



Tulane Environmental Law Clinic

May 4, 2016

Ref: 186-001.3

Administrator Gina McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to File Citizen Enforcement Suit Pursuant to Clean Air Act § 304(b)(2), 42 U.S.C. § 7604(b)(2)

Dear Administrator McCarthy:

This letter provides notice under Clean Air Act § 304(b)(2), 42 U.S.C. § 7604, and 40 C.F.R. § 54.3(a) that Ms. Toni Offner (aka "Offerman")¹ and Ms. Cynthia Portera intend to file a citizen suit against EPA under 42 U.S.C. § 7604(a)(2) for failure to grant or deny a petition they submitted requesting that you object to the Title V air permit No. 2520- 00048-V5 issued to Bunge North America Inc. for construction activities at its grain elevator in Destrehan, Louisiana.

Ms. Portera and Ms. Offner submitted their petition to you under 42 U.S.C. § 7661d(b)(2), which allows anyone to petition the Administrator of EPA to object to an air permit issued pursuant to Title V of the Clean Air Act if EPA has not already objected to the permit within its 45-day period to review such permits. This provision also requires the person to file the petition within 60 days after the expiration of EPA's review period. 42 U.S.C. § 7661d(b)(2).

EPA's 45-day period to review the Bunge permit ended on November 25, 2015. EPA did not object to permit. Ms. Portera and Ms. Offner filed their petition on January 24, 2016, which is after EPA's 45-day review period and within 60 days after the expiration of that review period. Their petition, therefore, is timely.

The Clean Air Act states: "The Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2). Since Ms. Portera and Ms. Offner filed their petition on January 24, 2016, EPA had until March 24, 2015 to grant or deny the petition. EPA's failure to grant or deny the petition within the 60-day period set out in 42 U.S.C. § 7661d(b)(2) constitutes a failure to perform a non-discretionary act, which is actionable under the Clean Air Act citizen suit provision. *See* 42 U.S.C. § 7604(a)(2) ("any person may commence a civil action on his own behalf ... (2) against the Administrator where there is

¹ Ms. Offner's last name was misspelled in both the public comments and the petition to EPA as "Offerman."

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alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary”).

Ms. Portera and Ms. Offner intend to file a suit in the federal district court to enforce EPA’s duty to respond to their petition. This letter constitutes notice served in accordance with the provisions of 40 C.F.R. § 54.2(d).

The full name and address of the parties giving this notice are as follows:

Ms. Cynthia Portera
12646 River Road
Destrehan, LA 70047
Phone: (985) 445-4539

Ms. Toni Offner
12646 River Road
Destrehan, LA 70047
Phone: (504) 784-2210

All communications, however, should be through counsel:

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If you believe that any portion of this notice is in error or if you wish to discuss any portion of this notice, please contact Machelle Hall at the address and phone number listed below.

Prepared by:



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Respectfully submitted by:



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