

BILL MACCLARENCE, P.E.)
10840 Glazanof Drive)
Anchorage, AK 99507,)
) Civil No. _____
v.)
)
STEPHEN L. JOHNSON, in his official)
Capacity as Administrator, United States)
Environmental Protection Agency,)
Ariel Rios Building)
1200 Pennsylvania Avenue, N.W.)
Washington, DC 20460,)
)
Defendant.)
_____)

I. INTRODUCTION

COMPLAINT -- 1

was dated February 5, 2004; and EPA received the petition on February 5, 2004. Despite the passage of over 60 days, Defendant has not responded to Plaintiff's petition.

II. JURISDICTION, VENUE AND NOTICE

2. This is a Clean Air Act citizen suit. Thus, this Court has subject matter jurisdiction over the claim set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(2), and has authority to award attorney fees pursuant to 42 U.S.C. § 7604(d). The Clean Air Act is a federal statute. Thus, this Court also has subject matter jurisdiction over the complaint pursuant to 28 U.S.C. § 1331 (federal question). An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of 1930. Thus this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

3. A substantial part of the alleged events or omissions giving rise to Plaintiff's claims occurred in the District of Columbia. In addition, Defendant Stephen Johnson officially resides in the District of Columbia. Thus, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

4. On October 9, 2006, Plaintiff mailed a letter via certified mail to Defendant Stephen L. Johnson stating that Plaintiff intended to sue Defendant for failure to respond to Plaintiff's petition for an objection to the BP permit within 60 days. On November 1, 2006 EPA sent Plaintiff a letter confirming EPA received Plaintiff's letter dated October 9, 2006, and assigned Plaintiff's letter Citizen Suit No. NCS-06-19.

5. More than 60 days have passed since Defendant received Plaintiff's notice of intent to sue letter. Defendant has not acted to remedy the violations alleged in this Complaint. Therefore, an actual controversy exists between the parties.

III. PARTIES

6. Plaintiff Bill MacClarence is an individual residing in Anchorage, Alaska. Mr. MacClarence is an avid outdoor enthusiast. Mr. MacClarence is deeply concerned about air quality and its effects on the health and welfare of people, plants, and animals.

7. EPA's failure to respond to his petition adversely affects Mr. MacClarence. Mr. MacClarence suffers from ocular melanoma in the left eye, the occurrence of which is correlated with high exposure to ultraviolet light. Pollution from BP Exploration (Alaska) Inc.'s Gathering Center #1 contributes to the destruction of stratospheric ozone, thus increasing medical risks for Mr. MacClarence. In addition, Mr. MacClarence regularly visits areas of northern Alaska which are impacted by pollution from the BP Exploration (Alaska) Inc.'s Gathering Center #1. Mr. MacClarence is adversely affected by pollution from this facility because such pollution impairs visibility, endangers his health, impairs water quality and has other adverse impacts, and because such pollution diminishes his enjoyment of these areas. Further, Mr. MacClarence invested his personal time in preparing the petition. However, Mr. MacClarence will not realize the benefit of his investment of his personal time, including the benefit of obtaining information in the form of a response, until EPA responds to his petition. Thus, Mr. MacClarence's scientific, educational and informational interests in his petition are adversely affected by EPA's failure to timely respond to his petition.

8. Mr. MacClarence's interests in protecting air quality and limiting pollutants which degrade stratospheric ozone are adversely affected by EPA's failure to timely respond to his petition. Moreover, if the BP Exploration (Alaska) Inc.'s Gathering Center #1 does not comply with the Clean Air Act, Mr. MacClarence will be exposed to pollutants from those facilities which are in excess of legal levels. EPA's failure to respond thus prevents Mr. MacClarence from being certain that the BP permit protects him from exposure to pollutants emitted by that facility which are in excess of legal limits.

9. EPA's failure to respond to Plaintiff's petition has caused, is causing, and unless this Court grants the requested relief, will continue to cause Plaintiff concrete injuries, which are traceable to EPA's failure to act and will be redressed by EPA's action.

10. Defendant STEPHEN L. JOHNSON is the Administrator of the Environmental Protection Agency. The Administrator is responsible for implementing the Clean Air Act, including the requirement to grant or deny Plaintiff's petition within 60 days. Mr. Johnson is sued in his official capacity.

IV. LEGAL BACKGROUND

Title V

11. 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 an operating permit program that applies to all major sources of air pollution – the Title V permit program. See 42 U.S.C. §§ 7661-7661f.

12. A primary purpose of the Title V permitting program is to reduce violations of the Clean Air Act and improve enforcement by recording in one document all of the air pollution control requirements that apply to a source of emissions. See New York Public Interest Research Group v. Whitman, 321 F.3d 316, 320 (2d Cir. 2003). Major sources of air pollution cannot legally discharge pollutants into the air unless they have a valid Title V operating permit. 42 U.S.C. § 7661a(a).

13. The Clean Air Act provides that the Administrator of EPA may approve states' programs to administer the Title V permitting program with respect to sources within their borders. 42 U.S.C. § 7661a(d). The Administrator has approved Alaska's Title V permit program. The Alaska Department of Environmental Conservation ("Alaska DEC") is responsible for issuing Title V permits in Alaska.

