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July 20, 2017

Via Certified Mail – Return Receipt Requested

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

RE: Notice of Intent to Sue Pursuant to the Clean Air Act for Failure to Perform a Nondiscretionary Duty to Act on Maryland's Section 126 Petition

Dear Administrator Pruitt:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), that the Chesapeake Bay Foundation, Inc. ("CBF") intends to file a citizen suit against the United States Environmental Protection Agency ("EPA") and the Administrator of the EPA for failure to perform a nondiscretionary duty as mandated by Section 126 of the Clean Air Act ("CAA"), 42 U.S.C. § 7426(b). Specifically, EPA has failed to hold a public hearing and either grant or deny the Section 126 Petition filed by the Maryland Department of the Environment ("MDE") on November 16, 2016 regarding emissions from 36 coal-fired electric generating units ("EGUs").

On November 16, 2016, the State of Maryland, through MDE, petitioned EPA to make a finding that 36 EGUs, at 19 separate power plants in five upwind states, are emitting air pollutants that significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards ("NAAQS") in Maryland. Pursuant to Section 126 of the CAA, "[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator *shall* make such a finding or deny the petition." 42 U.S.C. § 7426(b) (emphasis added).

On January 3, 2017, EPA granted itself a 6-month extension to hold a public notice-and-comment process and respond to Maryland's 126 Petition. *See* 82 Fed. Reg. 22 (Jan. 3, 2017). As of the date of this notice letter, both the 60 days and the 6-month extension have expired and EPA has not granted or denied Maryland's 126 Petition, nor held a public hearing. EPA has therefore failed to perform its mandatory, nondiscretionary duty as required by CAA Section 126. 42 U.S.C. § 7426(b).

The citizen suit provision of the CAA provides that any person may sue the Administrator of the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary." 42 U.S.C. § 7604(a)(2). The CAA requires citizens to provide the Administrator with 60 days'

notice prior to commencing an action under the citizen suit provision. 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. § 54.2(a).

The Chesapeake Bay Foundation hereby notifies the EPA Administrator that, absent corrective action by EPA within the 60-day notice period, CBF intends to file a citizen suit against EPA and the Administrator for failure to perform the nondiscretionary duty mandated by CAA Section 126. 42 U.S.C. § 7426(b). Pursuant to 40 C.F.R. § 54.3(a), the Chesapeake Bay Foundation's address is 6 Herndon Avenue, Annapolis, Maryland, 21403. CBF will seek injunctive and declaratory relief, the costs of litigation, and other appropriate relief as allowed.

If you have any questions concerning this notice letter or if you believe this notice is incorrect in any respect, please contact the undersigned counsel. During the notice period, we are available to discuss this matter with you.

Sincerely,



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cc via certified mail:

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