

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FOOD & WATER WATCH,

Plaintiff,

v.

ALLEGHENY COUNTY HEALTH
DEPARTMENT,

Defendant.

) CIVIL DIVISION

)

) GD No.

)

) **COMPLAINT**

)

) CODE: 070 - MANDAMUS

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) Issue No.: _____

)

) Filed on behalf of Plaintiff Food &
) Water Watch

)

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) Watch:

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FOOD & WATER WATCH,) GD No.
)
Plaintiff,)
)
v.)
)
ALLEGHENY COUNTY HEALTH)
DEPARTMENT,)
)
Defendant.)

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

FOOD & WATER WATCH,	§	
	§	
Plaintiff,	§	
vs.	§	Case No. GD-_____
	§	
ALLEGHENY COUNTY HEALTH	§	
DEPARTMENT,	§	
	§	CODE: 070 - MANDAMUS
Defendant.	§	
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COMPLAINT

NOW COMES Plaintiff Food & Water Watch, by and through their undersigned attorneys, and file this Complaint seeking an order of the Court to compel Defendant Allegheny County Health Department (“ACHD”) to take final action on the applications for “Title V” operating permits for two facilities—Synthomer (formerly Eastman Chemicals & Resins), located in West Elizabeth, and Neville Chemical Company, located in Neville Township—as required by the federal Clean Air Act and ACHD’s Air Pollution Control regulations. In support of this Complaint, Plaintiff makes the following averments:

I. PARTIES

1. Plaintiff Food & Water Watch (“FWW”) is a national nonprofit organization founded in 2005 to ensure access to clean drinking water, safe and sustainable food, and a livable climate. FWW mobilizes regular people to build political power to move bold and

uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW is headquartered in Washington, D.C., and has approximately 1.2 million members nationwide. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests.

2. FWW's membership includes residents of Allegheny County, Pennsylvania, including multiple members who live in close proximity to the Synthomer and Neville Chemical facilities and are negatively affected by air pollution from these facilities. FWW seeks to ensure that the Synthomer and Neville Chemical facilities are subject to Title V permits that assure compliance with, among other things, public health- and welfare-based pollution control requirements, and to exercise their right to participate in the issuance of Title V permits to assure compliance with these requirements. ACHD's failure to take timely final action on these applications for Title V permits frustrates FWW's work to promote clean air and its work to ensure that the Title V permits for the facilities are as strong as possible.

3. Defendant ACHD is a local health department organized under Pennsylvania's Local Health Administration Law, 16 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to the public health within Allegheny County, including but not limited to Article XXI of ACHD's Rules and Regulations (Allegheny County Ordinance No. 16782) ("Article XXI" or "Art. XXI"). The Director of ACHD has been delegated authority to regulate air quality in Allegheny County under the federal Clean Air Act, and Defendant ACHD is the agency responsible for administering the federal Title V operating permit program in Allegheny County.¹

¹ See U.S. EPA, "Final Rule: Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania." 66 Fed. Reg. 212 (Nov. 1, 2001), pp. 55112-55115.

4. ACHD's failure to timely act on Title V permit applications for the identified major sources has deprived and continues to deprive Plaintiff and their members of procedural and substantive rights under the federal Clean Air Act and Article XXI.

II. JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court under Article XXI § 2103.11.g. Article XXI § 2103.11.g specifically provides that a failure by ACHD to take timely final action on an application for a Title V operating permit "constitutes a final action by the Department for the sole purpose of being appealable," and that the "Court of Common Pleas may require that the Department take action on an application without further delay."

III. LEGAL BACKGROUND

The Clean Air Act's Title V Operating Permit Program

6. Title V of the Clean Air Act, 42 U.S.C. § 7661 et seq., requires major stationary sources of air pollution to obtain and periodically renew federal operating permits ("Title V permits"), and expressly prohibits the operation of any major source of air pollution except in compliance with the terms of a Title V permit. 42 U.S.C. § 7661a(a). Each Title V permit must list all federally enforceable pollution control requirements applicable to the source in question, as well as include monitoring and reporting provisions sufficient to enable regulators and the public to assure compliance with those requirements. *Id.* §§ 7661a(a), 7661c(c).

7. States and local agencies may implement their own programs to issue and enforce Title V permits, subject to EPA's approval and oversight. 42 U.S.C. § 7661a(d)(1); *see also* EPA's State Operating Permit Program, 40 C.F.R. § 70.1 (2006).

8. Title V permits play an important role in enhancing transparency and protecting air quality and public health and welfare by enabling regulators and the public to determine what limits apply to major sources of air pollution and whether those limits are being met.

