part 2 of Art. 16 of the Law of Ukraine "On protection of atmospheric air.

In Ukraine, a mechanism to reduce emissions of substances that accumulate in the air can lead to negative climate change in regard to specific anthropogenic sources ⁴ are still to be developed. Developing such a mechanism should be preceded, in particular, setting limits for emissions of specific anthropogenic sources and the issuance and control observance of permits for greenhouse gases.

The absence of such a mechanism leads to failure of defendants of their obligations to present and future generations of Ukrainian and international obligations to the international community.

In particular, the National Action Plan for implementation of the Kyoto Protocol to the UNFCCC (National Plan) approved by the Cabinet of Ministers of Ukraine of 18 August 2005 № 346-p. (As amended on 5.3.2009 onwards) **includes measures whose implementation is conducted according to the issued permits for greenhouse gases.** Thus, the lack of established procedures for issuing permits, make it impossible to implement the measures envisaged by the National Action Plan.

In particular, paragraph 1 of the National Action Plan envisages an annual inventory of anthropogenic emissions and removals of greenhouse gases ⁵, **which should be conducted on the basis of issued permits for greenhouse gases. Due to the lack of legal regulation issue permits, such permits are not issued today, making it impossible for the national inventory of emissions and removals of greenhouse gases in accordance with the issued permits for greenhouse gases.** In addition, paragraph 1 of the National Action Plan provides a national system of assessment of anthropogenic emissions and removals of greenhouse gases, which is done by conducting annual inventory of anthropogenic emissions **in accordance with the issued permits for greenhouse gases.**

Also, based on data inventory, annual Derzhkoinvestahentstvo should prepare national inventories of anthropogenic emissions and removals of greenhouse gases and national communication on climate change and related research to improve the quality of the estimation of anthropogenic emissions and removals of greenhouse gases (paragraph 5 of Resolution № 554 from CMU 21/04/2006 year). So, to prepare national inventories and national communications is necessary to provide a national inventory in accordance with the issued permits for greenhouse gas emissions in Ukraine.

Failure to properly these measures leads to failure in Ukraine UNFCCC requirements of the duty reduction of anthropogenic emissions of greenhouse gases. Thus, according to *art. 3 UNFCCC Doctor* To achieve the ultimate objective of UNFCCC to reduce emissions of greenhouse gases, parties should:

protect the climate system;

take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.
Parties that are developed countries and other Parties included in Annex 1 of the Convention ^{in June}, *take the following specific responsibilities:*

*Each of these Parties shall adopt national policies 1) and take **corresponding measures to mitigate climate change by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its sinks and reservoirs of greenhouse gases.***

According to Article 4 of the Framework Convention on Climate Change, all Parties, taking into account their common but differentiated responsibilities and their specific national and regional priorities, objectives and circumstances, shall:

Promote and cooperate in the development, application and diffusion, including transfer of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including energy, transport, industry, agriculture, forestry and waste management.

According to part 1 of article 15 of the Law of Ukraine "On International Treaties of Ukraine" ⁷ *international treaties of Ukraine are subject conscientious observance by Ukraine according to international law.*

According to paragraph 1 of Article 16 of the Law Ministry and other central executive authorities, Council of Ministers of the ARC, other public authorities, which include authority to matters governed by international treaties of Ukraine and enforce the obligations undertaken by international agreements of Ukraine, monitor implementation of the rights arising from such agreements for Ukraine and other parties over the implementation of international treaties of Ukraine of their obligations.

*Therefore, the defendant must perform its obligations UNFCCC, including the **limitations of, reduction or cessation of anthropogenic greenhouse gases in the relevant sectors of anthropogenic sources.***

For proper implementation of UNFCCC and the Kyoto Protocol, to ensure the implementation of Part 2 of Art. 16 of the Law of Ukraine "On air protection" measures under paragraph 1, 4 National Action Plan should: 1) regulate the procedure for issuing permits to the approved limit greenhouse gas emissions for anthropogenic sources through the development and adoption of appropriate regulations; 2) make an inventory of anthropogenic greenhouse gas sources in accordance with the issued permits.