14. Before a Title V permit can be issued by a state with an approved Title V permit program, the State must forward the proposed Title V permit to EPA. 42 U.S.C. § 7661d(a)(1)(B). EPA then has 45 days in which it can review the proposed permit. 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). However, as a practical matter, EPA does not review most proposed Title V permits forwarded to it by state permitting agencies.

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

16. Once it receives a petition for objection to a Title V permit, EPA must grant or deny that petition within 60 days. Id.; New York Public Interest Research Group v. Whitman, 214 F. Supp. 2d 1, 2 (D.D.C. 2002).

VI. STATEMENT OF FACTS

17. BP Exploration (Alaska) Inc.'s Gathering Center #1 processes crude oil from production wells in the vicinity of Prudhoe Bay, Alaska.

18. BP Exploration (Alaska) Inc.'s Gathering Center #1 emits volatile organic compounds, carbon monoxide, nitrogen oxides, sulfur dioxide, and hazardous air pollutants.

19. On or about February 21, 2002, Alaska DEC issued a draft Title V operating permit to BP Exploration (Alaska) Inc.'s Gathering Center #1 (Permit No. 182TVP01) and requested public comments on this draft permit.

20. Mr. MacClarence submitted written comments to Alaska DEC on the draft BP permit on March 23, 2002. Mr. MacClarence criticized the draft BP permit, in part, because it did not aggregate all of BP's contiguous and adjacent facilities into one permit, as required by the Clean Air Act and federal regulations.

21. Alaska DEC subsequently published a revised draft BP permit on March 7, 2003. This revised draft permit favorably responded to Mr. MacClarence's comments, and aggregated all of BP's contiguous and adjacent facilities into the draft permit.

22. On July 23, 2003, Alaska DEC reversed its March 7, 2003 draft BP permit, and submitted to EPA another version of the BP permit that disaggregated contiguous and adjacent BP facilities from the Gathering Center #1 permit. There was no public notice of this reversal. On August 14, 2003 EPA expressed their concern to Alaska DEC over the reversal.

23. On October 20, 2003, Alaska DEC published final permit 182TVP01 for BP Exploration (Alaska) Inc. Gathering Center #1. Like the July 23, 2003 version of the

permit, the final permit disaggregated contiguous and adjacent BP facilities from the Gathering Center #1 permit.

24. EPA did not object on its own initiative to the BP permit during its 45-day review period following receipt of the October 20, 2003 final permit.

25. Pursuant to 42 U.S.C. § 7661d(b)(2), via letter dated February 5, 2004, Mr. MacClarence timely submitted his petition to EPA seeking EPA's objection to the permit. EPA's office in Anchorage, Alaska, received the petition on February 5, 2004.

26. The petition raised the issue of Alaska DEC's failure to aggregate all BP facilities which are contiguous and adjacent to Gathering Center #1. This argument was raised specifically in Mr. MacClarence's comments to Alaska DEC during the public comment period for the BP permit.

27. Via electronic mail sent March 29, 2004, EPA notified Mr. MacClarence that Alaska DEC had made a minor revision to the BP permit and had provided such revision to EPA on December 31, 2003. Such revision did not address disaggregation, which was the basis of Mr. MacClarence's petition. However, on April 14, 2004, Mr. MacClarence resubmitted his February 5, 2004 petition to EPA.

28. As of the date of filing of this Complaint, EPA's online database lists Mr. MacClarence's petition as dated February 5, 2004, and lists the petition's status as "pending."

29. EPA had until on or about April 8, 2004, to grant or deny Plaintiff's original petition. 42 U.S.C. § 7661d(b)(2). However, EPA neither granted nor denied the petition within the statutory 60 day period. EPA still has not granted or denied the petition as of date of filing this Complaint.

VII. CLAIM FOR RELIEF

FAILURE TO RESPOND TO PLAINTIFF'S PETITION FOR OBJECTION TO THE BP EXPLORATION (ALASKA) INC. GATHERING CENTER #1 TITLE V PERMIT (42 U.S.C. § 7661d(b)(2))

30. Each allegation set forth in the Complaint is incorporated herein by reference.

31. EPA has a mandatory duty to respond within 60 days to Plaintiff's petition requesting that EPA object to the BP permit pursuant to 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed").

32. It has been more than 60 day since EPA received Plaintiff's petition requesting EPA object to the BP permit.

33. Defendant has not granted or denied Plaintiff's petition regarding the BP permit.

34. Defendant's failure to grant or deny the petition constitutes a failure to perform an act or duty that is not discretionary with Defendant within the meaning of Clean Air Act § 304(a)(2). 42 U.S.C. § 7604(a)(2).

35. Therefore, EPA has violated, and remains in violation of, its non-discretionary duty to grant or deny Plaintiff's petition within 60 days, as required by 42 U.S.C. § 7661d(b)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

A) Declare that Defendant's failure to grant or deny Plaintiff's petition for an objection to the BP Exploration (Alaska) Inc. Gathering Center #1 Title V permit

constitutes a failure to perform an act or duty that is not discretionary with the Defendant within the meaning of 42 U.S.C. § 7604(a)(2);

B) Order the Defendant to grant or deny Plaintiff's petition for an objection to the BP Exploration (Alaska) Inc. Gathering Center #1 Title V permit in accordance with an expeditious schedule prescribed by the Court;

C) Retain jurisdiction over this action to ensure compliance with the Court's Order;

D) Award Plaintiff his costs of litigation, including reasonable attorney fees; and

E) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

_____/s_____
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DATED: January 9, 2007.

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