

largest networks of environmental groups, representing more than one million members in 70 countries and five continents. Plaintiff brings this action for declaratory judgment and mandamus or other injunctive relief against Defendant Stephen L. Johnson, in his official capacity as the Administrator of the United States Environmental Protection Agency (EPA) for failing to respond substantively to Plaintiff's petition to assess and regulate pollution from cruise ships ("Cruise Ship Petition"), pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 553(e), 555(b), and 555(e).

2. On March 17, 2000, more than seven years ago, Bluewater Network submitted its request for rulemaking to EPA on behalf of 53 organizations. Defendant has failed to respond substantively to Plaintiff's petition, in violation of EPA's obligation under 5 U.S.C. § 553(e) of the APA to provide Plaintiff the right to petition for the issuance, amendment, or repeal of a rule, and EPA's duty under 5 U.S.C. § 555(b) to conclude the matter presented to it within a reasonable time.

3. Plaintiff respectfully requests that this Court issue a declaratory judgment that Defendant's inaction is a violation of the APA, and issue an order directing EPA to respond substantively to Plaintiff's petition lodged now more than seven years ago.

PARTIES

4. Plaintiff Friends of the Earth is one of the world's largest networks of environmental groups with one million supporters in 70 countries across five continents.

5. Bluewater Network has been a division of Friends of the Earth since the two organizations merged in March 2005.

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6. Plaintiff and its members have a substantial and particular interest in the health of the aquatic ecosystems where cruise ships discharge wastes and pollutants.

7. Plaintiff maintains its principal office at 1717 Massachusetts Ave, NW, Suite 600, Washington DC, 20036.

8. Plaintiff and its members regularly use and enjoy the fish, wildlife, water, and other natural resources of the waters of the United States, for a variety of recreational, aesthetic and educational purposes. These purposes include, but are not limited to, boating, fishing, swimming, wildlife observation, interpretive field trips, photography, and aesthetic appreciation. Plaintiff and its members intend to do all of the foregoing on an ongoing basis in the future and thereby do and will continue to derive recreational, aesthetic, educational, and economic benefits from the natural resources of these aquatic ecosystems.

9. Discharge of pollutants by cruise ships impedes, limits, and harms Plaintiff's and Plaintiff's members' ability to participate in the abovementioned activities.

10. Plaintiff produces materials for the public and local and federal governments to assess the economic and environmental impacts of cruise ships. Plaintiff's materials often analyze the legal and regulatory means taken by federal agencies to address the various economic and environmental impacts associated with cruise ships.

11. Plaintiff's interests are being, and will continue to be, adversely affected by Defendant's actions complained of herein. In particular, Defendant's unreasonable seven-year delay in responding substantively to the Cruise Ship Petition injures Plaintiff

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by postponing indefinitely Plaintiff's procedural right to petition a federal agency for rulemaking under the APA and to receive a timely response.

12. Defendant's unreasonable delay also directly harms Plaintiff's goals and functions by impeding Plaintiff's ability to further facilitate public involvement in governmental decision-making by foreclosing a statutory right that allows for public participation through petitions for rulemaking.

13. Defendant's failure to provide a response to the Cruise Ship Petition (and the substantive information contained therein) impedes Plaintiff's daily operations by impairing Plaintiff's use of the petitioning process to obtain a complete and comprehensive agency interpretation of the EPA's legal authority to regulate cruise ship emissions under the Clean Water Act. Plaintiff's technical reports and policy analyses rely on the receipt of such federal agency interpretations of statutory authority.

14. Defendant's failure to provide an answer to the Cruise Ship Petition deprives Plaintiff of the information necessary to create and analyze policy proposals concerning transportation technologies that conform to EPA's current statutory interpretation of the Clean Water Act.

15. Defendant's unreasonable delay adversely affects Plaintiff's ability to disseminate EPA's current statutory interpretation of the Clean Water Act to the public, state and local governments, policymakers, and others interested in the possible use of existing federal laws as regulatory tools for addressing cruise ships emissions.

16. Defendant Stephen L. Johnson is the Administrator of the United States Environmental Protection Agency, with its principal office located at 1200 Pennsylvania

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Avenue, NW, Washington, DC, 20460. As Administrator, Defendant Johnson has the ultimate responsibility for the activities of the EPA, including those actions complained of herein. The EPA is the federal agency with the primary responsibility for implementing the Clean Water Act.

JURISDICTION AND VENUE

17. Plaintiff has a right to bring this action pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

18. This Court has jurisdiction over this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 706(1) (scope of review), as well as 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1346 (United States as defendant).

19. The relief requested is specifically authorized pursuant to 28 U.S.C. § 1361 (mandamus), 28 U.S.C. § 1657 (writs), 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and 28 U.S.C. § 2412 (costs and fees). There is a present and actual controversy between the parties.

20. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because the Plaintiff resides in the District of Columbia, Defendant maintains offices in the District of Columbia, and a substantial part of the events and omissions which gave rise to this action occurred in this district.

