

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

X

FINGER LAKES ZERO WASTE COALITION, INC.
P.O. Box 865
Geneva NY 14456, and

KATHERINE M. BENNETT ROLL, as president of Finger Lakes
Zero Waste Coalition, Inc.
3688 Number Nine Road
Geneva, NY 14456

Plaintiffs,

**COMPLAINT FOR RELIEF
UNDER THE CLEAN AIR ACT**

v.

GINA MCCARTHY, in her official
capacity as Administrator,
United States Environmental
Protection Agency,
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Civil No. 14-cv-6542

Assigned Judge/Magistrate:

and

THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Defendants.

X

Plaintiffs allege on information and belief as follows:

NATURE OF THIS ACTION

1. This is a civil action for declaratory and injunctive relief under the Federal Clean Air Act ("the Act"), 42 U.S.C. §§ 7401 through 7671q. This action seeks relief from the failure of defendant Gina McCarthy, Administrator of the Environmental

Protection Agency ("EPA"), to perform her non-discretionary duty to grant or deny an administrative petition submitted to EPA by the Plaintiffs pursuant to §505(b)(2) of the Act, 42 U.S.C. §7661d(b)(2). The petition that gives rise to this action seeks EPA's objection to a landfill gas-to-energy facility operating permit issued by the New York State Department of Environmental Conservation ("NYSDEC"). Under the § 505(b)(2) of the Act, 42 U.S.C §7661d(b)(2), EPA was required to grant or deny the petition within 60 days after it was filed. Though well over 60 days has passed since Plaintiffs filed their petition, EPA has not granted or denied any the petition.

JURISDICTION

2. This court has subject matter jurisdiction over the claim set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of Clean Air Act), 28 U.S.C. § 1331 (federal question statute), and 28 U.S.C. § 2201 (declaratory judgment statute). The relief requested is authorized by 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 7604.

3. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the Western District of New York.

NOTICE

4. On May 16, 2014, Plaintiffs provided notice to the EPA Administrator of plaintiffs' intent to file a citizen suit due to EPA's failure to comply with the 60-day deadline under 42 U.S.C §7661d(b) (2) for granting or denying the petition identified in Counts one through six of this complaint. The notice letter filed with respect to the petition involved in this action complies with § 304 of the Act, 42 U.S.C. § 7604(b) (2), and 40 C.F.R. Part 54.

5. More than 60 days have passed since the postmark on the notice letter. See 42 U.S.C. § 7604(b) (2). Defendant violated and remains in violation of 42 U.S.C §7661d(b) (2) by failing to grant or deny Plaintiff's petition.

PARTIES

6. Plaintiff Katherine M. Bennett Roll lives and owns property on Number Nine Road, in Geneva, New York, approximately 1,000 yards from the landfill gas-to-energy facility.

7. Plaintiff Finger Lakes Zero Waste Coalition, Inc., (hereafter, "FLZWC"), was incorporated on February 17, 2009 under New York's Not-for-Profit Corporation Law corporate status, with a mission "to promote air and water quality in the Finger Lakes Region of New York State in order to protect community health; to stimulate public interest and awareness in the areas of waste

reduction, responsible recycling and renewable energy; to cooperate with similar organizations in carrying out any of the purposes for which the organization is formed; and to engage in legislative activities in support of the purposes for which the organization is formed."

8. Pursuant to its mission, on December 22, 2012 FLZWC filed the administrative petition seeking EPA's non-discretionary action that provides the underlying subject of this complaint.

9. Plaintiffs' petition alleges, among other things, that the Clean Air Act, Title V permit issued for the landfill gas-to-energy facility is based on an incomplete permit application, fails to include adequate monitoring and reporting of compliance with air quality requirements, and illegally sanctions the violation of applicable requirements under the Act. While EPA delays action on Plaintiffs' petition, the facility that is the subject of the petition is allowed to operate pursuant to a defective permit. Thus, Plaintiffs are directly and adversely impacted by EPA's delay in granting or denying the petition.

10. Defendant Gina McCarthy 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 Plaintiffs' petition within 60 days after they were filed. Defendant United States Environmental Protection Agency is an agency of the United States Government.

STATEMENT OF FACTS

11. On December 22, 2012, Plaintiffs filed a petition with EPA seeking EPA's objection to the Clean Air Act Title V operating permit issued by NYSDEC to the Ontario County Landfill Gas-to-Energy Facility, and operated by Seneca Energy II, LLC ("SE") (Permit I.D. DEC 8-3244-00040/00002) pursuant to 42 U.S.C. § 7661d(b)(2) (the "petition").

