

IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COUNTY OF BERKS,)
PENNSYLVANIA,)
633 Court Street)
Reading, PA 19601)

Plaintiff)

v.)

Civil Action No. _____

GINA McCARTHY)
in her Official Capacity as)
Administrator,)
United States Departmental)
Protection Agency)
Aerial Rios Building)
1200 Pennsylvania Avenue, N.W.)
Washington, DC 20460)

Defendant)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff County of Berks, Pennsylvania, brings this Clean Air Act citizen suit to compel the United States Environmental Protection Agency (“EPA”) to undertake an overdue mandatory duty. Specifically, Defendant, the Administrator of the EPA, has failed to make a finding of failure to submit two

State Implementation Plans by the Commonwealth of Pennsylvania related to the 2008 Lead National Ambient Air Quality Standards (“NAAQS”) pursuant to 42 U.S.C. § 7410(k)(1)(B).

JURISDICTION

2. This case is a Clean Air Act citizen suit. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

3. An actual case or controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 506 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.

NOTICE

4. On July 16, 2013, Plaintiff mailed to EPA by certified mail written notice of the violations alleged in this Complaint. The notice mailed by Plaintiff was addressed to Bob Perciasepe, then-Acting Administrator of the EPA. Gina

McCarthy, Administrator of the EPA, is substituted in this action as the successor to Mr. Perciasepe in his official duties.

5. EPA received Plaintiff's written notice on July 22, 2013. More than sixty days have passed since EPA received the Plaintiff's notice letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists.

VENUE

6. Defendant EPA (Region 3) resides in this judicial district. This civil action is brought against an officer of the United States acting in his official capacity and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Eastern District of Pennsylvania. Plaintiff's claims concern EPA's failure to perform mandatory duties with regard to the Commonwealth of Pennsylvania and, specifically, two geographic areas within the Eastern District of Pennsylvania. EPA Region 3, whose jurisdiction includes Pennsylvania, is headquartered in Philadelphia, Pennsylvania. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

7. Plaintiff County of Berks, Pennsylvania (the "County"), is a county government, existing and acting pursuant to the Constitution and laws of the Commonwealth of Pennsylvania.

8. The County is a “person” within the meaning of 42 U.S.C. § 7602(e), and may commence a civil action under 42 U.S.C. § 7604(a).

9. The County’s staff and employees live, work, recreate, and travel throughout the areas at issue in this case and will continue to do so on a regular basis. Lead in the affected areas threatens, and will continue to threaten, the health and welfare of the County’s staff and employees.

10. The County owns, operates, manages, and maintains properties throughout the geographic boundaries of Berks County, and does so for the benefit of the public. These properties include parks and recreation areas open to the public for the purposes of hiking, biking, swimming, equestrian uses, wildlife observation, and environmental and historic education. Lead in the affected areas, as well as lead deposition on these properties, diminishes the value of such properties and the public’s ability to enjoy their aesthetic, recreational, and educational qualities.

11. Property values in the affected areas are reduced by known and perceived lead pollution of air, water, and soils. Reductions in property values erode the tax base the County utilizes to pay costs and provide services.

12. EPA’s failure to timely perform the mandatory duties described in this Complaint also adversely affects the County by depriving it of procedural protection and opportunities as well as information which it is entitled to under the

Clean Air Act. The failure of EPA to perform the mandatory duties described in this Complaint also creates uncertainty as to whether the County and its staff and employees, as well as the County's property and the properties constituting its tax base, are exposed to and affected by excess air pollution.

13. The above injuries will continue until the Court grants the relief requested in this Complaint.

14. The United States Environmental Protection Agency is the federal agency charged with implementation and enforcement of the Clean Air Act.

15. Defendant Gina McCarthy is sued in her official capacity as the Administrator of the United States Environmental Protection Agency. In that role, Administrator McCarthy has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

LEGAL BACKGROUND

16. The purpose of the modern Clean Air Act is "to speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again." H.R. Rep. No. 91-1146, at 1(1970), as reprinted in 1970 U.S.C.C.A.N. 5356, 5356.

