

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	No. _____
)	
v.)	
)	
LISA JACKSON, in her official capacity as)	COMPLAINT FOR
Administrator, United States)	DECLARATORY AND
Environmental Protection Agency)	INJUNCTIVE RELIEF
)	
Defendant.)	
_____)	

INTRODUCTION

1. This is a straightforward, Clean Air Act deadline suit. 42 U.S.C. §§ 7401-7671q. Plaintiff WildEarth Guardians (“Guardians”), seeks an order declaring that the Defendant Lisa Jackson, the Administrator of the U.S. Environmental Protection Agency (“EPA”) must issue or deny an air pollution operating permit in accordance with the Clean Air Act and an order compelling timely compliance.

2. On July 29, 2011, the Administrator formally objected to the issuance of a Clean Air Act Title V Operating Permit (“Permit”) issued by the State of New Mexico for the Sims Mesa natural gas processing facility in Rio Arriba County, New Mexico. The Administrator objected because the Permit failed to comply with the Clean Air Act.

3. The Clean Air Act expressly requires that where a State fails to respond to address an objection within 90 days, the Administrator must issue or deny the Title V Permit in question. See 42 U.S.C. § 7661d(c). It has been more than 160 days since the Administrator issued her objection. As of the date of this complaint, the State of New Mexico has not responded to meet the objection and the Administrator has not issued or denied the Sims Mesa

Title V Permit. Therefore, the Administrator is in violation of her nondiscretionary duty under the Clean Air Act.

JURISDICTION, VENUE, AND NOTICE

4. This Court has federal question jurisdiction, because Guardians claims a violation of the Clean Air Act, a federal statute. 28 U.S.C. § 1331 (federal question jurisdiction). This Court has subject matter jurisdiction over the claim in this Complaint pursuant to the citizen suit provision of the Clean Air Act because the Administrator has failed to perform a non-discretionary act or duty under the Clean Air Act. 42 U.S.C. § 7604(a)(2) (citizen suit provision of the Clean Air Act). The requested relief is authorized by statute. 28 U.S.C. § 2201 (declaratory judgment); 28 U.S.C. § 2202 (injunctive relief); and 42 U.S.C. § 7604(d) (costs and attorney fees).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events and omissions giving rise to Guardians' claim occurred in the District of New Mexico. Additionally, Guardians' main office is located in Santa Fe, New Mexico.

6. Guardians properly gave the Administrator more than 60-days written notice of the violation alleged in this Complaint and of Guardians' intent to bring suit to remedy that violation. See 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2 and 54.3. Guardians provided notice to the Administrator on October 28, 2011. The Administrator received that notice on November 3, 2011. More than 60 days have passed since the Administrator received Guardians' notice letter. The Administrator has not remedied the violations alleged in Guardians' notice letter and this Complaint.

PARTIES

7. Plaintiff WILDEARTH GUARDIANS is a non-profit conservation organization with its main office in Santa Fe, New Mexico. Guardians is dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West, and to safeguarding the Earth's climate and air quality. Guardians and its members work to reduce harmful air pollution in order to safeguard public health, welfare, and the environment. Guardians has approximately 4,135 members, many of whom live, work, and/or recreate in areas affected by pollution from the Sims Mesa natural gas processing plant in Rio Arriba County.

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

9. Guardians' members live, work, and recreate around the Sims Mesa natural gas processing plant. Guardians' members breathe, use and enjoy the ambient air around the area of the Sims Mesa plant. Those members are adversely affected because they are reasonably concerned about their health and their use of the air, which is impaired by the pollution from the facility. Guardians' members are directly harmed by the Administrator's delay in issuing or denying a final Title V Permit because such permit or permit denial would result in fewer air pollution emissions than currently emitted from Sims Mesa.

10. Additionally, Guardians and its members would further participate in the public processes provided for by Congress in the Clean Air Act if the Administrator would timely issue or deny a Title V Permit for the Sims Mesa facility. Guardians and its members have the right to petition for review of the Permit terms and to enforce the Permit terms once it is issued. The Administrator's failure to timely grant or deny a Title V for Sims Mesa negatively affects Guardians' procedural rights under the Clean Air Act.

