

UNITED STATES DISTRICT COURT
for the
MIDDLE DISTRICT OF GEORGIA

PARTNERSHIP FOR POLICY
INTEGRITY, a Public Benefit Non-
Governmental Organization,

Plaintiff,

v.

GINA MCCARTHY, UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY Administrator,

Defendant.

Civ. No. 5:16-CV-38-CAR

CIVIL COMPLAINT FOR INJUNCTION AND DECLARATORY RELIEF

JURISDICTION, NOTICE AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 as a federal question, and 42 U.S.C. § 7604(a)(2) as an action arising under the Clean Air Act (“CAA” or “Act”).

2. On August 25, 2015 Plaintiff PARTNERSHIP FOR POLICY INTEGRITY (“PFPI”) provided Defendant GINA MCCARTHY, Administrator at the United States Environmental Protection Agency (“EPA”), with notice of its intent (“NOI”) to file suit for violations of Section 505 of the Act (42 U.C.S. § 7661d). (See Notice Letter, attached as Exhibit 1). The violations complained of are continuing and more than sixty days have elapsed since notice was served, thus fulfilling the requirements of the Act that at least sixty days elapse

between serving notice on the Administrator and the commencement of this action (42 U.S.C. § 7604(b)).

3. Venue lies in the United States District Court for the Middle District of Georgia pursuant to 28 U.S.C. § 1391(e)(1), which permits a civil action against an officer or employee of the United States, or any agency thereof, to be brought in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated. The City of Barnesville, where the facility at issue is situated, is located in Lamar County, which is among those Counties included in the Macon Division of the United States District Court for the Middle District of Georgia.

NATURE OF THE ACTION

4. This is an action brought under the CAA's "Citizens' Suit" provisions to compel Defendant MCCARTHY to take a non-discretionary action. Thus, this court has subject matter jurisdiction over the claim set forth herein pursuant to 42 U.S.C. § 7604(a)(2), and the authority to award attorney's fees pursuant to 42 U.S.C. § 7604(d). This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of 1930. Thus, this court has authority to order the declaratory relief requested pursuant to 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief. Plaintiff seeks a declaratory judgment and injunction compelling Administrator MCCARTHY to take final action to grant or deny the petition filed by PFPI on May 26, 2015 ("Petition"). The Petition seeks EPA's final action objecting to Title V operating permit No. 4911-171-0014-02-0 ("Permit") issued by the Georgia Environmental Protection Division of the Clean Air Branch ("EPD"), of the Georgia Department of Health. EPD issued the Permit for a 60.5-megawatt (MW) biomass steam-turbine generator ("Facility") owned and

operated by Piedmont Green Power (“PGP”) in the City of Barnesville, Lamar County, State of Georgia. Defendant has failed to comply with a non-discretionary duty to grant or deny the Petition within 60 days after filing as required by 42 U.S.C. § 7661d(b)(2).

PARTIES

5. PFPI is a non-profit corporation organized under the laws of the State of Massachusetts. PFPI provides scientific, legal and advocacy support so that citizen groups, environmental organizations, and policymakers can better understand energy development impacts on air quality, ecosystems, the climate and communities. PFPI’s Petition creates a procedural right to final action that has been denied by EPA’s inaction and delay. Relief will prompt enhanced control of harmful emissions of air pollution and thereby improve air quality in the area surrounding the Facility.

6. PFPI has members, supporters and directors who live, work, and pursue recreational activities in the immediate vicinity of the Facility.

7. PFPI’s members, supporters and directors have been, are, and will be adversely affected by excessive emissions of air pollution resulting from the Permit’s failure to ensure compliance with the Act, Federal Operating Permit regulations at 40 Code of Federal Regulations Part 70, Georgia’s State Implementation Plan (“SIP”), state permitting, and other applicable requirements which operate to limit and control emissions of air pollution as mandated by law. These adverse effects include health impacts caused by exposure to the Facility’s air pollution, lost economic opportunities, costs of health care, damage to homes and vehicles and increased maintenance expenses, the cost for purchase and maintenance of air purification equipment, and costs of more frequent clothes laundering, window cleaning and the like.

8. PFPI's members, supporters and directors experience increased rates of asthma and other respiratory ailments, and higher morbidity as a result of exposure to air pollutants emitted from the Facility.

9. PFPI's members, supporters and directors, and their children, alter their daily routines in response to the Facility's pollution, including reduced physical exercise and recreation, additional and/or prolonged periods of time indoors, and increased frequency of school and employment absenteeism, all as a direct result of the operation of the Facility in violation of the emissions limits in the Permit, the SIP, and the Clean Air Act.

10. Operation of the Facility in compliance with the Act as a result of PFPI's petition will have lower harmful emissions of air pollution either by actually conforming to the 250 TPY synthetic minor source emissions limits or through the imposition of enhanced air pollution control methods as part of new source review, applicable to major sources of air pollution.

11. Defendant MCCARTHY has failed to take timely final action on the Petition, thus interfering with the Act's requirement that all major sources of criteria pollutants and hazardous air pollutants (HAPs) have permits with specific, justified and enforceable emissions limitation that prevent excessive air pollution and protect the public's health and welfare interests. The Permit conditions fail to ensure compliance with applicable emissions limitations, among other requirements, and endangers, as described above, the community's health and welfare.

