

Thu Dec 24 08:01:57 EST 2015  
Moritz.Brigette@epamail.epa.gov  
FW: Notice of Intent to file a Civil Action  
To: CMS.OEX@epamail.epa.gov

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**From:** Albert Lin [mailto:alin@earthjustice.org]  
**Sent:** Wednesday, December 23, 2015 2:03 PM  
**To:** Mccarthy, Gina <McCarthy.Gina@epa.gov>  
**Subject:** Notice of Intent to file a Civil Action

December 23, 2015

Dear Administrator McCarthy,

Please accept the attached Notice submitted via Certified Mail and e-mail.

The Notice is submitted by Blue Ridge Environmental Defense League, Clean Wisconsin, and Midwest Environmental Defense Center.

/s/ Albert Lin (for Nicholas Morales)

Albert Lin

Litigation Assistant

Earthjustice Washington, D.C. Office

1625 Massachusetts Avenue, N.W., Suite 702

Washington, DC 20036-2243

T: 202.745.5219

F: 202.667.2356

[earthjustice.org](http://earthjustice.org)



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VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED AND EMAIL

December 23, 2015

Ms. Gina McCarthy  
Administrator  
Environmental Protection Agency  
1101A EPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington D.C. 20460  
mccarthy.gina@epa.gov

RE: Notice of Citizen Suit Concerning Clean Air Act Deadlines

Dear Administrator McCarthy,

This is a notice of “a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” within the meaning of the Clean Air Act, 42 U.S.C. § 7604(a)(2). This notice is provided to you as Administrator of the U.S. Environmental Protection Agency (“EPA”), in your official capacity, pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54 as a prerequisite to bringing a civil action.

The organizations giving this notice are: Blue Ridge Environmental Defense League, P.O. Box 88, Glendale Springs, NC 28629, (336) 982-2691; Clean Wisconsin, 634 W. Main St. #300, Madison, WI 53703, (608) 251-7020; and Midwest Environmental Defense Center, P.O. Box 2443, Madison, WI 53701.

**Section 7412(f) - Standards to Protect Health and Environment.** Title 42, section 7412(f) of the Clean Air Act provides that:

(A) . . . [T]he Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to [§ 7412(d)], promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. . . . If standards promulgated pursuant to [§ 7412(d)] and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer

risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

...

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under [§ 7412(d)] for each source category or subcategory concerned.

42 U.S.C. § 7412(f)(2). More than eight years have passed since EPA promulgated the following standards under 42 U.S.C. § 7412(d) for the following categories of major sources of hazardous air pollutants:

- (1) Leather Finishing Operations, 67 Fed. Reg. 9156 (Feb. 27, 2002) (40 C.F.R. Part 63 Subpart TTTT);
- (2) Wet-Formed Fiberglass Mat Production, 67 Fed. Reg. 17,824 (Apr. 11, 2002) (40 C.F.R. Part 63 Subpart HHHH);
- (3) Rubber Tire Manufacturing, 67 Fed. Reg. 45,588 (July 9, 2002) (40 C.F.R. Part 63 Subpart XXXX);
- (4) Surface Coating of Large Appliances, 67 Fed. Reg. 48,254 (July 23, 2002) (40 C.F.R. Part 63 Subpart NNNN);
- (5) Friction Materials Manufacturing Facilities, 67 Fed. Reg. 64,498 (Oct. 18, 2002) (40 C.F.R. Part 63 Subpart QQQQ);
- (6) Coke Ovens: Pushing, Quenching, and Battery Stacks, 68 Fed. Reg. 18,008 (Apr. 14, 2003) (40 C.F.R. Part 63 Subpart CCCCC);
- (7) Surface Coating of Metal Furniture, 68 Fed. Reg. 28,606 (May 23, 2003) (40 C.F.R. Part 63 Subpart RRRR);
- (8) Surface Coating of Wood Building Products, 68 Fed. Reg. 31,746 (May 28, 2003) (40 C.F.R. Part 63 Subpart QQQQ);
- (9) Printing, Coating, and Dyeing of Fabrics and Other Textiles, 68 Fed. Reg. 32,172 (May 29, 2003) (40 C.F.R. Part 63, Subpart OOOO);
- (10) Taconite Iron Ore Processing, 68 Fed. Reg. 61,868 (Oct. 30, 2003) (40 C.F.R. Part 63 Subpart RRRRR);
- (11) Miscellaneous Coating Manufacturing, 68 Fed. Reg. 69,164 (Dec. 11, 2003) (40 C.F.R. Part 63 Subpart HHHHH);
- (12) Mercury Emissions from Mercury Cell Chlor-Alkali Plants, 68 Fed. Reg. 70,904 (Dec. 19, 2003) (40 C.F.R. Part 63 Subpart IIII);
- (13) Lime Manufacturing Plants, 69 Fed. Reg. 394 (Jan. 5, 2004) (40 C.F.R. Part 63 Subpart AAAAA);
- (14) Iron and Steel Foundries, 69 Fed. Reg. 21,906 (Apr. 22, 2004) (40 C.F.R. Part 63 Subpart EEEEE); and

