

**U.S. DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

LOUISIANA ENVIRONMENTAL)
ACTION NETWORK and SIERRA)
CLUB,)
)
Plaintiffs,)
)
v.)
)
GINA MCCARTHY, in her official)
capacity as Administrator of the U.S.)
Environmental Protection Agency,)
)
Defendant.)

COMPLAINT

INTRODUCTION

1. The Administrator of the U.S. Environmental Protection Agency (“EPA”) has failed to perform her nondiscretionary duty under the Clean Air Act. Specifically, the Act requires EPA to grant or deny a timely petition for an EPA objection to a major source operating permit within 60 days. 42 U.S.C. § 7661d(b)(2). Plaintiffs Louisiana Environmental Action Network (“LEAN”) and Sierra Club filed such a petition on May 19, 2015 (“the Petition”). The Petition seeks EPA’s objection to a permit that the Louisiana Department of Environmental Quality (“LDEQ”) issued to plant Chemical Inc., i.e., Permit No. 2560-00295-V0 (“the Permit”). The Permit is for the operation of a new methanol manufacturing plant (“Yuhuang Methanol Plant”) in St. James, Louisiana. More than 60 days has passed since Plaintiffs filed their Petition, but EPA has failed to grant or deny the Petition.

2. The Clean Air Act empowers “any person” to sue to enforce any EPA “act or duty under [the Clean Air Act] that is not discretionary.” 42 U.S.C. § 7604(a)(2).

JURISDICTION AND VENUE

3. This action arises under the Clean Air Act, 42 U.S.C. § 7661d(b). This Court has jurisdiction over Plaintiffs’ claims pursuant to 42 U.S.C. § 7604(a) (granting district courts jurisdiction to order EPA to perform a nondiscretionary duty). This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). The relief that Plaintiffs request is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. § 2201 (declaratory judgment).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C) because plaintiff LEAN resides within the Middle District of Louisiana and no real property is involved in the action.

PARTIES

5. Gina McCarthy is the EPA Administrator and is responsible for directing the activities of the agency and implementing the requirements of the Clean Air Act. Plaintiffs sue Gina McCarthy in her official capacity.

6. LEAN is a non-profit corporation organized under the laws of the State of Louisiana with its domicile in Baton Rouge, Louisiana.

7. LEAN’s purpose is to preserve and protect the state’s land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. One way LEAN works to protect the environment and the health of state residents is to comment on and challenge air permits issued by LDEQ that do not conform to the law.

8. LEAN is a “person” within the meaning of 42 U.S.C. §§ 7604, 7661d(b)(2).

9. Sierra Club is a non-profit corporation organized under the laws of the State of California, and has an office in New Orleans, Louisiana.

10. Sierra Club is the oldest and largest grassroots environmental group in the United States, with more than 621,000 members throughout the United States, including Louisiana. Sierra Club's mission is to protect and enhance the quality of the natural and human environment. Its activities include public education, advocacy, and litigation to enforce environmental laws. Sierra Club and its members are concerned about the effects of air pollution on human health and the environment and have a long history of involvement in activities related to air quality. One way Sierra Club works to protect the environment and human health is to comment on and challenge air permits that do not conform to the law.

11. Sierra Club is a "person" within the meaning of 42 U.S.C. §§ 7604, 7661d(b)(2).

12. Members of LEAN and Sierra Club live, work, and recreate in areas in which air quality will be adversely affected by EPA's failure to grant or deny the Petition. These members live, work, and recreate in areas where they will be exposed to dangerous pollutants allowed by the Permit. Emissions of air pollutants allowed by the Permit will injure the members by causing them reasonable concern and anxiety about the pollutants' health, economic, and environmental effects.

13. EPA's failure to grant or deny the Petition injures LEAN and Sierra Club members because it allows construction of the Yuhuang Methanol Plant to proceed and ultimately operate without a permit that meets the requirements of the Clean Air Act, including Prevention of Significant Deterioration (PSD) requirements under the Act and Louisiana's State Implementation Plan, La. Admin. Code, tit. 33, pt. III § 509. The Permit does not include limits or other conditions that will ensure that the plant will not contribute to the violation of federal

health protection standards (known as “National Ambient Air Quality Standards.”) The Permit also fails to incorporate Best Available Control Technology pollution control standards mandated by the Clean Air Act and La. Admin. Code, tit. 33, pt. III § 509 to protect public health and welfare. Instead, the Permit incorporates less stringent pollution control requirements and consequently allows the Yuhuang Methanol Plant to emit excessive amounts of dangerous air pollutants, including: particulate matter (both PM₁₀ and PM_{2.5}), sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds, and greenhouse gases (including carbon dioxide, nitrous oxide, and methane) from various emission sources at the plant. These pollutants are associated with a variety of adverse effects on human health and the environment. Members of LEAN and Sierra Club are reasonably concerned that exposure to the excessive pollutants allowed by the Permit will impair their health and air quality. The Permit injures members of LEAN and Sierra Club because it denies these members health and welfare protections that the Clean Air Act guarantees them. These injuries are irreparable.

