

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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SIERRA CLUB, and)
)
AMERICAN BOTTOM)
CONSERVANCY,)
)
Plaintiffs,)
)
v.)
)
STEPHEN L. JOHNSON, in his official)
capacity as Administrator, United States)
Environmental Protection Agency,)
)
Defendant.)

AUG - 2 2005

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CLERK, U.S. DISTRICT COURT

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
PURSUANT TO 42 U.S.C. § 7604.

(Environmental)

Civil Action No. _____

050 4425

JUDGE DER-YEGHIAYAN

MAGISTRATE JUDGE KEYS

Plaintiffs, Sierra Club and American Bottom Conservancy, complain of Defendant,
Stephen L. Johnson, as follows:

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief, with costs and fees, under the Clean Air Act (“the Act” or “CAA”), 42 U.S.C. §§ 7401, *et seq.*, and the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.*

2. Sierra Club and American Bottom Conservancy (together “Plaintiffs”) seek an order requiring the Defendant, the Administrator of the Environmental Protection Agency

(“Administrator”), to perform his non-discretionary duty to grant or deny a petition submitted by the Plaintiffs to the Administrator pursuant to CAA § 505(b)(2), 42 U.S.C. §§ 7661d(b)(2).

3. On February 18, 2004, Sierra Club and American Bottom Conservancy petitioned the Administrator, pursuant to CAA § 505(b)(2), 40 C.F.R. § 70.8(d) and Executive Order 12898, to object to a proposed CAA Title V operating permit for the Onyx Environmental Services’ waste incinerator in Sauget, Illinois (“the Permit”).

4. Pursuant to CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2), the Administrator was required to grant or deny Sierra Club and American Bottom Conservancy’s petition within 60 days.

5. More than 60 days have passed since Plaintiffs petitioned the Administrator.

6. To date, the Administrator has taken no action on the Plaintiffs’ petition.

PARTIES

7. Sierra Club is an incorporated, not-for-profit organization located at 200 N. Michigan Avenue, Suite 505, Chicago, Illinois, 60601. Its purpose is to preserve, protect, and enhance the natural environment. The mission of the Sierra Club is to influence public, private, and corporate policies through programs at the local, state, national, and international levels. Sierra Club has over 700,000 members nationwide and 26,000 members in Illinois.

8. American Bottom Conservancy is a not-for-profit conservation organization working to protect the people and resources of the American Bottom floodplain in Southwestern Illinois. American Bottom Conservancy is located at 614 North 7th Street, East St. Louis, Illinois, 62201.

9. Plaintiffs' members live, work, and recreate around the Onyx Environmental Services waste incinerator in Sauget, Illinois. Plaintiffs' members breathe, use and enjoy the ambient air around the area of Sauget, Illinois. Their health and use of the air is impaired by the pollution in the air caused by the Onyx waste incinerator in Sauget. Onyx's waste incinerator emits criteria and hazardous air pollutants which negatively impact Plaintiffs' members. Plaintiffs' members are directly harmed by the Administrator's delay in responding to Plaintiffs' petition.

10. Additionally, Plaintiffs and their members would further participate in the public processes provided for by Congress in the Clean Air Act if the Administrator would timely respond to Plaintiffs' petitions, including the petition at issue in this case. The Administrator's failure to respond to Plaintiffs' petition negatively affects Plaintiffs' procedural rights under the CAA.

11. The Defendant is the Administrator of the United States Environmental Protection Agency ("U.S. EPA"). The Administrator is responsible for directing the activities of the U.S. EPA and implementing the requirements of the CAA. Specifically, the Administrator is statutorily required to respond to petitions under CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2).

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1331, and 28 U.S.C. § 2201. The relief requested by the Plaintiffs is authorized by statute in 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 7604.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2) and (3) because Plaintiff, Sierra Club, resides within the Northern District of Illinois and a substantial part of the events or omissions giving rise to the claim occurred within this district, at the EPA's Region 5 headquarters in Chicago, IL.

NOTICE

14. The Plaintiffs gave notice pursuant to and in compliance with the requirements in CAA § 304(b)(2), 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54. Plaintiffs notified the Administrator of their intent to file this action through an April 27, 2005 Notice of Intent to Sue Pursuant to § 304(b)(2) of the Clean Air Act. A true and accurate copy of this Notice is attached hereto as Exhibit A and incorporated herein.

15. The Notice of Intent was sent, via certified mail, to all required recipients and postmarked on April 27, 2005.

16. More than 60 days have passed since Plaintiffs provided their Notice of Intent to File Suit to the Administrator and others.

17. The Defendant has neither granted nor denied Plaintiffs' Petition. Thus, upon information and belief, the Defendant's failure to perform his nondiscretionary duty to grant or deny Plaintiffs' Petition is ongoing and will continue until enjoined and restrained by this Court.

COUNT 1

18. Onyx Environmental Services' hazardous waste incinerator is located in Sauget, Illinois (Onyx).

19. Onyx is a major stationary source of air pollution in the greater East St. Louis metropolitan area. As a major source, it is required to obtain a Clean Air Act Permit Program Title V Permit ("Title V Permit").

20. On or about September 11, 2003, Plaintiffs submitted public comments regarding the Onyx operating permit to the Illinois Environmental Protection Agency. These comments were submitted within the time provided for such comments under Illinois and federal law.

21. The Illinois Environmental Protection Agency submitted the proposed Title V Operating Permit for Onyx to the U.S. EPA on or about November 6, 2003. This submission commenced a 45-day period for the EPA to review the permit pursuant to CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1).

22. Upon the information and belief of the Plaintiffs, the Administrator did not object to the proposed operating permit for Onyx within the 45-day period provided by CAA § 505(b)(1), 42 U.S.C. § 7661d(b)(1). After the 45-day period expired, Plaintiffs could petition the Administrator to review and object to the permit.

23. On February 18, 2004, within the 60-day petition period provided by CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2), the Plaintiffs petitioned the Administrator to object to the Onyx operating permit. A true and accurate copy of the Plaintiffs' petition is attached as Exhibit B.

24. Plaintiffs provided a copy of their petition to the applicant, Onyx Environmental Services, pursuant to CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2).

25. Pursuant to CAA § 505(b), the Administrator had 60 days to grant or deny the Plaintiffs' petition. This 60-day period expired on or about April 21, 2004.

26. The Administrator's duty to grant or deny Plaintiffs' petition within 60 days, by April 21, 2004, is not discretionary.

27. As of the date of this Complaint, upon the Plaintiffs' information and belief, the Administrator has not granted or denied the Plaintiffs' petition.

28. The CAA provides Plaintiffs with a cause of action to compel the Administrator's non-discretionary duty to grant or deny Plaintiffs' timely petition in CAA § 304(a), 42 U.S.C. § 7604(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for this Court to:

- A. Declare that the Administrator has a non-discretionary duty to grant or deny Plaintiffs' petition within 60 days of receiving such petition;
- B. Declare that the Administrator's failure to grant or deny Plaintiffs' petition within 60 days is a violation of CAA § 505(b), 42 U.S.C. § 7661d(b);
- C. Order the Administrator to grant or deny the Plaintiffs' petition;
- D. Award the Plaintiffs the costs of this action, with reasonable attorney fees, pursuant to CAA § 304(d), 42 U.S.C. § 7604(d); and
- E. Grant such other relief as is just and proper.

Dated: July 28, 2005

Attorneys for Plaintiffs.

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