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April 22, 2016

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Administrator Gina McCarthy
United States Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Subject: Notice of intent to sue for failure to perform non-discretionary duty under the Clean Air Act to respond to Petition filed on or about February 8, 2016, requesting that the Administrator object to the Title V operating permit for the Seneca Energy II, LLC, Ontario County Landfill Gas to Energy Facility, Permit No. 3244-00040/00002

Dear Administrator McCarthy:

This letter is served upon you in compliance with Section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), and 40 C.F.R. § 54, and provides you with sixty days notice of intent to sue by Finger Lakes Zero Waste Coalition, Inc. (“Petitioner”) for your failure to respond within 60 days to the above-referenced timely submitted Petition. Any response to this notice of intent to sue should be directed to Petitioner’s counsel, the undersigned.

You have violated your non-discretionary duty by failing to grant or deny the Petitioner’s request that you object to the Title V Air Operating Permit No. 8-3244-00040/00002, which was received by the EPA from the New York State Department of Environmental Conservation (DEC) on or about September 11, 2012, and supplemented on or about October 26, 2015, when Acting DEC Deputy Commissioner issued a response to an EPA Order, dated June 29, 2015, “direct[ing] the DEC to provide an adequate record sufficient to support a source determination regarding the Seneca Energy Facility and the Ontario County Landfill.” EPA Order, 17.

EPA did not object to the proposed permit, as supplemented, within 45 days of receipt and, on February 8, 2016, Petitioner submitted a Petition requesting that the EPA object within the next 60 days. Section 505(b)(2) of the Clean Air Act 42 U.S.C. § 7661d(b)(2) instructs the Administrator of the EPA to respond to such a petition within sixty days of receipt. The sixty-day deadline


has passed, and you and EPA have failed to act on Petitioner's request and are thus in violation of your non-discretionary duty to respond. 42 U.S.C. § 7661d(b)(2).

Section 505(b)(2) of the Clean Air Act and 40 C.F.R. §70.8 provides that if the "Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day EPA review period specified in paragraph (1) to take such action." 42 U.S.C. § 7661d(b)(2). Following receipt of such a petition, "the Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. §7661d(b)(2).

Where there is a failure by the Administrator to perform a non-discretionary act or duty under the Clean Air Act, a civil action is available to enjoin such action. 42 U.S.C. § 7604(a)(2). Accordingly, at the close of sixty days from the postmark date of this notice of intent to sue, the Petitioners intend to file suit against you and EPA in federal district court under Section 304 of the Clean Air Act, 42 U.S.C. § 7604(a)(2), seeking declaratory relief, an injunction requiring prompt action on the Finger Lakes Zero Waste Coalition petition that is overdue, and an award of litigation expenses.

If you have questions or concerns regarding this matter, please contact me.

Sincerely yours,



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cc:

Judith Enck, Regional Administrator
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