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CLIENT/MATTER NUMBER
086120-0125

March 16, 2015

**VIA CERTIFIED MAIL
AND ELECTRONIC MAIL**

Ms. Gina McCarthy, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, D.C. 20460

RECEIVED
2015 MAR 20 PM 1:14
OFFICE OF THE
EXECUTIVE SECRETARY

Re: Notice of Intent to Sue Pursuant to Section 304(b)(2) of the
Clean Air Act for Failure to Grant or Deny Wisconsin Public
Service Corporation's Petitions Filed Pursuant to §505(b)(2)

Dear Administrator McCarthy:

Pursuant to Clean Air Act § 304(b)(2), 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Foley & Lardner LLP, on behalf of our client Wisconsin Public Service Corporation ("WPSC"), hereby provides formal notice that WPSC intends to file a citizen suit against the United States Environmental Protection Agency ("U.S. EPA") Administrator in accordance with Clean Air Act § 304(a)(2), 42 U.S.C. § 7604(a)(2). The Clean Air Act permits any person to commence a civil action on its own behalf "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(b)(2).

WPSC intends to file a citizen suit related to a petition WPSC submitted to the U.S. EPA Administrator on July 29, 2011. WPSC petitioned the U.S. EPA Administrator, pursuant to Clean Air Act § 505(b)(2) and 40 C.F.R. § 70.8(d), to object to the proposed Title V Operating Permit for WPSC's De Pere Energy, LLC plant, Permit No. 405170920-P10 ("De Pere Permit"). The Wisconsin Department of Natural Resources ("WDNR") proposed the De Pere Permit to U.S. EPA on April 18, 2011. A copy of WPSC's petition related to the De Pere Permit (without attachments¹) is attached as Exhibit A. WPSC requested the U.S. EPA Administrator to object to the De Pere Permit because (i) various emission limits in the permit are vague and unenforceable as they

¹ Due to the large size of the attachments to the petition related to the De Pere Permit and the fact that they were previously provided to U.S. EPA, they are not reattached here. WPSC will provide copies of these attachments upon request.

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do not identify the applicable averaging time periods and (ii) WDNR did not adequately respond to WPSC's comments on this issue.

WPSC also intends to file a citizen suit related to a petition WPSC submitted to the U.S. EPA Administrator on October 16, 2013 ("2013 Weston Petition"), in which WPSC requested that the U.S. EPA Administrator object to the proposed Title V Operating Permit for WPSC's Weston plant, Permit No. 737009020-P-10 (the "Weston Permit"). 42 U.S.C. § 7661d(b); 40 C.F.R. § 70.8(d). The WDNR proposed the Weston Permit to U.S. EPA on July 13, 2013, and a copy of the 2013 Weston Petition (without attachments²) is attached as Exhibit B. WPSC requested the U.S. EPA Administrator to object to the Weston Permit for five reasons: (1) the Weston Permit impermissibly imposes new or modifies preexisting requirements as part of the Title V permitting process; (2) various emission limits and monitoring provisions are vague and unenforceable as they do not identify appropriate averaging time periods; (3) WDNR failed to incorporate proper and adequate averaging periods into the compliance assurance monitoring provisions contained in the Weston Permit; (4) WDNR failed to incorporate the provisions, including the affirmative defense provisions, of the Mercury and Air Toxics Standard for Power Plants³; and (5) WDNR did not adequately respond to WPSC's comments on the Weston Permit.

WPSC further intends to file a citizen suit related to a petition WPSC submitted to the U.S. EPA Administrator on November 14, 2014 ("2014 Weston Petition"), in which WPSC requested that the U.S. EPA Administrator object to the proposed Title V Operating Permit revisions for WPSC's Weston plant, Permit Revision Nos. 737009020-P13 and 737009020-P16 ("Weston Permit Revision"). 42 U.S.C. § 7661d(b); 40 C.F.R. § 70.8(d). The WDNR proposed the Weston Permit Revision to U.S. EPA on August 1, 2014, and a copy of the 2014 Weston Petition related to this permit (without attachments⁴) is attached as Exhibit C. WDNR issued the Weston Permit Revision in 2014 only to revise several of the terms from the Weston Permit that are the subject of an ongoing state administrative challenge by WPSC. As a result, the Weston Permit Revision resolved only one of the issues raised by WPSC in the 2013 Weston Petition. The remaining issues from the 2013 Weston Petition (which WPSC reasserted in the 2014 Weston Petition) are (i) the Weston Permit impermissibly imposes new or modifies preexisting requirements as part of the Title V permitting process, (ii) various emission limits and monitoring provisions are vague and

² Due to the large size of the attachments to the petition related to the Weston Permit and the fact that they were previously provided to U.S. EPA, they are not reattached here. WPSC will provide copies of these attachments upon request.

³ As noted below, this issue was subsequently resolved with the issuance of a revised version of the Weston Permit in 2014, and so will not be included in the lawsuit WPSC intends to file related to the Weston Permit.

⁴ Due to the large size of the attachments to the petition related to the Weston Permit Revisions and the fact that they were previously provided to U.S. EPA, they are not reattached here. WPSC will provide copies of these attachments upon request.

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unenforceable as they do not identify appropriate averaging time periods, (iii) WDNR failed to incorporate proper and adequate averaging periods into the compliance assurance monitoring provisions contained in the Weston Permit, and (iv) WDNR did not adequately respond to WPSC's comments on the Weston Permit.

According to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), "[t]he Administrator shall grant or deny [a] petition within 60 days after the petition is filed." To date, the Administrator has not responded to any of WPSC's petitions. Therefore, WPSC hereby gives notice of its intent to file a citizen suit based upon the Administrator's failure to perform the non-discretionary duty to grant or deny WPSC's petitions within 60 days as required by the Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2).

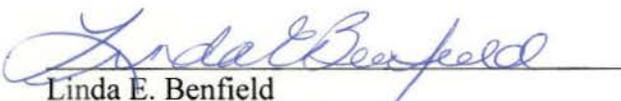
Pursuant to the requirements of 40 C.F.R. § 54.3, the person giving notice is:

Wisconsin Public Service Corporation
700 North Adams Street
Green Bay, WI 54307

As counsel for WPSC, I respectfully request that you direct all correspondence to Foley & Lardner LLP, c/o Linda E. Benfield, at the address shown in the letterhead.

Sincerely,

FOLEY & LARDNER LLP

By 

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cc: Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street (AD/8)
Madison, WI 53703

Susan Hedman
Regional Administrator
United States Environmental Protection Agency-Region 5
Mail Code R-19J
77 West Jackson Boulevard
Chicago, IL 60604-3507