11. Further still, the final Permit is required to include monitoring and reporting of air pollution emissions and compliance with all applicable permit limits and requirements. Guardians regularly reviews such reporting and has specific plans to review that reporting as to the Sims Mesa facility. The Administrator's failure to grant or deny a timely Title V Permit further injures Guardians because Sims Mesa is not subject to monitoring and reporting all of the information which Plaintiff plans to make use of to ensure that Sims Mesa is not emitting air pollution in excess of its permit limits.

12. Defendant LISA JACKSON is the Administrator of the EPA. The Administrator is responsible for implementing the Clean Air Act, including the requirement to issue or deny a Title V Permit when the State of New Mexico fails to timely respond to an objection. Ms. Jackson is sued in her official capacity.

REQUIREMENTS OF THE CLEAN AIR ACT

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. A primary purpose of the Title V permitting program is to reduce violations of the Clean Air Act and improve enforcement by recording in a single document all of the air pollution control requirements that apply to a major source of air pollution. See New York Public Interest Research Group v. Whitman, 321 F.3d 316, 320 (2nd Cir. 2003). Major sources of air pollution cannot legally discharge pollutants into the air unless they have a valid Title V Permit. See 42 U.S.C. § 7661a(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 has approved New Mexico's administration of its Title V permitting program. See 69 Fed. Reg. 54,244-47 (Sept. 8, 2004). The New Mexico Environment Department, Air Quality Bureau is responsible for issuing Title V Permits in New Mexico.

16. Before a state with an approved Title V Permit program can issue a Title V Permit, the State must forward the proposed Permit to EPA. See 42 U.S.C. § 7661d(a)(1)(B). EPA then has 45 days to review the proposed Permit. EPA must object to the issuance of the Permit if it finds that the permit does not comply with all applicable provisions of the Clean Air Act. See 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 proposed Permit. 42 U.S.C. § 7661d(b)(2).

18. Once EPA receives such a petition, 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 grants a petition for objection to a Permit, the State must submit a Permit revised to meet the objection. If the State fails to submit a Permit revised to meet the objection within 90 days, EPA "shall issue or deny the permit[.]" 42 U.S.C. § 7661d(c). Specifically, if the State fails to "terminate, modify, or revoke and reissue the permit" and resolve the objection within 90 days, the EPA must "terminate modify, or revoke and reissue the permit" in accordance with 40 C.F.R. § 71.7(g). See also 40 C.F.R. § 71.4(e).

20. Once EPA issues or denies the Permit, under 40 C.F.R. § 71.4(e), the State of New Mexico may thereafter issue a Title V Permit in accordance with 40 C.F.R. § 70, but such a State-issued Title V Permit will only replace any EPA-issued Title V Permit if EPA determines that such a state-issued Permit has resolved the Administrator's July 29, 2011 objection.

21. Under the Clean Air Act, citizens may file suit against the EPA Administrator where there is "alleged a failure of the Administrator to perform any act or duty under [the Clean Air Act] which is not discretionary with the Administrator[.]" 42 U.S.C. § 7604(a)(2). Such a suit may be commenced only "60 days after" notice has been given to the Administrator. 42 U.S.C. § 7604(b)(2).

FACTUAL ALLEGATIONS

22. The Sims Mesa natural gas processing plant is a major stationary source of air pollution located in Rio Arriba County, New Mexico. The facility consists of natural gas-powered reciprocating engines that compress and dehydrate pipeline quality natural gas for pipeline transmission. Incoming gas is routed to triethylene glycol dehydrators where water and some hydrocarbons are removed from the stream. The plant then boils off water and hydrocarbons, reclaiming the triethylene glycol solution. The resulting water is then stored in above ground storage tanks.

