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Tulane Environmental Law Clinic

OFFICE OF THE  
EXECUTIVE DIRECTOR

August 12, 2015

Ref: 126-024.2

Via U.S. Certified Mail No. 7013 0600 0001 9892 1948

Administrator Gina McCarthy  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Notice of Intent to File Citizen Enforcement Suit Pursuant to Clean Air Act § 304(b)(2), 42 U.S.C. § 7604(b)(2)

Dear Administrator McCarthy:

This letter provides notice under Clean Air Act § 304(b)(2), 42 U.S.C. § 7604, and 40 C.F.R. § 54.3(a) that Sierra Club and Louisiana Environmental Action Network ("LEAN") intend to file a citizen suit against EPA under 42 U.S.C. § 7604(a)(2) for failure to grant or deny a petition they submitted requesting that you object to the initial Title V air permit no. 2560-00295-V0 issued to Yuhuang Chemical Inc. for the construction and operation of a new methanol manufacturing plant in St. James, Louisiana.

Sierra Club and LEAN submitted the petition to you under 42 U.S.C. § 7661d(b)(2), which allows anyone to petition the Administrator of EPA to object to an air permit issued pursuant to Title V of the Clean Air Act if EPA has not already objected to the permit within its 45-day period to review such permits. This provision also requires the person to file the petition within 60 days after the expiration of EPA's review period. 42 U.S.C. § 7661d(b)(2).

EPA's 45-day period to review the Yuhuang permit ended on March 20, 2015. EPA did not object to permit. Sierra Club and LEAN filed their petition on May 19, 2015, which is after EPA's 45-day review period and within 60 days after the expiration of that review period. Their petition, therefore, is timely.

The Clean Air Act states: "The Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2). Since Sierra Club and LEAN filed their petition on May 19, 2015, EPA had until July 20, 2015 to grant or deny the petition. EPA's failure to grant or deny the petition within the 60-day period that 42 U.S.C. § 7661d(b)(2) provides constitutes a failure to perform a non-discretionary act, which is actionable under the Clean Air Act citizen suit provision. *See* 42 U.S.C. § 7604(a)(2) ("any person may commence a civil action on his own behalf ... (2) 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").

Tulane Environmental Law Clinic

6329 Freret St., Ste. 130, New Orleans, LA 70118-6231 tel 504.865.5789 fax 862.8721 www.tulane.edu/~telc

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Sierra Club and LEAN intend to file a suit in the U.S. District Court for the Eastern District of Louisiana 60 days from the postmark date on this notice letter to enforce EPA's duty to respond to their petition. *See* 40 C.F.R. § 54.2(d) ("Notice served in accordance with the provisions of this part shall be deemed given on the postmark date, if served by mail.").

The full name and address of the party giving this notice are as follows:

Sierra Club  
85 Second Street, 2nd Floor  
San Francisco, Ca. 94105  
Phone: (415) 977-5500

Louisiana Environmental Action Network  
162 Croydon Avenue  
Baton Rouge, LA 70806-4501  
Phone: (225) 928-1315

All communications, however, should be through counsel:

Corinne Van Dalen  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, La. 70118  
Phone: (504) 862-8818  
Fax: (504) 862-8721  
cvandale@tulane.edu

If you believe that any portion of this notice is in error or if you wish to discuss any portion of this notice, please contact Corinne Van Dalen at the address and phone number listed below.

Respectfully submitted by:



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Corinne Van Dalen, La. Bar No. 21175  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, Louisiana 70118  
Phone: (504) 865-8814  
Fax: (504) 862-8721  
Email: cvandale@tulane.edu  
*Counsel for Sierra Club and Louisiana  
Environmental Action Network*