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AGW-00-9820

May 16, 2014

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Administrator Gina McCarthy  
United States Environmental Protection Agency  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

RECEIVED  
2014 MAY 20 PM 2:44  
OFFICE OF THE  
EXECUTIVE SECRETARIES

Subject: Notice of intent to sue for failure to perform non-discretionary duty under the Clean Air Act to respond to Petition requesting that the Administrator object to the Title V operating permit for the Seneca Energy II, LLC, Ontario County Landfill Gas to Energy Facility, Permit No. 8-3244-00040/00002

Dear Administrator McCarthy:

This letter is served upon you in compliance with Section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), and 40 C.F.R. § 54, and provides you with sixty days notice of intent to sue by Finger Lakes Zero Waste Coalition, Inc. (“Petitioner”) for your failure to respond within 60 days to the above-referenced timely submitted Petition. Any response to this notice of intent to sue should be directed to Petitioner’s counsel, the undersigned.

You have violated your non-discretionary duty by failing to grant or deny the Petitioner’s request that you object to the Title V Air Operating Permit No. 8-3244-00040/00002, which was received by the EPA from the New York State Department of Environmental Conservation on or about September 11, 2012. The EPA did not object to the proposed permit within 45 days of receipt and, on December 22, 2012, Petitioner submitted a Petition requesting that the EPA object within the next 60 days. Section 505(b)(2) of the Clean Air Act 42 U.S.C. § 7661d(b)(2) instructs the Administrator of the EPA to respond to such a petition within sixty days of receipt. It is over sixteen months past the sixty-day deadline, and you and the EPA have failed to act on Petitioner’s request and are thus in violation of your non-discretionary duty to respond. 42 U.S.C. § 7661d(b)(2).

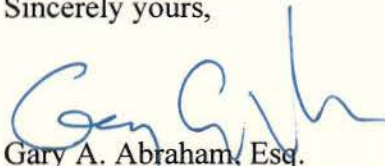
Section 505(b)(2) of the Clean Air Act and 40 C.F.R. §70.8 provides that if the “Administrator does not object in writing to the issuance of a permit

pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day EPA review period specified in paragraph (1) to take such action." 42 U.S.C. § 7661d(b)(2). Following receipt of such a petition, "the Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. §7661d(b)(2).

Where there is a failure by the Administrator to perform a non-discretionary act or duty under the Clean Air Act, a civil action is available to enjoin such action. 42 U.S.C. § 7604(a)(2). Accordingly, at the close of sixty days from the postmark date of this notice of intent to sue, the Petitioners intend to file suit against you and EPA in federal district court under Section 304 of the Clean Air Act, 42 U.S.C. § 7604(a)(2), seeking declaratory relief, an injunction requiring prompt action on the Finger Lakes Zero Waste Coalition petition that is overdue, and an award of litigation expenses.

If you have questions or concerns regarding this matter, please contact me.

Sincerely yours,



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

cc:

Judith Enck, Regional Administrator  
U.S. Environmental Protection Agency, Region II  
290 Broadway  
New York, New York 10007-1866