12. The SE facility is a major air pollution source located on the site of the Ontario County Landfill ("the landfill"), in the Village of Stanley, New York, with a business office at 2999 Judge Road, in the Cit of Oakfield, New York.

13. Plaintiffs filed the petition within 60 days after the expiration of EPA's 45 day period for review of the then-proposed Title V permit consistent with U.S.C. § 7661d(b)(2).

14. Plaintiff's petition was based upon objections raised during the public comment period consistent with U.S.C. § 7661d(b)(2).

15. Plaintiffs' petition complies fully with 42 U.S.C. § 7661d(b)(2).

16. Pursuant to 42 U.S.C. § 7661d(b)(2), EPA had 60 days to grant or deny Plaintiffs' petition.

17. More than 60 days have passed since EPA received Plaintiff's petition and EPA has not granted or denied

Plaintiff's petition.

FIRST CLAIM FOR RELIEF

Failure to Respond to Petition

18. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 18 as though fully set forth.

19. On December 22, 2012, Plaintiffs filed their petition with EPA pursuant to 42 U.S.C. § 7661d(b) (2).

20. EPA failed to grant or deny Plaintiffs' petition within 60 days, has not granted or denied Plaintiffs' petition after more than eighteen months, and has not granted or denied Plaintiffs' petition as of the date of this complaint.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Honorable Court:

22. DECLARE that Defendants' failure to perform their nondiscretionary duty to grant or deny Plaintiffs' administrative petition within sixty days is a violation of §505(b) of the Clean Air Act, 42 U.S.C. §7661d(b);

23. ORDER Defendants to grant or deny the petition within

ten calendar days of this Court's ruling;

24. ORDER Defendants to comply with the 60-day deadline set forth at § 505(b) of the Act, 42 U.S.C. §7661d(b) for granting or denying public petitions seeking Defendants' objection to Title V permits;

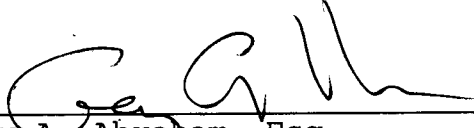
25. ORDER Defendants to pay Plaintiffs their costs of litigation, including but not limited to reasonable attorney fees, as authorized in Section 304(d) of the Act, 42 U.S.C. § 7604(d); and

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

Dated: Allegany, New York

September 16, 2014

By: _____


Gary A. Abraham, Esq.
Attorney for Plaintiffs
170 No. Second Street
Allegany, New York 14706
(716) 372-1913

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FINGER LAKES ZERO WASTE COALITION, INC., and
KATHERINE M. BENNETT ROLL

(b) County of Residence of First Listed Plaintiff ONTARIO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

GARY A. ABRAHAM, 170 NO. SECOND STREET, ALLEGANY, NY
14706, (716) 372-1913

DEFENDANTS

GINA McCARTHY, as Administrator, and
THE U.S. ENVIRONMENTAL PROTECTION AGENCY

County of Residence of First Listed Defendant DISTRICT OF COLUMBIA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☒ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 7661d(b)

Brief description of cause:

Failure to perform a non-discretionary duty to grant or deny a petition submitted to EPA by the Plaintiffs

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 16, 2014
FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

for the

Western District of New York

FINGER LAKES ZERO WASTE COALITION, INC., and
KATHERINE M. BENNETT ROLL

Plaintiff(s)

v.

GINA McCARTHY, Administrator, and
THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Defendant(s)

Civil Action No. **14-cv-6542**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

GINA McCARTHY, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Western District of New York

FINGER LAKES ZERO WASTE COALITION, INC., and
KATHERINE M. BENNETT ROLL

Plaintiff(s)

v.

GINA McCARTHY, Administrator, and
THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Defendant(s)

Civil Action No. **14-cv-6542**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Eric H. Holder, Jr., U.S. Attorney General
U.S. Department of Justice
Civil Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

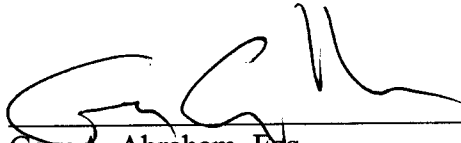
CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule 7.1, Petitioner FINGER LAKES ZERO WASTE COALITION, INC. states that this Petitioner has no parent corporation.

Respectfully submitted,

FINGER LAKES ZERO WASTE COALITION, INC.,

by its attorney,

A handwritten signature in black ink, appearing to read 'G. Abraham', is written over a horizontal line.

Gary A. Abraham, Esq.
Attorney for Plaintiffs
170 No. Second Street
Allegany, New York 14706
(716) 372-1913