ENVIRONMENTAL INTEGRITY PROJECT

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July 20, 2016

Via Certified Mail, Return Receipt Requested

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to Sue for Unreasonable Delay in Responding to a Petition for Reconsideration of EPA's Final Action on the Startup and Shutdown Provisions of the Mercury and Air Toxics Standards

Dear Administrator McCarthy:

With this letter, the Chesapeake Climate Action Network, Sierra Club and Environmental Integrity Project (collectively referred to as "Environmental Petitioners") are giving you the required 180-day notice of our intent to sue the U.S. Environmental Protection Agency ("EPA") and you, in your official capacity as Administrator of EPA, for unreasonable delay in responding to our January 20, 2015 petition requesting that EPA reconsider its final action on the startup and shutdown provisions from the Mercury and Air Toxics Standards (the "MATS Rule"), Docket No. EPA-HQ-OAR-2009-0234. The final action on the startup and shutdown provisions was published in the Federal Register on November 19, 2014 at 79 Fed. Reg. 68,777.[1] Among other things, our reconsideration petition (a copy of which we have included with this letter) took issue with the four-hour exemption from the MATS Rule's numerical standards that EPA established for electric utility steam generating units ("EGUs") during periods of startup. It also raised issues with alleged work practices adopted by EPA. Our understanding is that EPA intends to soon respond to our reconsideration petition, which may (depending on the response) moot these unreasonable delay claims in part or in whole. If EPA does not discharge its duty to issue a judicially-reviewable full and final response to our reconsideration request, we intend to sue for unreasonable delay in U.S. district court at the conclusion of the 180-day notice period.

[1] EPA's final action on the MATS startup and shutdown provisions is titled "Reconsideration of Certain Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units."

Under § 307 of the Clean Air Act, if a "person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the public-comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule . . . ." 42 U.S.C. § 7607(d)(7)(B). As explained in more detail in our petition for reconsideration, the petition meets these criteria. The Environmental Petitioners never had an opportunity to comment on EPA's rationale for the four-hour exemption in the final startup provisions (*i.e.*, that it is impracticable to measure emissions for the first four hours after generation of electricity) or EPA's unlawful startup and shutdown work practices because EPA previewed neither of these during the public comment period. As we explain in the reconsideration petition, Environmental Petitioners' objections are of central relevance because (among other reasons) EGUs can emit large amounts of hazardous air pollutants during startup and shutdown. That the startup and shutdown provisions are of central relevance is also shown by the fact that EPA has already spent considerable time and effort in previous reconsideration proceedings focused on these provisions.

It has been a year and a half since we filed our reconsideration petition. EPA's delay in responding to the petition is especially unreasonable given that April 16, 2016 — the deadline for existing EGUs that received extensions to come into compliance with the MATS Rule — has come and gone. Further, over a year after we filed our reconsideration petition, EPA issued final "technical corrections" to the MATS Rule, which included changes that further weakened the Rule's startup work practices but did not address any of the concerns raised in our petition. *See* 81 Fed. Reg. 20,172 (April 6, 2016). A prompt response to our reconsideration petition is also needed because Environmental Petitioners' case in the U.S. Court of Appeals for the D.C. Circuit challenging the final startup and shutdown provisions is being held in abeyance until August 15, 2016 — at which point motions to govern the proceedings will be due. *See* Case No. 15-1013, ECF Doc. No. 1619611. Any action by EPA on our reconsideration petition, in which we raise issues that are intertwined with those we expect to raise in our D.C. Circuit case, will affect our position on how the case should proceed.

Section 304(a) of the Clean Air Act provides that the district courts have jurisdiction "to compel . . . agency action unreasonably delayed," and also requires notice to EPA 180 days before commencing an action for unreasonable delay. 42 U.S.C. § 7604(a). Under § 304(a), this letter serves to notify you that, if EPA does not respond to our reconsideration petition in the manner described above, the Environmental Petitioners intend to file suit against you and EPA in federal district court after 180 days have elapsed from the date of this letter. *See* 40 C.F.R. § 54.2(d).

If you have any questions regarding this letter or would like to discuss the issues we raise here, please contact me at the number or email address listed below.

Sincerely,

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