

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

SIERRA CLUB)	
85 Second Street, 2 nd Floor)	
San Francisco, CA 94105)	
)	
Plaintiff,)	
)	Civ. No.
v.)	
)	
REGINA MCCARTHY, in her official capacity as)	
Administrator of the United States Environmental)	
Protection Agency)	
Ariel Rios Building)	
1200 Pennsylvania Avenue, N.W.)	
Washington, DC 20460)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. The Administrator of The United States Environmental Protection Agency (“Administrator” or “EPA”) has failed to perform her non-discretionary duty to grant or deny seven petitions filed by Sierra Club (collectively, “Petitions”). *See* 42 U.S.C. § 7661d(b)(2) (authorizing such petitions). Filed in 2012, these Petitions asked EPA to object to the air pollution operating permits (collectively, “the Permits”) issued by the Pennsylvania Department of Environmental Protection (“PaDEP”) pursuant to the Clean Air Act for seven coal-fired power plants: GenOn Shawville Generating Station (“Shawville”); Sunbury Generation Power Plant (“Sunbury”); AES Beaver Valley Power Station (“Beaver Valley”); AES Mitchell Power Station (“Mitchell”); AES Hatfield’s Ferry Power Station (“Hatfield’s Ferry”); EME Homer City

Generating Station (“Homer City”); and FirstEnergy Bruce Mansfield Power Station (“Bruce Mansfield”).

2. Although more than 60 days have passed, the EPA Administrator has not granted or denied Sierra Club’s Petitions, in contravention of a mandatory 60-day deadline for action. 42 U.S.C. § 7661d(b)(2). She is therefore in violation of her nondiscretionary duty under the Clean Air Act. Accordingly, Sierra Club seeks a declaration that the Administrator is in violation of the Clean Air Act and an order compelling the Administrator to grant or deny Sierra Club’s Petitions.

II. JURISDICTION

3. The instant action arises under the Clean Air Act, 42 U.S.C. § 7661d(b). This Court has jurisdiction over Sierra Club’s claims pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 1331, 1361. The relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1361, 2201, and 2202.

III. NOTICE

4. By certified letter dated May 21, 2013, Sierra Club provided the Administrator with written notice of Sierra Club’s claims concerning EPA’s failure to take action on the Petitions and of Sierra Club’s intent to bring suit to remedy these violations of the Clean Air Act. Sierra Club provided this notice pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.2, 54.3. A copy of this notice is provided as Exhibit A to this Complaint.

IV. VENUE

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1). EPA maintains a Regional Office in Philadelphia, Pennsylvania. This Regional Office has oversight responsibility for PaDEP air quality programs and is in large part responsible for ensuring that

EPA performs the nondiscretionary duty at issue in this Complaint. In addition, a substantial part of the events or omissions giving rise to Sierra Club's claims occurred in EPA's Philadelphia office.

V. PARTIES

6. Sierra Club is the oldest and largest grassroots environmental group in the United States, with over 598,000 members nationally, including over 23,000 members in Pennsylvania. Sierra Club's mission is to protect and enhance the quality of the natural and human environment, and its activities include public education, advocacy, and litigation to enforce environmental laws. Sierra Club and its members are greatly 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.

7. Sierra Club is a "person" within the meaning of 42 U.S.C. § 7602(e). As such, Sierra Club may commence a civil action under 42 U.S.C. § 7604(a).

8. Sierra Club has members in Pennsylvania whose health, economic, aesthetic and environmental interests have been, are being, and will be adversely affected by the EPA acts and omissions complained of herein. Sierra Club members live, raise their families, work, attend school, travel, and recreate in areas where they are exposed to dangerous air pollutants emitted from the Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield plants. Such air pollutants, which include sulfur dioxide, nitrogen oxides, and fine particulate matter, are associated with a variety of adverse effects on human health, and with impairment of visibility and damage to wildlife and vegetation. The Permits upon which the Petitions are based allow the plants listed above to release such air pollutants, thereby threatening the health of such Sierra club members and their use and enjoyment of the air,

environment, wildlife, scenery and outdoor views adversely impacted by such pollutants. The Administrator's acts and omissions complained of herein cause injury to Sierra Club members by threatening their health and welfare, and by denying them measures and procedures provided under the Clean Air Act to protect their health and welfare from air pollution in places where they live, work, recreate, and conduct other activities. The health, recreational, aesthetic, organizational, and procedural interests of Sierra Club and its members have been and continue to be adversely affected by the EPA acts and omissions complained of herein.