Failure of the Cabinet of Ministers of Ukraine (CMU)

Inaction is CMU failed to take steps to forming and implementing the state policy of environmental protection, particularly in the area of air protection of the settlement

activity that affects weather and climate by strengthening regulatory procedures for issuing permits for greenhouse gas emissions and establish limits on greenhouse gases.

According to Article 3 of the Law of Ukraine "On protection of atmospheric air" CMU performs state administration in air protection under the law.

According to paragraph 2 of Article 1 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" Cabinet exercises executive power directly and through the ministries, other central executive authorities, Council of Ministers and local government administration, directs and coordinates the work of these bodies.

Law of Ukraine "On the Cabinet of Ministers of Ukraine" in artistic surroundings. 2 to 1 Article 20 of the basic powers of Ministers in the field of environmental protection and disaster relief, including:

- ensures the implementation of government policy on environmental protection, environmental security and natural resources;
- carries within its authority in the field of public administration, protection and rational use of land, its subsoil, water resources, flora and fauna and other natural resources;
- coordinates the activities of executive authorities, local governments, enterprises, institutions and organizations related to environmental protection, the implementation of national, regional and international environmental programs.

According to paragraph 1 of Article 52 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" Cabinet on the basis of and pursuant to the Constitution and laws of Ukraine, acts of the President of Ukraine issues binding, - resolutions and orders.

According to Article 13 of the Law of Ukraine "On protection of atmospheric air" exposure levels physical and biological factors on the state of air, reducing their requirements for approval are set according to the approved standards. Order of the development, delivery and payment for work related to issuing permits for impact level of physical and biological factors on the state of the air, and accounting firms, institutions, organizations and citizens - businesses that have received permits, the Cabinet of Ministers Ukraine.

According to the Decision of the National Security and Defense Council of Ukraine of 15 June 2007, "On the status and problems of implementation by Ukraine of the UN Framework Convention on Climate Change" to put CMU within two months **enhancing the national system for estimating anthropogenic emissions and removals of greenhouse gases** not controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer, according to documents adopted by the Conference of the Parties. Improving the system is possible through the preparation and approval procedures for issuing permits for greenhouse gases as part of the national inventory of greenhouse gases, which is based on the national system of assessment of anthropogenic emissions and removals of greenhouse gases.

Cabinet according to artistic surroundings. 4 § 2 of the Decree of President of Ukraine "On additional measures to ensure transparency in the activities of public authorities" must provide, starting in January 2003, quarterly training for pre-established structure disclosed and published for wide public discussion of the reports of the Cabinet to address current social, economic and other problems, the functions specified in the Constitution and laws of Ukraine, Decrees of the President of Ukraine.

CMU is published information on the work of solving the assigned tasks of state regulation in the field of air protection to reduce greenhouse gas emissions by legal settlement permits and setting limits on greenhouse gases as well as information on the status of implementation of measures envisaged by the Decree CMU, which approves the National Plan.

So CMU respectively assigned to it above powers and duties, shall make public in the sphere of air through the regulatory settlement procedures for issuing permits for greenhouse gas emissions and setting limits and inform the implementation of plans and activities, including those relating to the mechanism of reducing greenhouse gas emissions.

The failure of the Ministry of Environment and Natural Resources of Ukraine (MEP)

Inaction is the Ministry failed to take steps to forming and implementing the state policy of environmental protection, air protection, regulation of negative anthropogenic impact on climate change and adapt to its changes and the requirements of UNFCCC imposed by the applicable laws and regulations in the part concerning the settlement of the reduction of greenhouse gases.

