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March 6, 2015

Administrator Gina McCarthy  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code 1101A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
Fax number (202) 501-1450

*Via USPS Certified Mail*  
7011 3500 0002 5383 3104

**RE: Notice of Intent to Sue for Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O31 Issued to Southwestern Electric Power Company for the H.W. Pirkey Power Plant in Harrison County, Texas**

Dear Administrator McCarthy:

With this letter, the Environmental Integrity Project and the Sierra Club are giving you notice of our intent to sue you in your official capacity as Administrator of the U.S. Environmental Protection Agency for failure to timely respond to our Petition to Object to the Part 70 Operating Permit (Title V permit) No. O31 issued to Southwestern Electric Power Company ("SWEPCO") for operation of the H.W. Pirkey Power Plant in Harrison County, Texas.

Our Title V Petition was timely filed on October 30, 2014, within 60 days following the end of EPA's 45-day review period for the proposed Title V Permit.<sup>1</sup> EPA failed to respond to the Petition within 60 days, in violation of 42 U.S.C. § 7661d(b)(2). Please respond to our Petition, as required by law, or we will be forced to file suit 60 days after you receive this notice letter to compel your response.

#### **Authority to Bring Suit**

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

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<sup>1</sup> The Petition is attached to this notice letter as Attachment A.

Air Act. 42 U.S.C. § 7661d(b)(2). In the event that 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). Petitioners are hereby giving you notice of our 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. Petitioners may commence this suit at any time 60 days after you receive this notice.

**Relief Requested**

Petitioners will seek the following relief:

1. An order compelling you to grant or deny the Petition within 60 days from the date of the order;
2. Attorney's fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you have any questions regarding this notice letter, believe any of the foregoing information to be in error, wish to discuss the exchange of information, or would otherwise like to discuss a settlement of this matter prior to the initiation of litigation, please contact Ilan Levin at (512) 637-9479 or [ilevin@environmentalintegrity.org](mailto:ilevin@environmentalintegrity.org).

Sincerely,



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Gabriel Clark-Leach  
Ilan Levin  
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[ilevin@environmentalintegrity.org](mailto:ilevin@environmentalintegrity.org)

Attachment

cc: *(Via USPS Certified Mail)*

Eric Holder, Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Ron Curry, Regional Administrator  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Steve Hagle, P.E., Office of Air Deputy Director, MC-122  
Texas Commission on Environmental Quality  
P.O Box 13087  
Austin, Texas 78711-3087