9. Sierra Club's interests and its members' interests have been, are being, and will continue to be, harmed by EPA's failure to act on Sierra Club's Petitions for objection to the Permits for the seven plants named herein. EPA's failure to respond to Sierra Club's Petitions creates doubt and concern for Sierra Club members about whether the permits for these seven plants comply with the requirements of the Clean Air Act and protect them from exposure to pollutants to the extent required by law.

10. The acts and omissions of EPA alleged herein further deprive Sierra Club and its members of procedural rights and protections to which they are entitled. During the permitting process for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield, Sierra Club provided comments critical of the Permits' terms and limits. Subsequently, Sierra Club petitioned EPA to object to the issuance of the Permits. The Clean Air Act gives Sierra Club a procedural right to a timely decision on its Petitions. EPA's failure to take action on Sierra Club's Petitions prevents Sierra Club and its members from challenging an unfavorable EPA decision or from benefiting from a favorable decision on the Petitions.

11. The Clean Air Act violations alleged in this Complaint have injured and continue to injure the interests of Sierra Club and its members. Granting the relief requested in this lawsuit would redress these injuries.

12. Regina McCarthy is the Administrator of the EPA. The Administrator is responsible for implementing the Clean Air Act, including the requirement to grant or deny Sierra Club's Petitions within 60 days. Ms. McCarthy is sued in her official capacity.

VI. LEGAL BACKGROUND

13. 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, the 1990 amendments to the Clean Air Act created the Title V permit program, an operating permit program that applies to all major sources of air pollution. See 42 U.S.C. §§ 7661-7661f.

14. Major sources of air pollution must obtain a valid Title V operating permit, which records applicable air pollution control requirements in a single document. See 42 U.S.C. §§ 7661a(a), 7661c(a).

15. The Clean Air Act provides that the EPA Administrator may approve state programs to administer the Title V permitting program with respect to sources within their borders. See 42 U.S.C. § 7661a(d). The Administrator approved Pennsylvania's administration of its Title V permit program in 1996. See Clean Air Act Final Full Approval Of Operating Permits Program; Final Approval of Operating Permit and Plan Approval Programs Under Section 112(l); Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Plan Approvals and Operating Permits Under Section 110; Commonwealth of Pennsylvania, 61 Fed. Reg. 39,597 (July 30, 1996) (codified at 40 C.F.R. pt. 52).

16. Before a state with an approved Title V permit program may issue a Title V permit, the state must forward the proposed Title V permit to EPA. 42 U.S.C. § 7661d(a)(1)(B). EPA then has 45 days to review the proposed permit. 42 U.S.C. § 7661d(b). EPA must object to the issuance of the permit if EPA finds that the permit does not comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1).

17. After EPA's 45-day review period expires, "any person may petition the Administrator within 60 days" to object to the Title V permit. 42 U.S.C. § 7661d(b)(2).

18. The Clean Air Act requires that "[t]he Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2).

19. If EPA objects to a permit, the permitting authority may not issue the permit unless it is revised. 42 U.S.C. § 7661d(b)(3). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator, the Administrator shall modify, terminate, or revoke such permit. *Id.*

20. If EPA fails to comply with a non-discretionary duty, such as acting on a petition within the statutorily mandated timeframe, the Clean Air Act allows any person to bring suit to compel EPA to perform its duty. *See* 42 U.S.C. § 7604(a).

VII. FACTUAL BACKGROUND

A. Shawville

21. Shawville is a major stationary source of air pollution located in Shawville, Pennsylvania. The facility's operation consists primarily of four coal-fired boilers.

22. In November 2010, PaDEP issued a proposed Title V renewal permit for Shawville. On January 4, 2011, Sierra Club submitted detailed comments on the proposed

permit during the public comment period. Sierra Club supplemented those comments on the then still-pending proposed permit on September 22, 2011.