In particular, under Article 20 of the Law of Ukraine "On environmental protection" within the competence of the authorized central executive authority on ecology and natural resources and its local bodies are:

- Implementation of comprehensive management in the field of environmental protection, the science and technology policy on environmental protection and natural resources;
- State control over the use and protection of air;
- Adoption of regulations, rules regulating the use of natural resources and environmental protection from pollution and other adverse impacts;
- International cooperation on environmental protection, research, synthesis and dissemination of international experience in this field, the *organization of Ukraine's commitments under international agreements on environmental protection*.

MEP is the coordinator of activities of Ukraine's obligations under the UN Framework

Convention on Climate Change and the Kyoto Protocol to the Convention, in accordance with the Decree of President of Ukraine from September 12, 2005 № 1239/2005.

Current Regulations on the Ministry of Environment and Natural Resources of Ukraine approved by the President of Ukraine from April 13, 2011 № 452/2011, Ministry of Ukraine was determined main body of central executive bodies in the formulation and implementation of national policy in the field of environmental protection, rational use of natural resources (including air protection), regulation of negative anthropogenic impact on climate change and adapting to change and its implementation within the competence requirements of the UN Framework Convention on Climate Change and its Kyoto Protocol, whose activity is directed and coordinated by the Cabinet of Ministers of Ukraine .

According to the Decree of President of Ukraine № 1085/2010 Derzhkoinvestahentstva activity directed and coordinated through the Minister of Cabinet Ministry.

According to paragraph 2 of Part 4 of the MEP, the MEP in the field of air protection:

a) provides the legal regulation concerning:

rules, regulations, rules, procedures in the field of air protection;

defining requirements for documentation for obtaining permits and installing forms in this area;

requirements for development standards in the field of air protection;

According to artistic surroundings. 4 to 4 - MEP in the regulation of negative anthropogenic impact on climate change and adapting to change and its implementation within the competence requirements of the UN Framework Convention on Climate Change and its Kyoto Protocol:

a) provides the legal regulation concerning:

national standards and procedures for monitoring, reporting and verification of emissions and absorption (absorption) of greenhouse gases;

methods of calculation of anthropogenic emissions by sources and removals (absorption) of greenhouse gases;

b) ensure, within its competence fulfillment of the requirements of the Framework Convention on Climate Change and its Kyoto Protocol, including implementation mechanisms under the Kyoto Protocol;

d) coordinating the implementation of Ukraine's commitments under the Framework Convention on Climate Change and the Kyoto Protocol.

MEP not met the obligations specified in artistic surroundings. a) paragraph 2 of Part 4 in the provision of legal regulation on rules, regulations and procedures in the field of air (emissions of greenhouse gases), requirements for documentation to obtain permits for greenhouse gas emissions and establishing forms of permits this area limits.

Due to improper implementation of international obligations on climate change was issued Presidential Decree of Ukraine on implementation of the decision of the National Security and Defense Council of Ukraine of 15 June 2007, "On the status and problems of implementation by Ukraine of the UN Framework Convention on Climate Change . Herewith the decision has been confirmed by inappropriate implementation of provisions of international agreements on climate change. In this regard, the Ministry was put on duty in three months, ie until 10.20.2007:

improve the methodological definition of greenhouse gas emissions in accordance with guidelines of the national inventory of anthropogenic greenhouse gas emissions made by the Intergovernmental Panel on Climate Change ¹.

In the absence of regulations to regulate the procedure for issuing permits and limits on greenhouse gases and lack of commitment to anthropogenic sources of this gap, considered it impossible to control for excess greenhouse gas emissions by companies, institutions and organizations.

At the Ministry, as well as on Derzhkoinvestahentstvo, paragraph 1, 4 National Action Plan for carrying out the annual national inventory of anthropogenic emissions and removals of greenhouse gases **in accordance with the issued permits for greenhouse gases** as well as **preparation and adoption of national plan of allocation of permits for anthropogenic emissions by sources of greenhouse gas available to June 2009** (subject to changes from year 03/05/2009).