STATEMENT OF FACTS

21. On March 17, 2000, Bluewater Network, along with 53 other organizations, petitioned EPA to “identify and take regulatory action on measures to address pollution by cruise ships.”

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22. On March 31, 2000, EPA issued an internal memorandum on the “Petition to Assess and Regulate Pollution from Cruise Ships,” in order to coordinate the various agency personnel whose participation might be necessary to address the issues raised in the petition. EPA stated at the time that a “[r]apid response to this petition is necessary, both because of the importance of the issue, and because extensive state and regional efforts to address cruise line pollution are proceeding at a fast pace, and these must be engaged to provide an effective national response.” Attached to the memorandum was an “Action Plan for Cruise Ship Petition Response” that included a target response date of October 1, 2000.

23. In an April 24, 2000, letter to Bluewater Network, EPA acknowledged receipt of the Cruise Ship Petition and stated that staff had been directed to “initiate an assessment of cruise ship waste streams and management practices.”

24. On May 12, 2000, EPA acknowledged receipt of a follow-up letter from Bluewater Network, stating that EPA “will thoroughly review the issues raised in your letter.”

25. On August 8, 2000, EPA released a white paper on cruise ship pollution. The white paper’s executive summary stated that the paper provided preliminary recommendations for EPA’s response to the Cruise Ship Petition and emphasized that the “options presented in the paper should not be interpreted as Agency recommendations or as a decision on the Bluewater Network petition.” One of the paper’s five recommended EPA actions was to release a draft assessment of cruise ship waste streams and environmental management options to the public.

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26. EPA held public hearings on cruise ship pollution in Los Angeles, California on September 6, 2000, in Juneau, Alaska on September 8, 2000, and in Miami, Florida on September 12, 2000.

27. On March 29, 2001, Bluewater Network requested that EPA consider an addendum to its Cruise Ship Petition seeking to include air emissions in the waste streams being examined in EPA's assessment.

28. In a letter dated July 16, 2001, EPA responded to Bluewater Network's addendum request by confirming that the original Cruise Ship Petition was still being reviewed and that the process was expected to be completed "in the next few months."

29. In September 2002, EPA released its Cruise Ship Plume Tracking Survey Report, which did not reference the Cruise Ship Petition.

30. In public presentations in 2003 and 2004, EPA mentioned that its assessment of cruise ship waste streams would be released in 2004.

31. In March 2005, Bluewater Network and Friends of the Earth finalized their merger, with Bluewater Network formally becoming a division of Friends of the Earth.

32. On July 27, 2006, Plaintiff wrote to EPA Assistant Administrator Benjamin Grumbles to inquire about the status of the Cruise Ship Petition and to request that a draft of EPA's assessment report be released immediately to the public. Mr. Grumbles acknowledged Plaintiff's letter in his August 23, 2006 reply and stated that EPA was "actively working to complete the assessment report."

33. On October 10, 2006, EPA responded to an inquiry from U.S. Senator Richard Durbin regarding the status of the agency's Cruise Ship Discharge Assessment Report. The report has long been EPA's promised response to Plaintiff's Cruise Ship Petition. Assistant Administrator Grumbles wrote that EPA was "actively working on [the report] and plan[ned] to release it for public comment" in a matter of months, echoing the language that EPA has used in its correspondence since March 2000.

34. More than seven years have elapsed since the Cruise Ship Petition was first submitted to the EPA. As of this filing, EPA has still failed to grant or deny Plaintiff's petition for regulatory action to address cruise ship pollution.

CLAIMS AND CAUSES OF ACTION

35. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 34, *supra*.

36. Pursuant to the APA, 5 U.S.C. § 553(e), and the EPA's implementing regulations found at 40 C.F.R. § 25, Plaintiff presented to EPA a petition for regulatory action on measures to address pollution by cruise ships. To date, EPA has failed to provide Plaintiff with a substantive answer to the Cruise Ship Petition.

37. The APA, 5 U.S.C. § 555(b), requires that the Administrator of the EPA "within a reasonable time . . . proceed to conclude a matter presented to it."

38. Furthermore, the APA, 5 U.S.C. § 555(e) requires that "[p]rompt notice" be provided to a petitioner when EPA denies a petition, and that EPA also provide "a brief statement of the grounds for the denial."

39. The APA, 5 U.S.C. § 706(1) further provides that a reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed.”

40. EPA’s failure to provide a substantive answer to the Cruise Ship Petition in a reasonable time violates the APA, 5 U.S.C. §§ 553(e), 555(b), and 555(e).

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court enter an order in favor of Plaintiff:

(1) Declaring that Defendant’s unreasonable delay in responding to the Cruise Ship Petition violates the Administrative Procedure Act;

(2) Ordering EPA to provide a substantive answer to the Cruise Ship Petition within sixty (60) days after the entrance of this Order;

(3) Retaining jurisdiction of this action to ensure compliance with the Court’s decree;

(4) Awarding Plaintiff attorney’s fees and all other reasonable expenses incurred in pursuit of this action; and

(5) Granting other such relief as the Court may deem just and proper.

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DATED this 9th day of May, 2007.

Respectfully Submitted,

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