23. PaDEP submitted Shawville's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on March 28, 2012. EPA did not raise any objections to the permit.

24. On May 25, 2012, Sierra Club filed a petition ("Shawville Petition") requesting that the Administrator object to the issuance of Shawville's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods for the sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with the Plant's sulfur dioxide and particulate matter emissions limits.

The Shawville Petition was timely filed within 60 days following the conclusion of EPA's review period.¹ 42 U.S.C. § 7661d(b)(2).

25. Sierra Club's Shawville Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

¹ On May 15, 2013, Sierra Club supplemented the Shawville Petition in order to address PaDEP's Comments and Response Document since that document was not provided to Sierra Club until after it had already submitted the Shawville Petition to EPA.

26. EPA had 60 days, until July 24, 2012, to grant or deny Sierra Club's Shawville Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

B. Sunbury

27. Sunbury is a major stationary source of air pollution located in Shamokin Dam, Pennsylvania. The facility consists of six coal-fired combustion units.

28. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Sunbury. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

29. PaDEP submitted Sunbury's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 9, 2012. EPA did not raise any objections to the permit.

30. On September 7, 2012, Sierra Club filed a petition ("Sunbury Petition") requesting that the Administrator object to the issuance of Sunbury's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits;
- require adequate monitoring to assure compliance with sulfur dioxide, particulate matter, and visible emissions limits;
- address the fact that the previous installation of Low NOx Burners on four of the Plant's boilers may have triggered permitting requirements under the New Source Review and/or Prevention of Significant Deterioration programs.

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

31. Sierra Club's Sunbury Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

32. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club's Sunbury Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

C. Beaver Valley

33. Beaver Valley is a major stationary source of air pollution located in Shippingport, Pennsylvania. The facility's operation consists primarily of four pulverized coal-fired boilers.

34. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Beaver Valley. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

35. PaDEP submitted Beaver Valley's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

² On May 15, 2013, Sierra Club supplemented the Sunbury Petition in order to address PaDEP's Comments and Response Document, which was not provided to Sierra Club until after the September 7, 2012 petition.

36. On September 7, 2012, Sierra Club filed a petition (“Beaver Valley Petition”) requesting that the Administrator object to the issuance of Beaver Valley’s Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with sulfur dioxide and particulate matter emissions limits.

The Beaver Valley Petition was timely filed within 60 days following the conclusion of EPA’s review period.³ 42 U.S.C. § 7661d(b)(2).

37. Sierra Club’s Beaver Valley Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

38. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club’s Beaver Valley Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

D. Mitchell

39. Mitchell is a major stationary source of air pollution located in Courtney, Pennsylvania. The main sources at this facility are one pulverized coal-fired boiler and three oil-fired boilers.

³ On May 15, 2013, Sierra Club supplemented the Beaver Valley Petition in order to address PaDEP’s Comments and Response Document, which was not provided to Sierra Club until months after the September 7, 2012 petition.

40. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Mitchell. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

41. PaDEP submitted Mitchell's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

42. On September 7, 2012, Sierra Club filed a petition ("Mitchell Petition") requesting that the Administrator object to the issuance of Mitchell's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with sulfur dioxide, particulate matter, and visible emissions limits.

The Mitchell Petition was timely filed within 60 days following the conclusion of EPA's review period.⁴ 42 U.S.C. § 7661d(b)(2).

43. Sierra Club's Mitchell Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

⁴ On May 15, 2013, Sierra Club supplemented the Mitchell Petition in order to address PaDEP's Comments and Response Document since that document was not provided to Sierra Club until December 12, 2012, months after the September 7, 2012 petition.

44. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club's Mitchell Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

E. Hatfield's Ferry

45. Hatfield's Ferry is a major stationary source of air pollution located in Masontown, Pennsylvania. The facility's operation consists primarily of three pulverized coal cell-fired units.

46. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Hatfield's Ferry. Sierra Club submitted detailed comments on July 20, 2012, during the public comment period for the proposed permit.