Thus, the failure of MEP is the failure of legal regulation on rules, regulations, rules, procedures in the field of air protection in establishing the mechanism of reducing greenhouse gas emissions, as well as failure of paragraph 1, 4 National Action Plan.

Inaction Derzhkoinvestahentstva

Inaction is Derzhkoinvestahentstva Failure to mitigate climate change by limiting anthropogenic emissions of greenhouse gases. Under paragraph 1 of the Regulation on State Environmental Investment Agency of Ukraine (Decree of the President of Ukraine from April 13, 2011 № 455/2011), the last to realize the government policy on regulation of negative anthropogenic impact on climate change and adapt to its changes and the requirements of the Framework Convention United Nations Climate Change and the Kyoto Protocol.

Current national legislation establishes the following obligations with regard to this.

The main objectives Derzhkoinvestahentstva Ukraine, pursuant to paragraph 3 of the Regulation on Derzhkoinvestahentstvo are:

- 1) implementation of state policy in the regulation of negative anthropogenic impact on climate change and adapt to its changes, as well as **making proposals for its formation;**
- 2) implementation within the competence requirements of the Framework United Nations Convention on Climate Change and the Kyoto Protocol;

Artistic surroundings. 3, 5, 16 paragraph 4 of the Derzhkoinvestahentstvo provides: Derzhkoinvestahentstvo according to its tasks:

- 3) an inventory of anthropogenic emissions by sources and removals (absorption) of greenhouse gases at the national level to prepare national inventories of anthropogenic emissions and removals of greenhouse gases in accordance with commitments under the Framework Convention of the United Nations on Climate Change and Kyoto Protocol ;
- 5) perform within the competence requirements of the Framework United Nations Convention on Climate Change and its Kyoto Protocol and **the Minister submits proposals to ensure their implementation;**
- 16) summarizes the practice of law on the regulation of negative anthropogenic impact on climate change and adapt to its changes, **is developing proposals to improve the legal acts of the President of Ukraine, Cabinet of Ministers of Ukraine, legal acts of ministries and the established procedure, submits them to the Minister;**

According to artistic surroundings. 3 Paragraph 10 of the Regulation Derzhkoinvestahentstvo, chairman Derzhkoinvestahentstva Ukraine **introduced the proposal of Minister** of state policy in the relevant area and worked Derzhkoinvestahentstvom Ukraine the draft laws, acts of the President of Ukraine and Cabinet of Ministers of Ukraine, Ministry of Environment and Natural Resources of Ukraine.

With these powers and charges the Derzhkoinvestahentstvom not done:

- Artistic surroundings. 5 to 4 of the Derzhkoinvestahentstvo because no written requirements of Article 4 of UNFCCC and the Minister have been made proposals for implementation of this article by preparing proposals for the issuance of permits for greenhouse gas emissions, setting limits on greenhouse gas emissions;
- Artistic surroundings. 16 § 4 - There were no proposals on the regulation of negative anthropogenic impact on climate change and adapt to its changes through the establishment of the permit system for greenhouse gases.

Paragraph 1 of the National Action Plan for Derzhkoinvestahentstvo, MoE and other agencies carrying out the annual inventory **in accordance with the issued permits for greenhouse gases and the formation of** a national system **based on its** assessment of anthropogenic emissions and removals of greenhouse gases, which is currently not being met. One of the main tasks Derzhkoinvestahentstva as a special body in the regulation of negative anthropogenic impact on climate change is the creation and operation of the national system of assessment and calculation of anthropogenic emissions and removals of greenhouse gases (paragraph 6 of Ministers of 21.04.2006, № 554).

Paragraph 4 of the National Action Plan also provides for a Derzhkoinvestahentstvom, MoE and other agencies of the national system of accounting of anthropogenic emissions and removals of greenhouse gases through the **preparation and adoption of national plan of allocation of permits for anthropogenic emissions by sources of greenhouse gases** by June 2009. As of today, the measure failed.