17. Section 108 of the Clean Air Act directs the Administrator to identify "criteria pollutants," which are those air pollutants the "emissions of which, in his

judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare.” 42 U.S.C. § 4708.

18. For each criteria pollutant, EPA is required to establish primary and secondary National Ambient Air Quality Standards (“NAAQS”).

42 U.S.C. § 7409(b)(2). EPA must establish primary NAAQS at a level “requisite to protect the public health.” 42 U.S.C. § 7409(b)(1). EPA must establish secondary NAAQS as a level “requisite to protect the public welfare,”

42 U.S.C. § 7409(b)(2), including soils, water, crops, vegetation, manmade materials, animals, wildlife, property, economic values and personal comfort and well-being, 42 U.S.C. § 7602(h). EPA must review and revise each NAAQS every five years. 42 U.S.C. § 7609(d)(1).

19. When EPA promulgates a NAAQS for a criteria pollutant, states are required, within one year, to submit to the EPA a list designating any area that does not meet the primary or secondary NAAQS for that pollutant as “nonattainment.”

42 U.S.C. § 7407(d)(1)(A). EPA must promulgate the designations submitted by the states within two years of promulgating the NAAQS.

42 U.S.C. § 7407(d)(1)(B).

20. States containing an area designated as nonattainment with respect to the primary NAAQS for, among other pollutants, lead, under Section 7407(d) of the Clean Air Act, must submit to the EPA an applicable State Implementation

Plan (“SIP”) within 18 months of the designation. 42 U.S.C. § 7514(a). The SIP must provide for attainment of the relevant primary NAAQS “as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.” 42 U.S.C. § 7514a(a).

21. No later than six months after the date by which a state is required to submit a SIP, the EPA is required to determine whether the SIP is administratively complete. 42 U.S.C. § 7410(k)(1)(B).

22. In enacting the Clean Air Act, Congress recognized that the timely development and review of SIPs is essential to controlling air pollutants and attaining the mandates and intended benefits of the Clean Air Act.

S. Rep. No. 91-1196, at 11-15 (1970).

23. If a state fails to submit a required SIP, there is no plan to be determined administratively complete, and the EPA must find that the state failed to submit the required SIP. 42 U.S.C. § 7410(k)(1)(B).

FACTUAL BACKGROUND

24. Lead is emitted into the air predominantly in particulate form. These lead particles, which occur in varying sizes, travel varying distances depending on their size.

25. Once deposited out of the air, lead can be resuspended into the ambient air, contributing to lead concentrations in various media, such as air, water, and soils, for years to come.

26. Exposure to lead emitted into the ambient air can occur directly through inhalation, or indirectly by ingestion of lead-contaminated food and water, and through contaminated materials such as soil.

27. The health effects of lead include damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells.

28. Lead exposure is particularly damaging to children, leading to IQ loss, poor academic achievement, long-term learning disabilities, and an increased risk of delinquent behavior.

29. The environmental effects of lead can last for many decades, and are associated with decreased species diversity, loss and decreased growth of vegetation, and increased numbers of invasive species.

30. The EPA promulgated the current NAAQS for lead in 2008, which became effective on January 12, 2009 (hereinafter the “2008 Lead NAAQS”). 73 Fed. Reg. 66964 (Nov. 12, 2008). EPA revised both the primary and secondary NAAQS level to 0.15 micrograms per cubic meter; one-tenth the previous level. The 2008 levels were determined by the EPA to be those requisite to protect the public health and public welfare. 73 Fed. Reg. 66964, 67007, 67011.

31. On November 22, 2010, EPA published notice that certain areas of the country were designated as nonattainment for the 2008 Lead NAAQS, effective December 31, 2010. 75 Fed. Reg. 71033, 71043-71044. Two of these areas are the North Reading 2008 Lead NAAQS Nonattainment Area (“North Reading Nonattainment Area”) and the Lyons 2008 Lead NAAQS Nonattainment Area (“Lyons Nonattainment Area”). Id.

32. Both the North Reading Nonattainment Area and the Lyons Nonattainment Area are located in Berks County, Pennsylvania.

