

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL INTEGRITY PROJECT
1000 Vermont Ave. NW, Suite 1100
Washington, DC 20005,

SIERRA CLUB
2101 Webster Street, Suite 1300
Oakland, CA 94612,

PORT ARTHUR COMMUNITY ACTION
NETWORK
501 West 15th Street
Port Arthur, TX 77640,

ENVIRONMENT TEXAS
200 East 30th Street
Austin, TX 78705,

NETA RHYNE
9227 Highway 17
Toyahvale, TX 79786,

Plaintiffs,

v.

ANDREW WHEELER, in his official capacity as
Administrator, U.S. Environmental Protection
Agency,
William Jefferson Clinton Building
Mail Code 1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460,

Defendant.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

STATEMENT OF THE CASE

1. This is a civil action for declaratory and injunctive relief, with costs and fees under the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the declaratory judgment statute, 28

U.S.C. §§ 2201, 2202.

2. With this action, Plaintiffs Environmental Integrity Project (“EIP”), Sierra Club, Port Arthur Community Action Network, Environment Texas, and Neta Rhyne (“Plaintiffs”) seek an order declaring that the United States Environmental Protection Agency (“EPA”) through the Defendant EPA Administrator Andrew Wheeler (“Administrator”), is required, pursuant to 42 U.S.C. § 7661d(b)(2), to grant or deny eight petitions filed by Plaintiffs. Each of these petitions requests that the Administrator object to a permit issued under Title V of the Clean Air Act by the Texas Commission on Environmental Quality (“TCEQ”) authorizing operation of a major source of air pollution located in the state of Texas. Plaintiffs also seek an order requiring the Administrator to perform his non-discretionary duty to grant or deny each of these petitions by March 31, 2021.

3. The eight petitions at issue in this action are listed in the table below and attached hereto as Exhibits A through H:

Permit Number	Operator	Source Name	Exhibit Number
O2546	ETC Texas Pipeline LTD	Waha Gas Plant	Exhibit A
O1498	Premcor Refining Group Inc.	Port Arthur Refinery	Exhibit B
O3336	Sandy Creek Services LLC	Sandy Creek Energy Station	Exhibit C
O1440	Phillips 66	Borger Refinery	Exhibit D
O3764	Kinder Morgan Crude & Condensate LLC	Galena Park Facility	Exhibit E
O2942	Oak Grove Management Company LLC	Oak Grove Steam Electric Station	Exhibit F
O1513	BP Amoco Chemical Company	Texas City Chemical Plant	Exhibit G
O1541	Blanchard Refining Company LLC	Galveston Bay Refinery	Exhibit H

JURISDICTION, VENUE, AND NOTICE

4. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), and has the authority to award attorneys' fees pursuant to 42 U.S.C. § 7604(d). This Court also has subject matter jurisdiction over the claims set forth in this complaint pursuant to 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as defendant), as the Clean Air Act is a federal statute and the Administrator is an agent of the United States government.

5. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, nor does it 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 such relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief, and 28 U.S.C. § 2412 authorizes this Court to award Plaintiffs their costs and attorneys' fees.

6. A substantial part of the alleged events or omissions giving rise to Plaintiffs' claims occurred in the District of Columbia. In addition, Plaintiffs bring this suit against the Administrator in his official capacity as an officer or employee of EPA, residing in the District of Columbia. Thus, venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e).

7. As required by 42 U.S.C. § 7604(b)(1)(A), Plaintiffs notified the Administrator of the EPA of the violations alleged in this complaint and of Plaintiffs' intent to sue, via certified first-class mail and email. Exhibits I (Notice of Intent Letter) and J (Notice of Intent Letter Delivery Confirmation). The notice letter was received on September 28, 2020.

8. More than 60 days have passed since the Administrator received this notice of intent to sue letter. The Administrator has not acted to remedy the violations alleged in this Complaint. Therefore, an actual controversy exists between the parties.

PARTIES

The Plaintiffs

9. Plaintiff ENVIRONMENTAL INTEGRITY PROJECT is a national nonprofit corporation founded to advocate for the effective enforcement of state and federal environmental laws, with a specific focus on the Clean Air Act and large stationary sources of air pollution, like chemical plants, petroleum refineries, and power plants. EPA's failure to respond in a timely manner to Plaintiffs' petitions, which demonstrate that Texas Title V permits for some of the largest sources of air pollution in the United States fail to comply with the Clean Air Act, adversely affects EIP's ability to assure that major sources of air pollution comply with federally enforceable public health protections.

10. Plaintiff SIERRA CLUB is one of the Nation's largest and oldest grassroots nonprofit membership organizations. Sierra Club's Texas chapter was formed more than forty years ago and has a long history of working to reduce industrial air pollution that adversely affect air quality in Texas. Sierra Club petitioned the Administrator to object to the eight Title V permits, because the permits fail to comply with Clean Air Act requirements. The Administrator's failure to perform his non-discretionary duty to grant or deny each of these petitions injures the organizational interests of Sierra Club as well as the concrete public health interests of its members.

11. Plaintiff PORT ARTHUR COMMUNITY ACTION NETWORK is a community group formed by Port Arthur residents to advocate for solutions that reduce or eliminate environmental and public health hazards and to improve the quality of life in Port Arthur, Texas. The Administrator's failure to perform his non-discretionary duty to grant or deny Plaintiffs' petition to object to the Title V permit for the Port Arthur Refinery injures the organizational interests of the Port Arthur Community Action Network as well as the concrete

public health interests of its members.

12. Plaintiff ENVIRONMENT TEXAS is a statewide non-profit environmental organization that advocates for clean air, clean water, and preservation of Texas's natural areas on behalf of its approximately 5,000 members. Environment Texas researches and distributes analytical reports on environmental issues, advocates before legislative and administrative bodies, conducts public education, and pursues public interest litigation on behalf of its members. The Administrator's failure to perform his non-discretionary duty to grant or deny each of these petitions injures the organizational interests of Environment Texas as well as the concrete public health interests of its members.

13. Plaintiff NETA RHYNE is a private citizen who lives in the northwest region of Texas. Ms. Rhyne is exposed to sulfur dioxide pollution and other disruptive effects of oil and gas activities in the Permian Basin. The Administrator's failure to grant or deny the petition to object to the Title V permit for the Waha Gas Plant injures Ms. Rhyne's concrete health and property interests.

14. Plaintiffs have an interest in ensuring that Title V permits authorizing operation of the Waha Gas Plant, the Port Arthur Refinery, the Sandy Creek Energy Station, the Borger Refinery, the Galena Park Facility, the Oak Grove Steam Electric Station, the Texas City Chemical Plant, and the Galveston Bay Refinery comply with all applicable federal requirements. Members and employees of Plaintiff organizations live, work, and recreate in areas that are affected by air pollution emitted from each of the major industrial sources that are the subjects of the petitions and this Complaint. Neta Rhyne lives, works and recreates in areas of Texas that are affected by air pollution from the Waha Gas Plant. Neta Rhyne, members and employees of Plaintiff organizations, as well as Plaintiff organizations, will be harmed if EPA

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