

UNITED STATES DISTRICT COURT  
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

LOUISIANA ENVIRONMENTAL )  
ACTION NETWORK, )  
162 Croydon Ave )  
Baton Rouge, LA 70806-4501 )

CONCERNED CITIZENS OF )  
LIVINGSTON PARISH, )  
29787 S. Satsuma Rd. )  
Livingston, LA 70754 )

Plaintiffs, )

v. )

LISA JACKSON, in her Official )  
Capacity as Administrator, U.S. )  
Environmental Protection Agency, )  
Ariel Rios Building )  
1200 Pennsylvania Avenue, N.W. )  
Washington, DC 20460 )

Defendants. )

**FILED**

**OCT 13 2009**

**Clerk, U.S. District and  
Bankruptcy Courts**

**Case: 1:09-cv-01943**

**Assigned To : Kennedy, Henry H.**

**Assign. Date : 10/13/2009**

**Description: Admin. Agency Review**

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

---

**INTRODUCTION**

1. Plaintiffs, Louisiana Environmental Action Network (“LEAN”) and Concerned Citizens of Livingston Parish (“Concerned Citizens”) bring this citizen suit pursuant to the Clean Air Act § 304(a)(2), 42 U.S.C. § 7604(a)(2), to compel Defendant, Lisa Jackson, in her official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”), to perform a nondiscretionary act.

2. Plaintiffs filed a timely petition (the “Petition”) with EPA objecting to air permit No.: 1740-00025-V1 (the “Permit”) that the Louisiana Department of Environmental Quality

issued to Waste Management for the Woodside Landfill in Walker, Livingston Parish, Louisiana on or about December 5, 2008.

3. The Clean Air Act requires that EPA grant or deny such petitions within 60 days. 42 U.S.C. §7661d(b)(2). EPA failed to grant or deny Plaintiffs' Petition.

4. Plaintiffs ask this Court to order EPA to perform its nondiscretionary duty to grant or deny the Petition.

### **JURISDICTION**

5. This Court has jurisdiction over the action pursuant to Clean Air Act §304(a). 42 U.S.C. §7604(a) (“[t]he district courts shall have jurisdiction . . . to order the Administrator to perform such act or duty [which is not discretionary]”). This Court also has jurisdiction over the action through its federal question jurisdiction and the Declaratory Judgment Act. *See* 28 U.S.C. §1331 (granting district courts “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”); 28 U.S.C. § 2201 (providing that “any court of the United States, upon filing of the appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration...”).

### **VENUE**

6. Venue is proper in this Court. Pursuant to 28 U.S.C. §1391(e), venue is proper where “the defendant in the action resides, [or] a substantial part of the events or omissions giving rise to the claim occurred....” Specifically, venue is proper here because both EPA Headquarters and the omission giving rise to the claim are located in the District of Columbia.

### **NOTICE**

7. Plaintiffs provided notice of their intent to file this lawsuit in a May 1, 2009, Notice of Intent to File Suit to the Administrator of the U.S. Environmental Protection Agency.

Plaintiffs have attached an accurate copy of the Notice of Intent as Exhibit A. The notice complies with §304(b)(2) of the Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. pt. 54.

8. More than 60 days have passed since Plaintiffs provided their May 1, 2009 Notice of Intent to File Suit. EPA has neither granted nor denied the Petition. Upon information and belief, EPA's failure to perform this nondiscretionary duty to grant or deny the Petition will continue until enjoined and restrained by this Court.

### **PARTIES**

9. LEAN is a Louisiana non-profit corporation that fits the definition of "person" under Clean Air Act § 304(a)(2). *See* 42 U.S.C. §7602(e) ("the term 'person' includes... [a] corporation."). LEAN serves as an umbrella organization for several environmental and citizen groups in Louisiana and also has individual members. LEAN has members who live, own property, recreate, and work near the Woodside Landfill. LEAN's purpose is to preserve and protect Louisiana's land, air, water, and other natural resources. LEAN seeks to protect its members from threats of pollution, including harmful emissions such as those from the Woodside Landfill. This lawsuit is germane to LEAN's purpose.

10. Concerned Citizens is a non-profit corporation that fits the definition of "person" who can bring a citizen suit under Clean Air Act § 304(a)(2). *See* 42 U.S.C. §7602(e) ("the term 'person' includes... [a] corporation."). Concerned Citizens has members who live, own property, recreate, and work near the Woodside Landfill. Concerned Citizens' purpose is to maintain and improve the air and water quality of Livingston Parish. Additionally, Concerned Citizens seeks to protect the health, safety and welfare of the citizens and environment of Livingston Parish. This lawsuit is germane to Concerned Citizens' purpose.

11. Harold Wayne Breaud is a member of LEAN and Concerned Citizens who lives within one mile of the Woodside Landfill. On several occasions the unmonitored emissions from the Woodside Landfill have forced Mr. Breaud to remain indoors depriving him and his family of enjoying the outdoors on his land. Odors from the Woodside Landfill often seep into Mr. Breaud's home and cause him and his family severe discomfort. For example, Woodside Landfill emissions cause his eyes, nose and throat to burn.

12. O'Neil Couvillion is a member of LEAN and Concerned Citizens who lives within five miles of the Woodside Landfill. The Woodside Landfill at times emits a strong chemical odor which deprives Mr. Couvillion of the ability to enjoy the outdoors. These emissions cause Mr. Couvillion to cough and sneeze.

13. The Woodside Landfill releases hazardous and toxic pollutants into the air that Plaintiffs' members breathe. Plaintiffs' members are injured because exposure to these pollutants offends and annoys them, causes them to curtail outdoor activities, and increases their risk of health problems. These injuries are actual, concrete and irreparable and cannot be adequately remedied by money damages.

14. Plaintiffs' members' injuries are fairly traceable to EPA's failure to take legally required action with respect to the Petition. EPA's failure to grant or deny the Petition injures Plaintiffs' members because it allows the continued operation of the Woodside Landfill under an air permit that a) fails to require the permittee to conduct sufficient emission monitoring to assure compliance, and b) fails to impose the minimum emission requirements that the Clean Air Act mandates for new and modified sources which, like the Woodside Landfill, emit more than 25 tons per year of volatile organic compounds (known as "VOCs") or oxides of nitrogen

(known as “NOx”). EPA’s failure to grant or deny the Petition also injures Plaintiffs by denying them a response to their Petition that the law entitles them to receive.

15. The Defendant is Lisa Jackson, in her official capacity as EPA Administrator. The Administrator is responsible for directing the activities of EPA and implementing the requirements and mandates of the Act.

### **GENERAL ALLEGATIONS**

16. On January 2, 2009, Plaintiffs, pursuant to §505(b)(2) of the Act, submitted the Petition to EPA.

17. Plaintiffs have attached an accurate copy of the Petition as Exhibit B.

18. Plaintiffs submitted the Petition to EPA, Louisiana Department of Environmental Quality, and Waste Management within the 60 days after the expiration of EPA’s 45 day period for administrative review of the Permit. *See* 42 U.S.C. §7661d(b)(2).

19. Plaintiffs based the Petition on objections raised with the Louisiana Department of Environmental Quality during the public comment period for the Permit.

20. The Petition complies with Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2).

21. The Louisiana Department of Environmental Quality issued the Permit on December 5, 2008.

### **CAUSE OF ACTION**

22. EPA has a statutory duty to grant or deny the petition by March 3, 2009.

23. Clean Air Act § 304(a) gives this Court jurisdiction “to order the Administrator to perform such ... duty.”

24. EPA's duty to grant or deny Plaintiffs' Petition is clearly expressed and is ministerial and not discretionary. See 42 U.S.C. §7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after this petition is filed.").

25. EPA has failed to grant or deny Plaintiffs' Petition.

**PRAYER FOR RELIEF**

Plaintiffs respectfully pray that this Court:

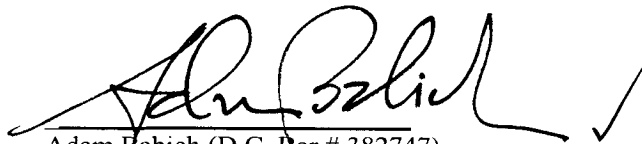
A. Declare that EPA's failure to perform its nondiscretionary duty to grant or deny the Petition within 60 days is a violation of Clean Air Act §505(b), 42 U.S.C. §7661d(b);

B. Order EPA to grant or deny the Petition within 60 calendar days of this Court's ruling;

C. Award Plaintiffs the costs of this litigation, including reasonable attorney's fees, pursuant to §304(d) of the Clean Air Act, 42 U.S.C. § 7604(d); and

D. Grant such other relief as the Court deems just and proper.

Respectfully submitted on October 12, 2009,



Adam Babich (D.C. Bar # 382747)  
Tulane Environmental Clinic  
6329 Freret St.  
New Orleans, LA 70118  
Tel. No. (504) 862-8800  
Fax No. (504) 862-8721  
e-mail: ababich@tulane.edu

*Counsel for Plaintiffs*

Prepared primarily by Shreedhar Patel,  
Student Attorney, Tulane Environmental Law  
Clinic



Tulane Environmental Law Clinic

May 1, 2009

Ref: 101-093.3

Via Certified Mail No. 7008 1830 0002 8233 3088

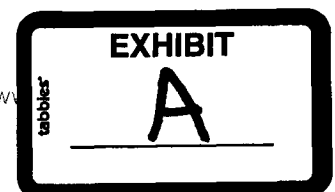
Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

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

Dear Administrator Jackson:

EPA has failed to timely respond to a petition filed by the Louisiana Environmental Action Network, Concerned Citizens of Livingston Parish, Mr. O'Neil Couvillion and Mr. Harold Wayne Breaud ("Petitioners") on January 2, 2009. The petition asked the EPA to object to the preconstruction and initial Part 70 Air Operating Permit (No. 1740-00025-V1) the Louisiana Department of Environmental Quality issued to Waste Management of LA, LLC for the Woodside Sanitary Landfill & Recycling Center on December 5, 2008. EPA has not yet responded to the petition. For this reason, the Petitioners respectfully provide this notice that they will file a lawsuit against you as the EPA administrator, as required by 40 C.F.R. § 54.3.

Petitioners intend to file a lawsuit to compel you to respond to their petition filed on January 2, 2009, pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2). Under the law, "the Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2). The Administrator had until March 3, 2009 to respond to the petition. You have failed to do so. Section 304(a)(2) permits any person to commence a civil action "against the Administrator where there is alleged a failure of the Administrator to perform and



Administrator Jackson  
Re: Notice of Intent to Sue re: Woodside Landfill Petition to Object  
May 1, 2009  
Page 2 of 2

act or duty under this Chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2).

The full names and addresses of the parties giving this notice are as follows:

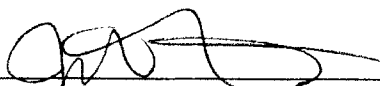
Louisiana Environmental Action Network  
P.O. Box 66323  
Baton Rouge, LA 70896

Concerned Citizens of Livingston Parish  
P. O Box 874  
Livingston, LA 70754

O’Neil Couvillion  
24095 Joe May Road  
Denham Springs, LA 70726

Harold Wayne Breaud  
16020 Ruth Drive  
Walker, LA 70785

Sincerely,



Jill M. Witkowski, La. Bar No. 30121  
Deputy Director  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, Louisiana 70118  
Phone: (504) 862-8814  
Fax: (504) 862-8721  
Email: jwitkows@tulane.edu

Counsel for Louisiana Environmental Action  
Network, Concerned Citizens of Livingston Parish,  
Mr. Couvillion, and Mr. Breaud