



March 5, 2018

Via Certified Mail and Email

pruitt.scott@epa.gov

E. Scott Pruitt, Administrator
USEPA Headquarters
Room 3000, William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Re: Notice of Intent to File Suit
Unreasonable Delay in Responding to Petition for Notice of Deficiency
Inadequate Implementation of a Title V Program
Section 502(i) of the Clean Air Act
Allegheny County Health Department (Allegheny County, Pennsylvania)

Dear Administrator Pruitt:

The Clean Air Council (the "Council") hereby notifies you of its intent to file suit under the Clean Air Act and/or the Administrative Procedure Act against you and the Environmental Protection Agency ("EPA") for an unreasonable delay in responding to the Council's October 20, 2016 Petition (the "Petition").

The Petition was submitted pursuant to the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, and the Clean Air Act, 42 U.S.C. § 7401, *et seq.* The Petition requested that the EPA Administrator make a finding under Section 502(i) of the Clean Air Act, 42 U.S.C. § 7661a(i), that the Allegheny County Health Department ("Department") has failed to adequately implement its Title V permitting program based on longstanding, systemic delays in processing applications, and publish a notice of this finding in the Federal Register.

Pursuant to Section 304 of the Clean Air Act, 42 U.S.C. § 7604, the Council intends to commence a legal action 180 days from the date of this notice, or shortly thereafter, unless EPA has made a decision on the petition within that 180 day period.

Background

The Department has the authority to administer the Title V permit program throughout Allegheny County, which includes the City of Pittsburgh and a number of

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other municipalities in Southwestern Pennsylvania.¹ This is a highly industrial area with at least 32 current major sources.

There is a longstanding and continuing programmatic backlog in the Department's processing of Title V applications. Section 503(c) of the Clean Air Act requires the Department to approve or disapprove a Title V application within 18 months. 42 U.S.C. §7661b(c). This requirement is reiterated in EPA's regulations. 40 C.F.R. §70.7(a)(2). The Petition demonstrates the Department has failed to meet the 18-month deadline for the majority of these major sources, either currently or in the past.

The backlog is also inconsistent with Section 502 of the Clean Air Act, which requires EPA to issue Title V permit regulations providing "[a]dequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing" 42 U.S.C. §7661a(b)(6). EPA regulations require state Title V programs to be conducted in accordance with the requirements of the Clean Air Act at all times. See 40 C.F.R. §70.10(b).

Whenever the EPA makes a determination that a permitting authority is not adequately administering a program in accordance with the Title V requirements, Section 502(i) of the Clean Air Act requires EPA to provide notice to a State. 42 U.S.C. §7661a(i)(1) (emphasis added). EPA regulations require that the notice be published in the Federal Register. 40 C.F.R. §70.10(b)(1).

Claim for Unreasonable Delay

Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2)

The Council has a right to petition EPA to take action, and EPA must grant or deny the petition within a reasonable time. See 5 U.S.C. §555(b) ("within a reasonable time, each agency should proceed to conclude a matter presented to it"); 5 U.S.C. § 706(1) (authorizing court to "compel agency action ... unreasonably delayed"); 42 U.S.C. § 7604(a)(2) (authorizing suits in district court "to compel agency action unreasonably delayed").

¹ EPA approved the authority of the Department to implement a Title V program in 2001. Direct Final Rule, Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania, 66 Fed. Reg. 55,112, 55,115 (November 1, 2001) (to be codified at 40 C.F.R. part 70, Appendix A (Pennsylvania, paragraph (b))). The Department has full approval for a partial program, meaning the program is limited to sources within Allegheny County. Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania, 66 Fed. Reg. 55,113, col. 1 ("The term "partial" is a geographic reference. It is not a reference to the approval status of the ACHD's program"). See 40 C.F.R. §70.4(c)(1) ("EPA may approve a partial program that applies to all part 70 sources within a limited geographical area").

The Administrator and EPA received the Petition on October 20, 2016. It has been over one year since the Petition was submitted, and the Council has not received a decision. If the EPA does not take action within 180 days of this notice, over 18 months will have passed since it received the Petition.

"A reasonable time for agency action is typically counted in weeks or months, not years." *In re: American Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004). In its Petition, the Council requested that EPA promptly respond to the Petition, given the severity of the Department's Title V Permit application backlog. EPA's delay in responding to the petition is unreasonable. See *Telecommunications Research and Action Center v. Federal Communications Commission*, 750 F.2d 70, 80 (D.C. Cir. 1984) (laying out six-factor test for unreasonable delay).

The Council is providing this notice that it intends to file suit against the Administrator and EPA for failing to timely perform a nondiscretionary duty to act on the petition under the Clean Air Act and the Administrative Procedure Act. This letter provides notice under Section 304 of the Clean Air Act, 42 U.S.C. § 7604(b) and 40 C.F.R. part 54. Pursuant to 40 C.F.R. 54.3, you are hereby notified that the full names and addresses of the persons giving notice on behalf of the Council are set forth below. Notice is also being provided to the Regional Administrator of EPA Region III, the Secretary of the Department of Environmental Protection of the Commonwealth of Pennsylvania, the Governor of Pennsylvania, and the Director of the Allegheny County Health Department.

Unless EPA takes the required action before the end of the notice period, the Council intends to bring suit in the United States District Court for the Western District of Pennsylvania under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2).

If you have any questions, please contact me at 215-567-4004, ext. 125. Thank you for your consideration of this matter.

Sincerely,



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