23. According to the Statement of Basis for the Title V Operating Permit, the Sims Mesa natural gas processing plant has the potential to emit 194.8 tons of nitrogen oxides ("NO_x"), 356.8 tons of carbon monoxide, 171.6 tons of volatile organic compounds ("VOCs"), and 39.6 tons of hazardous air pollutants. These include 2.8 tons of benzene (a known carcinogen) and 22 tons of formaldehyde.

24. Guardians submitted detailed comments on December 18, 2009 on the draft Operating Permit for Sims Mesa, raising a number of concerns over the failure of the Permit to assure compliance with the Clean Air Act. The State of New Mexico ultimately rejected Guardians' comments and submitted the proposed Permit to EPA on December 30, 2009. EPA's 45-day review period for the Permit ended on February 13, 2010. On April 14, 2010, Guardians filed a petition requesting that the Administrator object to the issuance of the Permit for the Sims Mesa natural gas processing plant on the basis that the Title V permit 1) failed to assure compliance with Clean Air Act Prevention of Significant Deterioration permitting requirements, 2) failed to require sufficient periodic monitoring to assure the facility complies with NO_x and carbon monoxide limits, 3) failed to require VOC monitoring to assure compliance with emission limits, 4) failed to require prompt reporting of permit deviations, and 5) inappropriately deemed that compliance with the terms of the Permit automatically protected the National Ambient Air Quality Standards.

25. On July 29, 2011, the Administrator granted Guardians' petition in its entirety and objected to the Title V Permit, finding that the State of New Mexico failed to adequately respond to comments and failed to justify that the Operating Permit complied with the Clean Air Act. See *In the Matter of Williams Four Corners, LLC Sims Mesa CDP Compressor Station*, Petition VI-2011-__ at 18-19 (July 29, 2011) (hereafter "Sims Mesa ruling"), available at http://www.epa.gov/region7/air/title5/petitiondb/petitions/simsmesa_response2010.pdf (last accessed Jan. 10, 2012).

26. Despite the Administrator's ruling, the State of New Mexico has not addressed the objection or otherwise submitted a Permit revised to meet the Administrator's objection. It has now been more than 160 days since the Administrator objected to the Permit, and the State

of New Mexico still has not responded to the objection in accordance with the Clean Air Act. Pursuant to the Clean Air Act, the Administrator was required to issue or deny the Title V Permit if the State of New Mexico failed to respond to the objection within 90 days, or by October 27, 2011. As of the date of this complaint, the Administrator has not issued or denied the Title V Permit.

27. On October 28, 2011, Guardians provided notice to the Administrator of her failure to perform a nondiscretionary duty under the Clean Air Act related to her obligation to issue or deny the Permit for the Sims Mesa natural gas processing plant after the State of New Mexico failed to revise the permit to respond to the objection within 90 days.

CLAIM FOR RELIEF

Failure to Issue or Deny the Sims Mesa Operating Permit, a Nondiscretionary Duty Under the Clean Air Act

28. Every allegation set forth in this Complaint is incorporated herein by reference.

29. The Administrator was required to issue or deny the Title V Permit for the Sims Mesa natural gas processing plant if the State of New Mexico failed to submit a Permit revised to meet the Administrator's July 29, 2011 objection within 90 days.

30. Given that the State of New Mexico has not yet submitted a permit revised to meet the Administrator's objection to the State-issued Title V Permit for the Sims Mesa natural gas processing plant, the Administrator has a nondiscretionary duty to issue or deny the Title V Permit for the facility. See 42 U.S.C. § 7661d(c).

29. 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)(2). EPA's violation is ongoing, and will continue unless remedied by this Court.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff WildEarth Guardians 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 issue or deny the Title V Permit for the Sims Mesa natural gas processing plant;
- B. An order compelling EPA to issue or deny the Title V Permit for the Sims Mesa natural gas processing plant in accordance with an expeditious schedule prescribed by the Court;
- 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 Guardians its costs of litigation, including reasonable attorney's fees pursuant to 42 U.S.C. § 7604(d); and
- E. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 11th day of January 2012.

/s/ Samantha Ruscavage-Barz
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