14. EPA’s failure to grant or deny the Petition harms LEAN’s and Sierra Club’s interests and their members’ interests. EPA’s failure results in doubt and concern for LEAN and Sierra Club members about whether EPA will object to the Permit and require changes to the Permit so that it will comply with the requirements of the Clean Air Act and protect them from exposure to pollutants to the extent required by law. This uncertainty and resulting fear is an actual, concrete, and irreparable injury. Monetary damages cannot adequately remedy these injuries.

15. EPA’s failure to grant or deny the Petition further deprives Plaintiffs and their members of procedural rights and protections to which they are entitled to under the Clean Air Act. If EPA grants the Petition, the Plaintiffs and their members will be entitled to reform of the

Permit. If EPA denies the Petition, the Plaintiffs will have an opportunity to seek judicial review of that denial. EPA's failure to grant or deny the Petition prevents Plaintiffs and their members from exercising either of these statutory rights.

16. An order by this Court requiring EPA to grant or deny Plaintiffs' petition will redress injuries to LEAN and Sierra Club members.

NOTICE

17. On August 17, 2015, EPA received notice of Plaintiffs' intent to file this lawsuit via certified mail. Plaintiffs have attached an accurate copy of their notice letter as Exhibit A and a copy of their certified mail receipt as Exhibit B. The notice complies with 42 U.S.C. § 7604(b)(2), and 40 C.F.R. pt. 54.

18. More than 60 days has passed since Plaintiffs served their notice of intent to file this suit on EPA.

LEGAL BACKGROUND

19. The Clean Air Act aims "to protect and enhance the quality of the Nation's air resources." 42 U.S.C. § 7401(b)(1). To help meet this goal, Title V of the Act creates an operating permit program that applies to all major sources of air pollution. *See* 42 U.S.C. § 7661-7661f.

20. Major sources of air pollution must obtain a valid Title V operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Clean Air Act, including the requirements of the applicable State Implementation Plan ("SIP"). *See* 42 U.S.C. §§ 7661a(a) and 7661c(a).

21. The Clean Air Act allows EPA to approve state programs that meet the requirements of the Act so that states can administer the Title V permitting program within their

states. 42 U.S.C. § 7661a(d). EPA's full approval of Louisiana's Title V permitting program became effective on October 12, 1995. *See* 40 C.F.R. § pt. 70, App. A. Louisiana's Title V permitting program is codified at La. Admin. Code, tit. 33, pt. III § 507; *cf. id.* at § 507.B.2. (Permits issued for a major source under Louisiana's Title V permitting program "shall include the elements required by 40 C.F.R. 70.6.").

22. EPA maintains oversight of state-run Title V programs. Prior to the issuance of a Title V permit, the state must submit the proposed permit to EPA for review. 42 U.S.C. § 7661d(a); 40 C.F.R. § 70.8(a). Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if EPA determines that it is not in compliance with applicable requirements of the Clean Air Act or the requirements under 40 C.F.R. pt. 70. 40 C.F.R. § 70.8(c).

23. If EPA does not object to a Title V permit on its own initiative, any person may petition EPA, within 60 days of expiration of EPA's 45-day review period, to object to the permit. 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(d).

24. The petition must "be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to EPA that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." 42 U.S.C. § 7661d(b)(2).

25. In response to such a petition, the Clean Air Act requires EPA to issue an objection if the petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including requirements of the applicable SIP. 42 U.S.C. § 7661d(b)(2). *See also* 40

C.F.R. § 70.8(c)(1); *N.Y. Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003).

26. EPA “shall grant or deny such petition within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2).

27. If, in responding to a petition, EPA objects to a permit that has already been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures set forth in 40 C.F.R. §§ 70.7(g)(4) and (5)(i)(ii), and 40 C.F.R. § 70.8(d).

28. “[A]ny person may commence a civil action on his own behalf . . . against the Administrator . . . to perform any act or duty under this Act which is not discretionary with the Administrator.” 42 U.S.C § 7604(a)(2).

FACTS

29. On February 4, 2015, LDEQ issued a proposed version of the Permit for the Yuhuang Methanol Plant.

30. LDEQ submitted the proposed Permit for the Yuhuang Methanol Plant to EPA in accordance with Title V of the Clean Air Act. EPA’s 45-day review period for the proposed Permit began on February 4, 2015 and ended on March 20, 2015. EPA did not raise any objections during this period.

31. On May 5, 2015, LDEQ finalized the Permit as a permit under Louisiana’s Title V operating permit program.

32. On May 19, 2015, Plaintiffs filed the Petition requesting that the Administrator object to the Permit because, among other reasons, LDEQ did not require PSD review or a PSD permit for the plant, making the Permit illegal because it fails to include emission limitations and

standards and other conditions necessary to assure compliance with the applicable requirements of the Clean Air Act and with Louisiana's SIP.

