

LAW OFFICE OF
JOHN M. BARTH

P.O. BOX 409 HYGIENE, COLORADO 80533 (303) 774-8868 BARTHLAWOFFICE@GMAIL.COM

May 2, 2022

BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Notice of Intent to Sue Administrator Regan for the Failure to Timely Grant or Deny a Petition to Object to a Clean Air Act Part 70 Operating Permit Revision No. P0007595, Issued by Maricopa County to Salt River Project Agricultural Improvement and Power District for Operation of the Agua Fria Generating Station, Maricopa County, Arizona.

Dear Administrator Regan:

I am writing on behalf of Sierra Club to provide you with notice that we intend to bring suit against you in your official capacity as Administrator of the U.S. Environmental Protection Agency ("EPA"). This suit will seek redress for your failure to timely grant or deny our Petition to Object ("Petition") to the Clean Air Act Part 70 Operating Permit Revision No. P0007595 ("Permit") issued by Maricopa County to the Salt River Project Agricultural Improvement and Power District ("SRP") for operation of the Agua Fria Generating Station ("AFGS") in Maricopa County, Arizona.

The Petition was timely filed on February 28, 2022 within 60 days following the end of EPA's 45-day review period for the Permit. Your failure to act on the Petition within 60 days is a violation of 42 U.S.C. § 7661d(b)(2). Unless you promptly respond to our Petition as required by law, Sierra Club intends to file suit 60 days after issuance of this notice letter to compel your response.

Clean Air Act section 304(a)(2) authorizes citizen suits "against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. §7604(a)(2). The Administrator has a nondiscretionary duty to grant or deny petitions filed by citizens that object to the issuance of a federal operating permit on the basis that it contains provisions not in compliance with the Clean Air Act. 42 U.S.C. §7661d(b)(2). In the event the Administrator fails to perform this nondiscretionary duty, citizens may bring suit to compel such action. The district courts have jurisdiction over these suits. 42 U.S.C. §7604(a).

The Clean Air Act requires citizens to give the Administrator notice 60 days before bringing an action under section 304(a)(2). 42 U.S.C. §7604(b)(2). Sierra Club is hereby giving you notice of its intent to file suit against you in your official capacity as Administrator of the EPA, under Clean Air Act section 304(a)(2), for failing to perform a non-discretionary duty. Sierra Club may commence this suit at any time after 60 days from the issuance of this letter.

The relief we will request in the lawsuit is: 1) an order compelling you to grant or deny the Petition within 60 days from the date of any court order; 2) attorneys' fees and other litigation costs; and 3) any other appropriate relief.

If you have any questions regarding the allegations in this notice letter, believe that any information contained herein is in error, or would like to discuss this matter, please contact me at the address listed above.

Sincerely,

s/ John M. Barth

cc:

Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Martha Guzman, Regional Administrator
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Misael Cabrera, Director
Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, AZ 85007

Scott Treece
Title V Permitting/Performance Testing Supervisor
Maricopa County Air Quality Department
301 W. Jefferson St., Suite 410
Phoenix, AZ 85003