12. Defendant's failure to take timely final action on the Petition has allowed PGP to operate without a Permit that ensures compliance with the Act, and results in emissions in excess of those allowed for any facility with Synthetic Minor status.

13. PFPI has been and will continue to be adversely affected and irreparably injured by Defendant's failure to comply with the Act.

14. Defendant MCCARTHY is sued in her official capacity as EPA Administrator, and as the person with ultimate authority over and responsibility to respond to PFPI's Petition.

TITLE V OF THE CLEAN AIR ACT AND GEORGIA'S PERMIT PROGRAM

15. Congress passed the Act in 1970 to abate air pollution, enhance air quality, and to protect the public health and welfare. 42 U.S.C. § 7401(b). Congress directed EPA to improve our Nation's air quality and required EPA to identify those air pollutants that endanger public health and welfare. 42 U.S.C. § 7408(a).

16. Title V of the CAA as amended in 1990 requires that states develop federally approvable permit programs that apply to major sources of air pollution. Georgia promulgated Chapter 391-3-1-.03(2) of the Georgia Air Quality Act (O.C.G.A. Section 12-9-1, et seq.) establishing that an "Operating (SIP) Permit" is required by "[a]ny person operating a facility or performing an activity which is not exempted under 391-3-1-.03(6) from which air contaminants are or may be emitted."

17. A permit issued pursuant to Title V of the Act ("Title V Permit") violates the Act if it fails to ensure compliance with applicable requirements. 42 U.S.C. § 7661c(a), CAA § 504(a). This includes, but is not limited to, any standard or other requirement under Sections 111 and 112 of the Act; any standard or other requirement provided for in the applicable implementation plan; and any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act. 40 C.F.R. § 702.

18. The Administrator has a non-discretionary duty to object to Title V Permits that fail to meet the minimum requirements of the Act. If the Administrator does not object to the issuance of a Title V Permit, any person may petition the Administrator to take such action. 42 U.S.C. § 7661d(b)(2).

19. PFPI's Petition to the EPA alleged that Permit 4911-171-0014-V-02-0 suffers from the following legal infirmities: i) the "don't ask, don't tell" condition for fuel contamination testing is a gross violation of the spirit of the Act, and is not in compliance with 40 CFR § 63.11222(a)(2); ii) the provisions limiting the Facility's annual mass emissions of any individual HAP to 10 tons, and total HAPs to 25 tons, are unenforceable as a practical matter; iii) data on which the Facility's Synthetic Minor status is based are technically unsubstantiated, and the NOx and CO conditions are not practically enforceable; and iv) the Potential to Emit (PTE) calculations do not include quantified emissions associated with startup, shutdown and malfunction (SSM) as required by law.

20. The Petition requests EPA object to the Permit and order EPD to commence Prevention of Significant Deterioration permitting processes for the Facility as a Major Source.

21. The Administrator is required to grant or deny Title V Petitions within 60 days after the petition is filed. 42 U.S.C. § 7661d(b)(2). More than 60 days has elapsed since PFPI filed its Petition, and the Administrator has not taken action to grant or deny the Petition. Respondent and Defendant Administrator have a clear, present non-discretionary duty to act on PFPI's Petition.

22. Plaintiff has exhausted its administrative remedies and has no plain, speedy or adequate remedy in the ordinary course of law. Issuance of a writ is needed to avoid immediate, severe, and irreparable harm to Plaintiff, as well as residents and visitors to the City of Barnesville.

FIRST CLAIM FOR RELIEF

(Failure To Take Final Action on PFPI's Title V Petition)

23. Paragraphs 1 through 22 are hereby incorporated herein by reference.

24. To date, Defendant MCCARTHY has not granted, denied or otherwise acted in response to PFPI's Petition as required by law. 42 U.S.C. § 7661(d).

25. PFPI's Petition, filed on May 26, 2015, objected to the Title V Permit issued by EPD for PGP's facility in the City of Barnesville.

26. Defendant MCCARTHY has violated and is in violation of Section 505 of the Act by failing to perform this non-discretionary duty. 42 U.S.C. § 7661(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter a declaratory judgment that Defendant MCCARTHY failed to perform her non-discretionary duty by failing to take timely final action to grant or deny PFPI's Petition objecting to the Permit;

2. Issue a writ of mandamus compelling Defendant MCCARTHY to immediately take action to grant or deny the Petition, and publish this action in the Federal Register within 30 days of the Court's ruling;

3. Direct by injunction, pursuant to section 304(a) of the CAA (42 U.S.C. § 7604(a)), that Defendant MCCARTHY take final action to grant or deny the Petition and publish this action in the Federal Register within 30 days of the Court's ruling;

4. Retain continuing jurisdiction to review Defendant MCCARTHY's compliance with all judgments entered herein;

5. Issue such additional judicial determinations and orders that are necessary to effectuate the foregoing requests for relief;

6. Grant to Plaintiff the costs of litigation, including reasonable attorneys' and expert witness' fees, pursuant to the Act's section 7604(d); and

7. Provide such other relief as the Court shall deem just and proper.

DATE: January 25, 2016

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