The absence of resolution of these issues in the current legislation Derzhkoinvestahentstvo indicates in his letter of 01.03.2011 № 450/18/7 (Annex 1): "current regulations of Ukraine limits on emissions of greenhouse gases directly to one or other sectors or individual enterprises not installed.

Thus, the failure mechanism of Part 2 of Art. 16 of the Law of Ukraine "On protection of atmospheric air" and not the requirements of the above legislation indicates inactivity Derzhkoinvestahentstva and is misconduct aimed at regulating greenhouse gases, which accumulate in the air can lead to adverse climate changes in the part of Communications Minister with proposals to regulate the procedure for issuing permits for greenhouse gas emissions within limits.

So Derzhkoinvestahentstvo due to lack of adjustment of the permit system in greenhouse gases are not met the requirements of Art. 4 UNFCCC, § 1, 4 National Action Plan, artistic surroundings. 3, 5, 16 paragraph 4 of the Derzhkoinvestahentstvo.

Omission of the above authorities violated the legitimate interests of the plaintiff to protect and preserve the environment. In particular, the violation of interests of the claimant is that the result indicated inaction violated the requirements of current legislation on environmental protection ² (article 13 of the Constitution of Ukraine, Part 2, Article 16. Law of Ukraine "On protection of atmospheric air", preamble, art. 4, 5 of the Law of Ukraine "On Environment Protection", paragraph 1, 4 National Action Plan, etc.), but because according to Article 6 CAS Ukraine plaintiff has the right to seek administrative court to protect their legitimate interests. Violation of the interest stems primarily from the assigned to the plaintiff under the Charter, goals, objectives and powers.

According to Art. 17 cashier competence of administrative courts extends to disputes natural or legal persons and the subject of authority to appeal its decisions, actions or inaction.

Based on the above, following centuries. 6, 17, 24, 48, 50, 104, 105, 106, 166 cash,

Asked the court:

I. On the Cabinet of Ministers of Ukraine:

To declare illegal the inaction of Ministers to ensure the policy-making in the field of air protection in the absence of legal regulation of procedure of issuing permits for greenhouse gas emissions and setting limits on greenhouse gas emissions and reporting on the crisis mechanism of reducing greenhouse gas emissions.

Obligate CMU over the ditch was to develop and approve procedures for issuing permits and regulating the issue of limits on greenhouse gases.

Obligate CMU to prepare and one month after the court decision comes into force to make public information about the state of implementation of measures envisaged by the National Action Plan, as required by Presidential Decree of Ukraine "On additional measures to ensure transparency in government bodies" of 1 August 2002 № 683.

II. About MEP:

Recognize illegal omission MEP for the formation and implementation of state policy of air protection, regulation of negative anthropogenic impact on climate change and meet the requirements of RKOOZK in the absence of legal regulation mechanism to reduce greenhouse gas emissions.

To bind the Ministry to develop and adopt within six months relevant rules, regulations, standards and methods for regulation mechanism of the reduction of greenhouse gases.

III. Derzhkoinvestahentstva For:

1. Recognize illegal omission Derzhkoinvestahentstva in state policy in the regulation of negative anthropogenic impact on climate change, and making proposals for its formation, in part concerning the enhancement of greenhouse gases;

2. Obligate Derzhkoinvestahentstvo in two months time to develop proposals for issuing permits and setting limits on greenhouse gas emissions by businesses, institutions, organizations and submit them to the established order of the Minister of Ministry of Environment and CMU.

Attachments:

Letter of 03.01.2011, the Derzhkoinvestahentstva № 450/18/7.

Blueprint certificate of registration number 203 093 of 24 March 1999.

Charter blueprint "Environment-People-Law".

Orders № 29/10-2009 blueprint and № 22-03/2010.

Copies of the administrative claim and attached documents for Respondents 1, 2, 3.

Receipt of state duty.

Executive Director Kravchenko OV

"Environment-People-Law"

"" May 2011