



TULANE ENVIRONMENTAL LAW CLINIC

May 30, 2012

Ref: 161-006.2

VIA CERTIFIED MAIL- RETURN RECEIPT REQUESTED

AND E-MAIL mccarthy.gina@epa.gov

Ms. Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

OFFICE OF THE  
EXECUTIVE SECRETARY

2014 JUN -4 PM 1:35

RECEIVED

**RE: Notice of Intent to File Citizen Enforcement Claim Pursuant to Clean Air Act § 304(b)(2), 42 U.S.C. § 7604(b)(2)**

Dear Administrator McCarthy:

This letter provides notice under Clean Air Act § 304(b)(2), 42 U.S.C § 7604, and 40 C.F.R. § 54.3(a) that Concerned Citizens Around Murphy (“Concerned Citizens”) intend to file a citizen-suit claim against EPA under 42 U.S.C. § 7604(a)(2) for failure to grant or deny the Concerned Citizens’ April 3, 2012 Title V Petition (“the Petition”). The Concerned Citizens hope they can reach a negotiated resolution of this issue with EPA, but submit notice at this time to preserve their rights under § 304.

On September 21, 2011, EPA sent an Order to the Louisiana Department of Environmental Quality (“LDEQ”) objecting to Title V permit No. 2500-00001-V5 (the Permit) for a refinery in Meraux, Louisiana that Valero Refining-Meraux, LLC now owns. LDEQ responded to EPA’s September 21, 2011 Objection on December 20, 2011 (“LDEQ’s Response”). The Concerned Citizens are informed and believe that EPA is treating LDEQ’s Response as an amendment to the Permit. On April 3, 2012, the Concerned Citizens filed the Petition with EPA, pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), requesting that EPA object to the Permit because, *inter alia*, LDEQ’s Response did not resolve EPA’s September 21, 2011 Objection and the Permit is not in compliance with the Clean Air Act’s requirements. The Concerned Citizens timely filed the Petition, “within 60 days after the expiration of [EPA’s] 45-day review period” under 42 U.S.C. § 7661d(b)(2). Under the Act, “[t]he Administrator shall grant or deny such petition within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2). Because the Concerned Citizens filed its Petition on April 3, 2012, the Act required EPA to grant or deny the Petition by at least June 3, 2012. EPA failed to do so and has still not granted or denied the Petition.

Tulane Environmental Law Clinic

6329 Freret St., Ste. 130, New Orleans, LA 70118-6231 tel 504.865.5789 fax 504.862.8721 www.tulane.edu/~telc

Administrator McCarthy  
May 30, 2014  
Page 2 of 2

EPA's failure to grant or deny the Petition within the 60-day period required by 42 U.S.C. § 7661d(b)(2) is a failure to perform a non-discretionary act, which is actionable under the Clean Air Act citizen suit provision. 42 U.S.C. § 7604(a)(2) ("any person may commence a civil action on his own behalf ... (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary"). The Concerned Citizens may file a claim in the U.S. District Court for the Eastern District of Louisiana 60 days from the postmark date on this notice letter to enforce EPA's duty to respond to the Petition. *See* 40 C.F.R. § 54.2(d) ("Notice served in accordance with the provisions of this part shall be deemed given on the postmark date, if served by mail.").

Due to EPA's failure to perform its non-discretionary duty to respond to the Petition within 60 days, the Concerned Citizens gives notice that, in the event a timely negotiated resolution is not practical, it intends to file a citizen suit claim (probably by amending its current lawsuit) to require EPA to perform this duty.

Pursuant to the requirements of 40 C.F.R. § 54.3, the person giving notice is:

Concerned Citizens Around Murphy  
2114 Corinne Drive  
Chalmette, LA 70043

Undersigned counsel represents the Concerned Citizens in this matter.

If you believe that any portion of this notice is in error or if you wish to discuss any portion of this Notice, please contact Corinne Van Dalen at the address and phone number listed below. Petitioner would be pleased to discuss alternatives for a cooperative resolution of the violation listed in this notice.

Respectfully submitted by:



Corinne Van Dalen, La. Bar No. 21175

Staff Attorney

Tulane Environmental Law Clinic

6329 Freret Street

New Orleans, LA 70118

Phone: (504) 865-8814

Fax: (504) 862-8721

E-mail: [cvandale@tulane.edu](mailto:cvandale@tulane.edu)

*Counsel for Concerned Citizens Around Murphy*

Cc: Stephanie J. Talbert, U.S. Department of Justice



**Tulane University**

LAW SCHOOL  
Tulane Environmental Law Clinic  
6329 Freret St., Ste. 130  
New Orleans, LA 70118-6231

**CERTIFIED MAIL™**



7013 0600 0001 9892 0507

**RETURN RECEIPT  
REQUESTED**



UNITED STATES POSTAGE  
EAGLE  
FIRST CLASS PERMIT NO. 1000 NEW YORK, NY

02 1R  
0002006848 MAY 30 2014  
MAILED FROM ZIP CODE 70118

**\$ 06.48<sup>0</sup>**

0002006848 MAY 30 2014  
MAILED FROM ZIP CODE 70118

*Ms. Gina McCarthy*

Ms. Gina McCarthy, Administrator **RECEIVED** JUN 4 2014  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460



20460