9. Further, the Clean Air Act also specifically provides the public with several additional procedural and substantive opportunities to challenge the substantive requirements of a permit which are triggered by a permitting decision. For example, State programs must contain:

...[a]dequate, streamlined, and reasonable procedures... for public notice, including an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

42 U.S.C. § 7661a(b)(6).

10. In addition to challenging final permits in state court, the Clean Air Act allows members of the public to petition the Administrator of the U.S. Environmental Protection Agency to object to deficient Title V permits issued by state agencies. 42 U.S.C. § 7661d(b)(2). The Administrator must issue an objection in response to a public petition “if the petitioner demonstrates... that the permit is not in compliance with the requirements of” the Clean Air Act.” *Id.* The Administrator must grant or deny any such public petition within 60 days. *Id.*

11. Upon receipt of an objection by the EPA Administrator, a permitting authority must revise the permit to meet the objection within 90 days. 42 U.S.C. § 7661d(b)(3).

Allegheny County’s Approved Title V Permit Program

12. ACHD is the agency delegated primary responsibility for administering the Title V operating permit program in Allegheny County, pursuant to Part C of Article XXI. *See* U.S. EPA, “Final Rule: Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny

County; Pennsylvania.” 66 Fed. Reg. 212 (November 1, 2001), pp. 55112-55115. ACHD’s responsibilities include reviewing permit applications, determining their completeness, and issuing final determinations to issue or deny permits.

Statutory Deadline for Action on a Permit Application

13. The Clean Air Act establishes statutory deadlines under which state permitting agencies must issue Title V permits. Specifically, the Act requires that:

The permitting authority shall approve or disapprove a completed application..., and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date.

42 U.S.C. § 7661b(c). EPA’s regulations reiterate this requirement. 40 C.F.R. § 70.7(a)(2) (stating state permit programs “shall provide that the permitting authority take final action on each permit application (including a request for permit modification or renewal) within 18 months... after receiving a complete application.”).

14. Consistent with the Clean Air Act, § 2103.11.g of Article XXI lays out the general timeline under which ACHD must take final action on an application for a Title V permit for a source in Allegheny County, providing in relevant part that:

Unless otherwise specifically provided under this Part, the Department shall take final action within 18 months of the date of a submittal of a complete application, including all applicable fees, for an Operating Permit under this Subpart, including applications for permit modifications and renewals. For initial permit applications submitted under the historical requirements of Section 2103.01, “Transition,” of this Part, the Department shall take final action on such application within 18 months of a complete submittal of an application or within the specific applicable deadline set forth under Section 2103.01, whichever is later. A failure by the Department to take action in accordance with this Subsection constitutes a final action by the Department for the sole purpose of being appealable. The Court of Common Pleas may require that the Department take action on an application without further delay.

The deadlines established by Article XXI mirror the requirements of the Clean Air Act, *see* 42 U.S.C. § 7661b(c), and EPA’s regulations implementing those requirements, *see* 40 C.F.R. §§ 70.4(b)(11) and 70.7(a)(2).

15. Section 2103.11.d.1.B of Article XXI also states, “[e]xcept as provided in §2103.01 of this Article, the Department will approve or disapprove a complete application within 18 months after the date of receipt of a complete application.”

16. Unless ACHD notifies an applicant of its determination that a Title V permit application is incomplete or requests additional information from the applicant, an application is deemed complete by operation of law on the 61st day after ACHD’s receipt of the application. Art. XXI § 2103.11.d.1.

17. Before ACHD can take final action on Title V permits, it must provide public notice of preliminary approval of a permit and provide at least 30 days for public comment and an opportunity for a hearing on a draft of the permit. Art. XXI §§ 2103.11.e, 2103.11.f, and 2103.21.c. Along with the draft permit, ACHD must provide, to EPA and any person who requests it in writing, a “statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions.” Art. XXI § 2103.21.c.3.

IV. FACTUAL BACKGROUND

A. Permit No. 0058: Synthomer (formerly Eastman Chemicals & Resins)

18. The Synthomer Plant (formerly Eastman Chemicals & Resins) is a resin manufacturing plant located at 2200 State Highway 837, West Elizabeth, PA 15088 that was

originally constructed in 1950.² At all times relevant to this action, the Synthomer plant has been a major source of air pollution subject to Title V permit program requirements.

19. Though the plant is a major source of air pollution that has been operating for decades, it has never been issued a Title V operating permit by ACHD.

20. Synthomer submitted an application for an initial Title V permit for the first time on February 4, 2022.³ Accordingly, ACHD's 18-month deadline to take final action on this permit application was August 4, 2023. ACHD's failure to take timely final action on Synthomer's permit application is especially problematic, given that the Synthomer plant has already been operating for decades without ever being issued a valid Title V operating permit.

21. As of the date of this Complaint, ACHD has not yet taken final action to issue or deny the renewal application.

22. As of the date of this Complaint, ACHD is more than three months past its statutory deadline for taking final action on the Synthomer permit application.

