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May 4, 2020

VIA CERTIFIED MAIL

Administrator Andrew Wheeler
U.S. Environmental Protection Agency
Mail code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator Wheeler:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), that the Sierra Club and Clean Air Council (“CAC”) intend to file a citizen suit against the United States Environmental Protection Agency (“EPA”) and the Administrator of the EPA, based on your failure to perform your nondiscretionary duty set forth under the Clean Air Act. *See* 42 U.S.C. § 7604(a)(2). Specifically, Sierra Club and CAC intend to file suit over your failure to act within the express sixty day time frame required by 42 U.S.C. § 7661d(b)(2), to grant or deny their January 8, 2020 petition seeking an objection to the proposed modification of Title V operating permit No. 48-00021 (“Northampton Permit”) issued by the Pennsylvania Department of Environmental Protection (“DEP”) for the Northampton Generating Co. Waste Coal Plant (“Northampton”) in Northampton County, Pennsylvania. *See* Petition to the EPA Administrator to Object to Issuance of the Proposed Title V Operating Permit Minor Modification for the Northampton Waste Coal Plant, available at <https://www.epa.gov/sites/production/files/2020-02/documents/northamptonpetition2020.pdf> (“Northampton Petition”).

The Clean Air Act imposes on the EPA Administrator a nondiscretionary duty to respond to any petition to object to a Title V permit within a statutorily mandated timeframe. *See* 42 U.S.C. § 7661d(b)(2). Specifically, the Clean Air Act mandates that the Administrator must

grant or deny such petition within sixty days of the petition being filed. *Id.* The proposed modification to the Northampton Permit at issue in Sierra Club and CAC's petition to EPA was noticed for public comments by DEP in October 2019. Sierra Club and CAC submitted joint comments on the proposed permit on November 4, 2019, raising issue with various insufficient monitoring requirements proposed in the permit as well as its classification as a "minor" modification. EPA's statutory forty-five day review period on the Northampton Permit ended on November 12, 2019, with no objection from EPA. *See* 42 U.S.C. § 7661d(b)(1). Consequently, on January 8, 2020, Sierra Club and CAC electronically filed a petition for EPA objection to the permit through the Central Data Exchange. The EPA Administrator was required to respond to Sierra Club and CAC's Northampton Petition by March 9, 2020. *See* 42 U.S.C. § 7661d(b)(2). However, the Administrator has neither granted nor denied the Northampton Petition and, therefore, is in violation of his nondiscretionary duty under Clean Air Act section 505. 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed.").

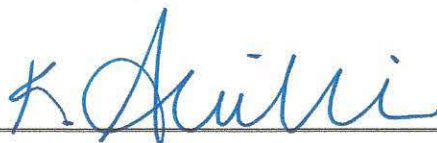
Section 304(a)(2) of the Clean Air Act provides that any person may sue the Administrator of the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary." 42 U.S.C. § 7604(a)(2). Section 505 of the Clean Air Act expressly provides that "[t]he Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2) (emphasis added). This provision imposes a clear nondiscretionary duty on the Administrator to act within sixty days of a petition submission under this section. Thus, where the Administrator has failed to perform this nondiscretionary duty, citizens may bring suit to compel such action.

The Clean Air Act requires citizens to provide the Administrator with sixty days notice prior to bringing an action under Section 304(a)(2). 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. 54.2(a). Accordingly, Sierra Club and CAC hereby notify EPA and the Administrator of their intent to file suit against EPA and the Administrator of the EPA, under Clean Air Act section 304(a)(2) for failing to perform the nondiscretionary duty described above as to the Northampton Petition. If this violation remains unresolved at the end of the sixty-day notice period, Sierra Club and CAC intend to seek the following relief:

1. A court order compelling EPA and the Administrator to grant or deny Sierra Club and CAC's January 8, 2020 Northampton Petition;
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matter identified in this letter or offer a proposal for

resolving this issue, please contact me at (703) 771-8394 or via email at kmalawoffice@gmail.com.



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