

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

CONCERNED CITIZENS OF SENECA
COUNTY, INC. and LEMMON, DIXIE D.

-against-

GINA McCARTHY, in her official capacity as
ADMINISTRATOR OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

**Complaint for Declaratory and
Injunctive Relief Under the Clean Air
Act**

Case No.

Jury Trial: Yes No

Plaintiffs allege, upon information and belief, as follows:

NATURE OF THIS ACTION

1. This is a civil action for declaratory and injunctive relief under the Federal Clean Air Act (the “Act”), 42 U.S.C. §§ 7401 through 7671q and seeks declaratory and injunctive relief from the failure of defendant Gina McCarthy, Administrator (“hereinafter the “Administrator”) of the defendant United States Environmental Protection Agency (“USEPA”), to perform her non-discretionary duty to grant or deny an administrative petition dated September 9, 2013 (the “Petition”) submitted to the Administrator by the plaintiffs pursuant to §505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).
2. The Petition that gives rise to this action sought USEPA’s objection to a landfill gas-to-energy facility operating permit issued by the New York State Department of Environmental Conservation (“NYSDEC”).
3. Under the § 505(b)(2) of the Act, 42 U.S.C § 7661d(b)(2), the Administrator was required to grant or deny plaintiffs’ Petition within sixty days after it was filed and more

than sixty days have passed since plaintiffs filed their Petition, and, upon information and belief, USEPA has neither granted nor denied plaintiffs' Petition.

JURISDICTION

4. This Court has subject matter jurisdiction over the claim set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of Clean Air Act), 28 U.S.C. §1331 (federal question statute), and 28 U.S.C. § 2201(declaratory judgment statute). The relief requested is authorized by 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 7604.
5. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the Western District of New York.

NOTICE

6. On January 12, 2016, plaintiffs provided notice to the Administrator of plaintiffs' intent to file a citizen suit due to the Administrator's failure to comply with the sixty day deadline under 42 U.S.C. § 7661d(b)(2) for granting or denying the Petition.
7. The notice letter filed with respect to the Petition involved in this action and the service thereof, upon information and belief, comply with § 304 of the Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54.
8. More than sixty days have passed since the postmark on the notice letter without receipt of any written response from the Administrator or USEPA. See 42 U.S.C. § 7604(b)(2).
9. Upon information and belief, defendants violated and remain in violation of 42 U.S.C. §7661d(b)(2) for failing to grant or deny plaintiffs' Petition.

PARTIES

10. Plaintiff Concerned Citizens of Seneca County, Inc. (“CCSC”) was incorporated on or about March 12, 2010 under New York’s Not-for-Profit Corporation Law and is “committed to promoting the health and quality of life of the Seneca County region of New York State (as well as neighboring counties) by ensuring that Seneca County’s air, soil, water and environment are clean and healthful.”
11. Plaintiff Dixie D. Lemmon (“Ms. Lemmon”) owns and resides on property approximately 2,200 yards from the Seneca Energy II, LLC landfill gas-to-energy facility located near New York State Route 414 in Seneca Falls, Seneca County, New York (the “LFGTE Facility”) that is the subject of plaintiffs’ Petition, and Ms. Lemmon is an officer and member of CCSC.
12. Pursuant to its mission, on September 9, 2013, CCSC filed the administrative Petition on behalf of its members’, including Ms. Lemmon, seeking the Administrator’s non-discretionary action that provides the underlying subject of this complaint.
13. Plaintiffs’ Petition alleges, among other things, that the Title V permit issued pursuant to Clean Air Act for the LFGTE Facility is based on an incomplete permit application, fails to include adequate monitoring and reporting of compliance with air quality requirements, and illegally sanctions the violation of applicable requirements under the Act.
14. While the Administrator delays action on plaintiffs’ Petition, the LFGTE Facility that is subject of the Petition is allowed to operate pursuant to a defective permit; therefore plaintiffs are directly and adversely impacted by the Administrator’s and USEPA’s delay in granting or denying the Petition.

15. Defendant Gina McCarthy is the duly appointed and confirmed Administrator of the United States Environmental Protection Agency, and the Administrator is responsible for, among other things, implementing the Clean Air Act, including the requirement to grant or deny plaintiffs' Petition within 60 days after it was filed.

STATEMENT OF FACTS

16. On September 9, 2013, plaintiffs filed their Petition with the Administrator seeking her and USEPA's objection to the Clean Air Act Title V operating permit issued by NYSDEC to the Seneca County Landfill Gas-to-Energy Facility operated by Seneca Energy II, LLC ("SEII") (Permit I.D. DEC 8-4532-00075/00029) pursuant to 42 U.S.C. § 7661d(b)(2).

17. The SEII LFGTE Facility in Seneca Falls is a Major air pollution source located, as that term is defined in the Act, on the site of the Seneca Meadows, Inc. Landfill (the "Landfill") in the Town of Seneca Falls, Seneca County, New York, and upon information and belief and according to records maintained by the New York State Department of State, SEII is a New York limited liability company with an address at 2999 Judge Road, Oakfield, New York 14125.

18. Upon information and belief, plaintiffs filed their Petition within 60 days after the expiration of USEPA's 45 day period for review of the then-proposed Title V permit for the LFGTE Facility, consistent with 42 U.S.C. § 7661d(b)(2).

19. Upon information and belief, plaintiffs' Petition was based upon objections raised during the public comment period consistent with 42 U.S.C. § 7661d(b)(2).

20. Upon information and belief, plaintiffs' Petition fully complied with 42 U.S.C. §7661d(b)(2).

21. Pursuant to 42 U.S.C. § 7661d(b)(2), the Administrator had 60 days to grant or deny plaintiffs' Petition.
22. More than 60 days have passed since the Administrator received plaintiffs' Petition and, upon information and belief, the Administrator has neither granted nor denied plaintiffs' Petition.

AS AND FOR PLAINTIFFS' CAUSE OF ACTION
(Failure to Respond to Petition)

23. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 22 as if more fully set forth herein.
24. On September 9, 2013, plaintiffs filed their Petition with the Administrator of USEPA pursuant to 42 U.S.C. § 7661d(b)(2).
25. The Administrator failed to grant or deny plaintiffs' Petition within sixty days, has not granted or denied plaintiffs' Petition after more than thirty months, and, upon information and belief, has not granted or denied plaintiffs' Petition as of the date of this complaint.
26. Plaintiffs duly notified the Administrator of their intent to commence this action more than 60 days prior to commencement of this action.
27. The Administrator has violated, and is in violation of, her non-discretionary duty to grant or deny plaintiffs' Petition within sixty days as required by 42 U.S.C. § 7661d(b).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

1. DECLARE that defendant's failure to perform her non-discretionary duty to grant or deny plaintiffs' administrative Petition within sixty days is a violation of §505(b) of the Clean Air Act, 42 U.S.C. §7661d(b);
2. ORDER defendant to grant or deny plaintiffs' Petition within ten calendar days of this Court's ruling;

3. ORDER defendant to comply with the sixty day deadline set forth at § 505(b) of the Act, 42 U.S.C. § 7661d(b) for granting or denying public petitions seeking defendant's objection to Title V permits;
4. ORDER defendant to pay plaintiffs their costs of litigation, including but not limited to their reasonable attorney's fees, as authorized by Section 304(d) of the Act, 42 U.S.C. § 7604(d); and
5. Grant such other relief as the Court deems just and proper.

Dated: Springfield Center, New York
March 23, 2016

By: _____/s/_____

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