B. Permit No. 0060: Neville Chemical Company

23. Neville Chemical Company operates a facility that manufactures synthetic hydrocarbon resins, plasticizers, and plasticizing oils located at 2800 Neville Road, Neville Township, PA 15225. At all times relevant to this action, the Neville Chemical plant has been a major source of air pollution subject to Title V permit program requirements.

24. ACHD last renewed the Neville Chemical Company's Title V Permit No. 0060 on September 28, 2015. This operating permit expired on September 27, 2020.

² See generally U.S. EPA, *Hazardous Waste Cleanup: Synthomer Jefferson Hills Llc* (including description of Synthomer plant history and ownership), <https://www.epa.gov/hwcorrectiveactioncleanups/hazardous-waste-cleanup-synthomer-jefferson-hills-llc-formerly-hercules#Description> (last visited Nov. 15, 2023).

³ See ACHD, *Allegheny County PA Title V Air Operating Permit Status*, (last updated Aug. 1, 2023) (ACHD's online Title V permit tracker stating ACHD received an application from Synthomer on 2/04/22), https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Health_Department/Programs/Air_Quality/Allegheny-County-Title-V-permits-2023-08-01.pdf (last visited Nov. 15, 2023).

25. On April 29, 2020, ACHD received Neville Chemical’s completed application for a Title V permit renewal. Accordingly, ACHD’s deadline to take final action on the renewal permit was October 29, 2021, 18 months after ACHD’s receipt of the completed application. Art. XXI § 2103.11.g; 42 U.S.C. § 7661b(c).

26. As of the date of this Complaint, ACHD has not yet taken final action to issue or deny the renewal application.

27. As of the date of this Complaint, ACHD is more than two years past its statutory deadline for taking final action on the Neville Chemical Company permit application.

V. CAUSE OF ACTION

28. Plaintiff re-alleges and incorporates ¶¶ 1–27 by reference into each Count below.

COUNT I **VIOLATION OF ARTICLE XXI § 2103.11.g** *Failure to take final action on permit application for the Synthomer plant*

29. ACHD received Synthomer’s completed initial application for a Title V permit on February 4, 2022. Therefore, ACHD was required to take final action on this application by no later than August 4, 2023. Art. XXI § 2103.11.g.

30. ACHD has failed to timely issue or deny a final Title V permit for the Synthomer plant in violation of Article XXI § 2103.11.g.

31. Pursuant to Art. XXI § 2103.11.g, persons and organizations may obtain judicial review in this Court for a failure by ACHD to take timely final action on a permit application as required by § 2103.11.g.

32. Art. XXI § 2103.11.g authorizes this Court to “require that the Department take action on an application without further delay.”

33. ACHD's failure to issue a final permit deprives Plaintiff's members of the protection that a final Title V permit would provide, and also interferes with Plaintiff's right to comment on a proposed permit, challenge a deficient permit, to know what the enforceable limitations applicable to the plant are, and to potentially enforce against violations of those limitations.

COUNT II
VIOLATION OF ARTICLE XXI § 2103.11.g

Failure to take final action on permit application for Neville Chemical Company

34. ACHD received Neville Chemical's completed application for a Title V permit renewal on April 29, 2020. Therefore, ACHD was required to take final action on this application by no later than October 29, 2021. Art. XXI § 2103.11.g.

35. ACHD has failed to timely issue or deny a final Title V permit for Neville Chemical in violation of Article XXI § 2103.11.g.

36. Pursuant to Art. XXI § 2103.11.g, persons and organizations may obtain judicial review in this Court for a failure by ACHD to take timely final action on a permit application as required by § 2103.11.g.

37. Art. XXI § 2103.11.g authorizes this Court to "require that the Department take action on an application without further delay."

38. ACHD's failure to issue a final permit deprives Plaintiff's members of the protection that a final Title V permit would provide, and also interferes with Plaintiff's right to comment on a proposed permit, challenge a deficient permit, to know what the enforceable limitations applicable to the plant are, and to potentially enforce against violations of those limitations.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter an order requiring ACHD to take final action on each of the applications for a Title V permit identified above without further delay;
- B. retain jurisdiction of this action to ensure compliance with this Court's order;
- C. award Plaintiff its costs and fees related to this action; and
- D. grant such other relief as the Court deems just and proper.

Respectfully submitted this the 16th day of November, 2023,




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VERIFICATION

I, Tarah Heinzen, am the Legal Director of Plaintiff Group Food & Water Watch, and I am authorized to make this Verification on its behalf. I have read the foregoing Complaint, and verify that the statements of fact made therein are true and correct to the best of my knowledge, information, and belief. I make this Verification subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: November 15, 2023



Tarah Heinzen