47. PaDEP submitted the proposed Title V permit for Hatfield's Ferry to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

48. On September 7, 2012, Sierra Club filed a petition ("Hatfield's Ferry Petition") requesting that the Administrator object to the issuance of Hatfield's Ferry's Title V permit on the basis that the permit, among other things failed to:

- explicitly include the applicable prohibition on air pollution;
- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits;
- ensure compliance with applicable particulate matter emissions limits and monitoring requirements; and

- require adequate monitoring of visible emissions.

The Hatfield's Ferry Petition was timely filed within 60 days following the conclusion of EPA's review period.⁵ 42 U.S.C. § 7661d(b)(2).

49. Sierra Club's Hatfield's Ferry Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

50. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club's Hatfield's Ferry Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

F. Homer City

51. Homer City is a major stationary source of air pollution located in Homer City, Pennsylvania. The facility's operation consists primarily of three coal-fired boilers.

52. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Homer City. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

53. PaDEP submitted Homer City's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

⁵ On May 15, 2013, Sierra Club supplemented the Hatfield's Ferry Petition in order to address PaDEP's Comments and Response Document since that document was not provided to Sierra Club until December 21, 2012, months after the September 7, 2012 petition.

54. On September 7, 2012, Sierra Club filed a petition (“Homer City Petition”) requesting that the Administrator object to the issuance of Homer City’s Title V permit on the basis that the permit, among other things, failed to:

- explicitly include the applicable prohibition on air pollution;
- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits;
- address current violations of the prohibition on air pollution and ongoing violations of the national ambient air quality standard for sulfur dioxide; and
- ensure compliance with applicable particulate matter limits and compliance monitoring requirements.

The Homer City Petition was timely filed within 60 days following the conclusion of EPA’s review period.⁶ 42 U.S.C. § 7661d(b)(2).

55. Sierra Club’s Homer City Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

56. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club’s Homer City Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

G. Bruce Mansfield

⁶ On May 15, 2013, Sierra Club supplemented the Homer City Petition in order to address PaDEP’s Comments and Response Document since that document was not provided to Sierra Club until December 24, 2012, months after the September 7, 2012 petition.

57. Bruce Mansfield is a major stationary source of air pollution located in Shippingport, Pennsylvania. The facility's operation consists primarily of three pulverized coal-fired boilers.

58. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Bruce Mansfield. Sierra Club submitted detailed comments on July 20, 2012, during the public comment period for the proposed permit.

59. PaDEP submitted Bruce Mansfield's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on August 20, 2012. EPA did not raise any objections to the permit.

60. On October 18, 2012, Sierra Club filed a petition ("Bruce Mansfield Petition") requesting that the Administrator object to the issuance of Bruce Mansfield's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with sulfur dioxide, particulate matter, and visible emissions limits.

The Bruce Mansfield Petition was timely filed within 60 days following the conclusion of EPA's review period. 42 U.S.C. § 7661d(b)(2).

61. Sierra Club's Bruce Mansfield Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

62. EPA had 60 days, until December 18, 2012, to grant or deny Sierra Club's Bruce Mansfield Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

VIII. CLAIM FOR RELIEF

63. Sierra Club incorporates the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.

64. The Administrator had a mandatory duty to grant or deny Sierra Club's Petitions within 60 days after they were filed. *See* 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed").

65. It has been more than 60 days since the Administrator received Sierra Club's Petitions requesting that EPA object to the Title V Permits for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield.

66. As of date of filing this Complaint, the Administrator has not granted or denied Sierra Club's Petitions.

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

68. This Clean Air Act violation constitutes a "failure of the Administrator to perform any act or duty under this chapter 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). EPA's violation is ongoing, and will continue unless remedied by this Court.

IX. REQUEST FOR RELIEF

WHEREFORE, Sierra Club respectfully requests that this Court enter judgment providing the following relief:

- A) A declaration that EPA has violated the Clean Air Act by failing to grant or deny Sierra Club's Petitions requesting that EPA object to the Title V Permits for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield;
- B) An order compelling EPA to perform its mandatory duty to grant or deny Sierra Club's Petitions for objection to the Title V Permits for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield, by an expeditious certain date;
- C) An order retaining jurisdiction over this matter until such time as EPA has complied with its non-discretionary duties under the Clean Air Act;
- D) An order awarding Sierra Club its costs of litigation, including reasonable attorneys' fees; and
- E) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 18, 2013

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