CLAIM FOR RELIEF
CLAIM ONE

33. The allegations set forth in paragraphs 1 through 32 are incorporated by reference as though fully set forth.

34. Pennsylvania was required to submit SIPs for the North Reading Nonattainment Area and the Lyons Nonattainment Area within eighteen months of the effective date of the nonattainment designations, i.e. by June 30, 2012.

75 Fed. Reg. 71033, 71035.

35. As of the date of this Complaint, the Pennsylvania Department of Environmental Protection (“PA DEP”) has not submitted SIPs for either the North Reading Nonattainment Area or the Lyons Nonattainment Area.

36. The EPA has a mandatory duty to make a completeness finding no later than six months after the date that a state is to submit a SIP or SIPs.

42 U.S.C. § 7410(k)(1)(B). EPA was required to make findings of failure to submit SIPs for the North Reading Nonattainment Area and the Lyons Nonattainment Area no later than December 30, 2012.

37. When EPA makes such a finding of failure to submit a SIP, two regulatory time periods begin: one for the imposition of sanctions against the state in question to encourage timely compliance, 42 U.S.C. § 7509(b); and one for the EPA to promulgate a Federal Implementation Plan, 42 U.S.C. § 7410(c)(1). When the EPA fails to make a finding, the areas are left to languish in nonattainment.

38. To date, EPA has not made findings that Pennsylvania has failed to submit SIPs for the North Reading Nonattainment Area or the Lyons Nonattainment Area, and is therefore in violation of its mandatory duty.

REQUEST FOR RELIEF

WHEREFORE, the County of Berks, Pennsylvania, respectfully requests that the Court:

1. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform the mandatory duties set forth above;
2. Issue an injunction requiring the Administrator to perform her mandatory duties within 30 days;

3. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's order;
4. Award costs of litigation, including reasonable attorney and expert witness fees, to the Plaintiff; and
5. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

STOCK AND LEADER

December 2, 2013

Date

By: Alexandra Chiaruttini

Alexandra C. Chiaruttini, Esquire
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Christopher L. Ryder, Esquire
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JS 44 (Rev. 12/12)

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.)

<p>I. (a) PLAINTIFFS County of Berks, Pennsylvania</p> <p>(b) County of Residence of First Listed Plaintiff <u>Berks</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Alexandra C. Chiaruttini, Esquire Stock and Leader 221 W. Philadelphia Street, Suite E600 York, PA 17401 (717) 846-9800</p>	<p>DEFENDANTS Environmental Protection Agency Gina McCarthy, Administrator</p> <p>County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY - PRODUCT LIABILITY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input checked="" type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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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. §7604(a)(2)

Brief description of cause:
Failure to perform mandatory duties

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 12/2/13

SIGNATURE OF ATTORNEY OF RECORD
Christyandra C. Chianetti

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 633 Court Street, Reading, PA 19601

Address of Defendant: U.S. Environmental Protection, Ariel Rios Building, 1200 Pennsylvania Avenue N.W., Washington, DC 20004

Place of Accident, Incident or Transaction: Inactions of Administrator relate to two areas in Berks County, and inactions

(Use Reverse Side For Additional Space) occurred at U.S. EPA Region 3 located at 1650 Arch Street Philadelphia, Pennsylvania 19103

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [] No [X]

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No []
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No []
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No []
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No []

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [X] All other Federal Question Cases (Please specify) Clean Air Act

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability — Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Alexandra C. Chiaruttini, counsel of record do hereby certify:

- [] Pursuant to Local Civil Rule 53.2, Section 3(e)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
[X] Relief other than monetary damages is sought.

DATE: Dec. 2, 2013 [Signature] Attorney-at-Law

80428 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: Dec. 2, 2013 [Signature] Attorney-at-Law

80428 Attorney I.D.#

JLS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

County of Berks

CIVIL ACTION

v.

Gina McCarthy

AR

NO. **13 7136**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

December 2, 2013

Alexandra C. Chiaruttini

Plaintiff

Date

Attorney-at-law

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