33. Plaintiffs based their Petition on objections raised with reasonable specificity during the public comment period provided by LDEQ on the proposed Permit in accordance with 42 U.S.C. § 7661d(b)(2).

34. Plaintiffs filed their Petition timely within 60 days following the conclusion of EPA's review period. 42 U.S.C. § 7661d(b)(2).

35. Plaintiffs provided copies of their Petition to LDEQ and Yuhuang Chemical, Inc.

36. The Act required EPA to grant or deny Plaintiffs' Petition within 60 days, i.e., by July 20, 2015. 42 U.S.C. § 7661d(b)(2).

CAUSE OF ACTION:
(Failure to Perform a Nondiscretionary Duty)

37. EPA's duty to grant or deny Plaintiffs' Petition within 60 days of its filing is not discretionary. 42 U.S.C. § 7661d(b)(2).

38. It has been more than 60 days since EPA received the Petition.

39. EPA has not granted or denied the Petition.

40. EPA has violated and continues to violate the Clean Air Act, 42 U.S.C. § 7661d(b)(2).

41. This Clean Air Act violation constitutes a "failure of the Administrator to perform any act or duty under [the Clean Air Act] which is not discretionary with the Administrator" within the meaning of the Clean Air Act's citizen suit provision. 42 U.S.C. § 7604(a).

42. EPA's failure to perform its nondiscretionary duty to grant or deny Plaintiffs' Petition is ongoing and will continue unless remedied by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- A. Declare that EPA's failure to perform its duty to grant or deny Plaintiffs' Petition to object to the Permit within 60 days of its filing is a violation of the Clean Air Act under 42 U.S.C. §7661d(b);
- B. Order EPA to grant or deny Plaintiffs' Petition within 60 calendar days of this Court's ruling;
- C. Award Plaintiffs the costs of this litigation, including reasonable attorney fees, as allowed under §304(d) of the Act, 42 U.S.C. § 7604(d).
- E. Grant such other relief as the Court deems just and proper.

Respectfully submitted on December 23, 2015
by:

/s/ Corinne Van Dalen
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/s/ Catherine Simon
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Counsel for Plaintiffs LEAN and Sierra Club



Tulane Environmental Law Clinic

August 12, 2015

Ref: 126-024.2

Via U.S. Certified Mail No. 7013 0600 0001 9892 1948

Administrator Gina McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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

Dear Administrator McCarthy:

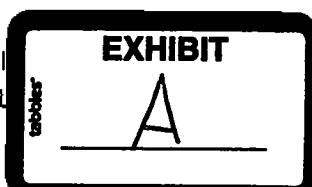
This letter provides notice under Clean Air Act § 304(b)(2), 42 U.S.C. § 7604, and 40 C.F.R. § 54.3(a) that Sierra Club and Louisiana Environmental Action Network ("LEAN") intend to file a citizen suit against EPA under 42 U.S.C. § 7604(a)(2) for failure to grant or deny a petition they submitted requesting that you object to the initial Title V air permit no. 2560-00295-V0 issued to Yuhuang Chemical Inc. for the construction and operation of a new methanol manufacturing plant in St. James, Louisiana.

Sierra Club and LEAN submitted the petition to you under 42 U.S.C. § 7661d(b)(2), which allows anyone to petition the Administrator of EPA to object to an air permit issued pursuant to Title V of the Clean Air Act if EPA has not already objected to the permit within its 45-day period to review such permits. This provision also requires the person to file the petition within 60 days after the expiration of EPA's review period. 42 U.S.C. § 7661d(b)(2).

EPA's 45-day period to review the Yuhuang permit ended on March 20, 2015. EPA did not object to permit. Sierra Club and LEAN filed their petition on May 19, 2015, which is after EPA's 45-day review period and within 60 days after the expiration of that review period. Their petition, therefore, is timely.

The Clean Air Act states: "The Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2). Since Sierra Club and LEAN filed their petition on May 19, 2015, EPA had until July 20, 2015 to grant or deny the petition. EPA's failure to grant or deny the petition within the 60-day period that 42 U.S.C. § 7661d(b)(2) provides constitutes a failure to perform a non-discretionary act, which is actionable under the Clean Air Act citizen suit provision. See 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").

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Administrator Gina McCarthy
August 12, 2015
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Sierra Club and LEAN intend to file a suit 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 their 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.").

The full name and address of the party giving this notice are as follows:

Sierra Club
85 Second Street, 2nd Floor
San Francisco, Ca. 94105
Phone: (415) 977-5500

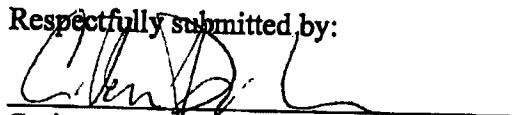
Louisiana Environmental Action Network
162 Croydon Avenue
Baton Rouge, LA 70806-4501
Phone: (225) 928-1315

All communications, however, should be through counsel:

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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.

Respectfully submitted by:



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