

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
ROCHESTER DIVISION

CONCERNED CITIZENS OF SENECA  
COUNTY, INC. and LEMMON, DIXIE D.

**-against-**

GINA McCARTHY, in her official capacity as  
ADMINISTRATOR OF THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

**Complaint for Declaratory and  
Injunctive Relief Under the Clean Air  
Act**

Case No.

Jury Trial:  Yes  No

Plaintiffs allege, upon 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 and seeks declaratory and injunctive relief from the failure of defendant Gina McCarthy, Administrator (“hereinafter the “Administrator”) of the defendant United States Environmental Protection Agency (“USEPA”), to perform her non-discretionary duty to grant or deny an administrative petition dated September 9, 2013 (the “Petition”) submitted to the Administrator by the plaintiffs pursuant to §505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).
2. The Petition that gives rise to this action sought USEPA’s objection to a landfill gas-to-energy facility operating permit issued by the New York State Department of Environmental Conservation (“NYSDEC”).
3. Under the § 505(b)(2) of the Act, 42 U.S.C § 7661d(b)(2), the Administrator was required to grant or deny plaintiffs’ Petition within sixty days after it was filed and more

than sixty days have passed since plaintiffs filed their Petition, and, upon information and belief, USEPA has neither granted nor denied plaintiffs' Petition.

**JURISDICTION**

4. 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.
5. 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**

6. On January 12, 2016, plaintiffs provided notice to the Administrator of plaintiffs' intent to file a citizen suit due to the Administrator's failure to comply with the sixty day deadline under 42 U.S.C. § 7661d(b)(2) for granting or denying the Petition.
7. The notice letter filed with respect to the Petition involved in this action and the service thereof, upon information and belief, comply with § 304 of the Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54.
8. More than sixty days have passed since the postmark on the notice letter without receipt of any written response from the Administrator or USEPA. See 42 U.S.C. § 7604(b)(2).
9. Upon information and belief, defendants violated and remain in violation of 42 U.S.C. §7661d(b)(2) for failing to grant or deny plaintiffs' Petition.

**PARTIES**

10. Plaintiff Concerned Citizens of Seneca County, Inc. (“CCSC”) was incorporated on or about March 12, 2010 under New York’s Not-for-Profit Corporation Law and is “committed to promoting the health and quality of life of the Seneca County region of New York State (as well as neighboring counties) by ensuring that Seneca County’s air, soil, water and environment are clean and healthful.”
11. Plaintiff Dixie D. Lemmon (“Ms. Lemmon”) owns and resides on property approximately 2,200 yards from the Seneca Energy II, LLC landfill gas-to-energy facility located near New York State Route 414 in Seneca Falls, Seneca County, New York (the “LFGTE Facility”) that is the subject of plaintiffs’ Petition, and Ms. Lemmon is an officer and member of CCSC.
12. Pursuant to its mission, on September 9, 2013, CCSC filed the administrative Petition on behalf of its members’, including Ms. Lemmon, seeking the Administrator’s non-discretionary action that provides the underlying subject of this complaint.
13. Plaintiffs’ Petition alleges, among other things, that the Title V permit issued pursuant to Clean Air Act for the LFGTE 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.
14. While the Administrator delays action on plaintiffs’ Petition, the LFGTE Facility that is subject of the Petition is allowed to operate pursuant to a defective permit; therefore plaintiffs are directly and adversely impacted by the Administrator’s and USEPA’s delay in granting or denying the Petition.

15. Defendant Gina McCarthy is the duly appointed and confirmed Administrator of the United States Environmental Protection Agency, and the Administrator is responsible for, among other things, implementing the Clean Air Act, including the requirement to grant or deny plaintiffs' Petition within 60 days after it was filed.

**STATEMENT OF FACTS**

16. On September 9, 2013, plaintiffs filed their Petition with the Administrator seeking her and USEPA's objection to the Clean Air Act Title V operating permit issued by NYSDEC to the Seneca County Landfill Gas-to-Energy Facility operated by Seneca Energy II, LLC ("SEII") (Permit I.D. DEC 8-4532-00075/00029) pursuant to 42 U.S.C. § 7661d(b)(2).

17. The SEII LFGTE Facility in Seneca Falls is a Major air pollution source located, as that term is defined in the Act, on the site of the Seneca Meadows, Inc. Landfill (the "Landfill") in the Town of Seneca Falls, Seneca County, New York, and upon information and belief and according to records maintained by the New York State Department of State, SEII is a New York limited liability company with an address at 2999 Judge Road, Oakfield, New York 14125.

18. Upon information and belief, plaintiffs filed their Petition within 60 days after the expiration of USEPA's 45 day period for review of the then-proposed Title V permit for the LFGTE Facility, consistent with 42 U.S.C. § 7661d(b)(2).

19. Upon information and belief, plaintiffs' Petition was based upon objections raised during the public comment period consistent with 42 U.S.C. § 7661d(b)(2).

20. Upon information and belief, plaintiffs' Petition fully complied with 42 U.S.C. §7661d(b)(2).

21. Pursuant to 42 U.S.C. § 7661d(b)(2), the Administrator had 60 days to grant or deny plaintiffs' Petition.
22. More than 60 days have passed since the Administrator received plaintiffs' Petition and, upon information and belief, the Administrator has neither granted nor denied plaintiffs' Petition.

**AS AND FOR PLAINTIFFS' CAUSE OF ACTION**  
**(Failure to Respond to Petition)**

23. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 22 as if more fully set forth herein.
24. On September 9, 2013, plaintiffs filed their Petition with the Administrator of USEPA pursuant to 42 U.S.C. § 7661d(b)(2).
25. The Administrator failed to grant or deny plaintiffs' Petition within sixty days, has not granted or denied plaintiffs' Petition after more than thirty months, and, upon information and belief, has not granted or denied plaintiffs' Petition as of the date of this complaint.
26. Plaintiffs duly notified the Administrator of their intent to commence this action more than 60 days prior to commencement of this action.
27. The Administrator has violated, and is in violation of, her non-discretionary duty to grant or deny plaintiffs' Petition within sixty days as required by 42 U.S.C. § 7661d(b).

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs request that this Court:

1. DECLARE that defendant's failure to perform her non-discretionary 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);
2. ORDER defendant to grant or deny plaintiffs' Petition within ten calendar days of this Court's ruling;

3. ORDER defendant to comply with the sixty day deadline set forth at § 505(b) of the Act, 42 U.S.C. § 7661d(b) for granting or denying public petitions seeking defendant's objection to Title V permits;
4. ORDER defendant to pay plaintiffs their costs of litigation, including but not limited to their reasonable attorney's fees, as authorized by Section 304(d) of the Act, 42 U.S.C. § 7604(d); and
5. Grant such other relief as the Court deems just and proper.

Dated: Springfield Center, New York  
March 23, 2016

By: \_\_\_\_\_/s/\_\_\_\_\_

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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

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

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

DEFENDANTS

County of Residence of First Listed Defendant (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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, 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):

Brief description of cause:

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

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**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.





Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: