

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

STATE OF CONNECTICUT,)	
)	
Plaintiff,)	CIVIL ACTION NO. 3:17-CV-00796
)	
v.)	
)	
SCOTT PRUITT, in his official capacity as)	
Administrator of the United States)	
Environmental Protection Agency; and the)	Judge Warren W. Eginton
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendants.)	
_____)	

ANSWER

NOW COME Defendants, Scott Pruitt, in his official capacity Administrator, U.S. Environmental Protection Agency (“U.S. EPA”) and U.S. EPA, and respectfully submit their answer and defenses to the numbered paragraphs in Plaintiff’s complaint.

The unnumbered paragraph which begins Plaintiff’s Complaint contains a characterization of Plaintiff’s claims, to which no response is required.

1. The allegations in paragraph one of the Complaint are jurisdictional allegations to which no response is required. To the extent a response is deemed required, Defendants admits that 42 U.S.C. § 7604(a)(2) provides jurisdiction in district court for civil actions against the Administrator of U.S. EPA where the Administrator is alleged to have failed to perform a nondiscretionary act or duty under the Clean Air Act (“CAA”). Defendants deny any remaining allegations in paragraph one.

2. The allegations in paragraph two of the Complaint concerning venue are conclusions of law, to which no response is required. To the extent these allegations could be deemed factual, Defendants admit that Connecticut is presently in nonattainment with the 2008 ozone National Ambient Air Quality Standards (“NAAQS”) cited in Plaintiff’s petition under CAA section 126(b), 42 U.S.C. § 7426(b), and further admit that the citizens and residents of Connecticut reside within this judicial district. Defendants lack sufficient knowledge or information to form a basis as to the truth of the remaining factual allegations in paragraph two and therefore deny them.

3. The allegation in paragraph three of the Complaint states a legal conclusion and contains a characterization of Plaintiff’s Complaint, to which no response is required.

4. The allegation in paragraph four of the Complaint states a legal conclusion to which no response is required.

5. In response to the allegations in the first sentence of paragraph five of the Complaint, Defendants admit that Scott Pruitt is the Administrator of U.S. EPA. The remaining allegations in the first sentence of paragraph five contain a characterization of Plaintiff’s Complaint, to which no response is required. The allegations in the second sentence of paragraph five of the Complaint characterize an enacted statute which speaks for itself and so no response is required.

6. In response to the allegations in paragraph 6 of the Complaint, Defendants admit that Defendant EPA is an executive agency of the federal government. The remaining allegations in paragraph 6 characterize an enacted statute which speaks for itself and so no response is required.

7-11. The allegations in paragraphs 7-11 of the Complaint characterize an enacted statute which speaks for itself and so no response is required.

12-13. Defendants admit the allegations in paragraphs 12 and 13 of the Complaint.

14. In response to the allegation in paragraph 14 of the Complaint, Defendants admit that in 2008 and 2015, U.S. EPA revised the primary and secondary NAAQS for ozone (O₃).

15. In response to the allegations in paragraph 15 of the Complaint, Defendants admit that Connecticut is presently in nonattainment with the 2008 ozone NAAQS. Defendants object to the use of the vague and undefined term “well above” in the second sentence of paragraph 15, and therefore are without sufficient information or knowledge to admit said allegation. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 and therefore deny them.

16. Upon information and belief, Defendants admit the allegations in paragraph 16 of the Complaint.

17-18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 17 and 18 of the Complaint and therefore deny them.

19. In response to the allegations in paragraph 19 of the Complaint, Defendants admit that on June 1, 2016, the State of Connecticut, through its Department of Energy and Environmental Protection (“DEEP”), submitted an administrative petition to U.S. EPA, including technical support documents, pursuant to CAA section 126(b), 42 U.S.C. § 7426(b) (“section 126(b) petition”). The remaining allegations in paragraph 19 characterize Plaintiff’s section 126(b) petition, which document speaks for itself and is the best evidence of its contents and so no response is required.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and therefore deny them.

21. The allegation in paragraph 21 of the Complaint constitutes a conclusion of law, to which no response is required. To the extent a response is required, Defendants admit that more than 60 days have elapsed since U.S. EPA received Plaintiff's section 126(b) petition, and further admit that U.S. EPA, to date, has not held a public hearing or taken other final action regarding said petition. Defendants admit that the CAA imposed an obligation on EPA to hold a public hearing or act on the State's section 126(b) petition within 60 days after receipt but aver that the CAA section 307(d)(10), 42 U.S.C. § 7607(d)(10), also authorized EPA to extend its time to respond to that petition beyond the 60-day period established in section 126(b).

22. In response to the allegations in the first sentence of paragraph 22 of the Complaint, Defendants admit that on July 25, 2016, U.S. EPA determined that it was necessary to extend the time to respond to Plaintiff's section 126(b) petition, in order to afford the public, and U.S. EPA itself, sufficient opportunity to carry out the notice and comment rulemaking requirements provided by CAA section 307(d)(10), 42 U.S.C. § 7607(d)(10). The remaining allegations in the first sentence of paragraph 22 characterize an enacted statute which speaks for itself and so no response is required. The allegations in the second sentence of paragraph 22 characterizes an enacted statute, 42 U.S.C. § 7607(d)(10), which speaks for itself and so no response is required. To the extent these allegations could be deemed factual, Defendants admit that the six-month extension of the deadline that commenced on July 25, 2016, has expired and that no further extension is authorized by CAA section 307(d)(10).

23. In response to the allegations in paragraph 23 of the Complaint, Defendants admit that Plaintiff's section 126(b) petition was submitted over 11 months prior to the date of this

Answer, and that U.S. EPA is directed to make the finding requested in a section 126(b) petition, or deny the petition, within time frames prescribed by applicable provisions of the CAA, including CAA sections 126(b) and section 307(d)(10), 42 U.S.C. §§ 7426(b), 7607(d)(10). Defendants further admit that U.S. EPA to date has not completed the technical and other analyses, the public notice and comment process and the public hearing prior to taking final action on Plaintiff's section 126(b) petition. Defendants deny the remaining allegations in paragraph 23.

24. The allegations in the first sentence of paragraph 24 of the Complaint constitutes a conclusion of law, to which no response is required. The allegations in the first sentence of paragraph 24 also characterizes an enacted statute, 42 U.S.C. § 7426(c), which speaks for itself and so no response is required. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in the second sentence of paragraph 24 and therefore deny the allegations.

25. In response to the allegations in paragraph 25 of the Complaint, Defendants admit that Plaintiff sent U.S. EPA a written notice of intent to sue letter, dated March 9, 2017, and that more than 60 days have elapsed since Plaintiff sent such notice. The remaining allegations in paragraph 25 characterize Plaintiff's notice letter, which document speaks for itself and is the best evidence of its contents and so no response is required.

26. In response to the allegations in paragraph 26 of the Complaint, Defendants admit that U.S. EPA received Plaintiff's notice of intent to sue letter on or about March 14, 2017, and that more than 60 days have elapsed since such receipt. In further response to the allegations in paragraph 26, Defendants admit U.S. EPA is directed to make the finding requested in a section 126(b) petition, or deny the petition, within time frames prescribed by applicable provisions of

the CAA, including section 126(b) and section 307(d)(10) and that, to date, U.S. EPA has not completed the technical and other analyses, the public notice and comment process, or the public hearing required to complete its review of Plaintiff's section 126(b) petition.

27. The allegations in paragraph 27 of the Complaint constitute conclusions of law, to which no response is required.

28. Defendants deny the allegations in paragraph 28 of the Complaint, and aver that while the CAA imposed an obligation on EPA to hold a public hearing or act on the State's section 126(b) petition within 60 days after receipt, U.S. EPA properly exercised its authority under CAA section 307(d)(10), 42 U.S.C. § 7607(d)(10), to extend the time, beyond 60 days, to hold a public hearing and make the finding or deny the State's section 126(b) petition.

Defendants admit that to the extent that the Court determines that U.S. EPA has violated 42 U.S.C. § 7426(b), said violation continues to this day.

29. Defendants admit that to the extent that the Court determines that U.S. EPA has violated 42 U.S.C. § 7426(b), said violation constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator," within the meaning of 42 U.S.C. § 7604(a)(2).

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 30 of the Complaint and therefore deny the allegations.

Plaintiff's Complaint has a prayer for relief requesting various forms of relief, to which no response is required. To the extent a response is necessary, Defendants deny that Plaintiff is entitled to the relief sought.

GENERAL DENIAL

Any allegation of fact not specifically admitted in the foregoing responses is denied.

DEFENSE

Without limiting or waiving any other defenses available to it, the United States hereby asserts the following defense to the Complaint.

1. With respect to one or more of the allegations in support of its claim, Plaintiff is not entitled to relief on equitable grounds.

Respectfully submitted,

DEIRDRE M. DALY
United States Attorney
District of Connecticut

Date: July 20, 2017

John B. Hughes
Assistant U.S. Attorney
157 Church Street
New Haven, CT 06510
(203) 821-3802
Fed. Bar. No. ct05289

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division

By: s/ Joshua M. Levin
Joshua M. Levin
Environmental Defense Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 514-4198
Facsimile: (202) 514-8865
Email: joshua.levin@usdoj.gov
Fed. Bar No. phv03363

OF COUNSEL:

ABIRAMI VIJAYAN
Office of General Counsel
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2017, a copy of the foregoing Answer was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Joshua M. Levin _____

Joshua M. Levin