- (15) Plywood and Composite Wood Products, 69 Fed. Reg. 45,944 (July 30, 2004) (40 C.F.R. Part 63 Subpart DDDD).

Nonetheless, you have neither promulgated standards for these categories pursuant to Clean Air Act § 7412(f), nor determined that such standards are not “required in order to provide an ample margin of safety to protect public health in accordance with this section . . . or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.” 42 U.S.C. § 7412(f)(2). There are no § 7412(f)(2) standards or final residual risk determinations currently in force or effect after publication in the Federal Register for these sources. Accordingly, you have failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 7604(a)(2) for each of the above-listed standards and source categories.

**Section 7412(d)(6) – MACT Review and Revision.** Title 42, section 7412(d)(6) of the Clean Air Act requires EPA to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [§ 112] no less often than every 8 years.” 42 U.S.C. § 7412(d)(6). More than eight years have passed since EPA promulgated Clean Air Act § 7412 regulations for the following categories:

- (1) Leather Finishing Operations, 67 Fed. Reg. 9156 (Feb. 27, 2002) (40 C.F.R. Part 63 Subpart TTTT);
- (2) Wet-Formed Fiberglass Mat Production, 67 Fed. Reg. 17,824 (Apr. 11, 2002) (40 C.F.R. Part 63 Subpart HHHH);
- (3) Rubber Tire Manufacturing, 67 Fed. Reg. 45,588 (July 9, 2002) (40 C.F.R. Part 63 Subpart XXXX);
- (4) Surface Coating of Large Appliances, 67 Fed. Reg. 48,254 (July 23, 2002) (40 C.F.R. Part 63 Subpart NNNN);
- (5) Friction Materials Manufacturing Facilities, 67 Fed. Reg. 64,498 (Oct. 18, 2002) (40 C.F.R. Part 63 Subpart QQQQ);
- (6) Coke Ovens: Pushing, Quenching, and Battery Stacks, 68 Fed. Reg. 18,008 (Apr. 14, 2003) (40 C.F.R. Part 63 Subpart CCCCC);
- (7) Surface Coating of Metal Furniture, 68 Fed. Reg. 28,606 (May 23, 2003) (40 C.F.R. Part 63 Subpart RRRR);
- (8) Surface Coating of Wood Building Products, 68 Fed. Reg. 31,746 (May 28, 2003) (40 C.F.R. Part 63 Subpart QQQQ);
- (9) Printing, Coating, and Dyeing of Fabrics and Other Textiles, 68 Fed. Reg. 32,172 (May 29, 2003) (40 C.F.R. Part 63, Subpart OOOO);
- (10) Taconite Iron Ore Processing, 68 Fed. Reg. 61,868 (Oct. 30, 2003) (40 C.F.R. Part 63 Subpart RRRRR);
- (11) Miscellaneous Coating Manufacturing, 68 Fed. Reg. 69,164 (Dec. 11, 2003) (40 C.F.R. Part 63 Subpart HHHHH);
- (12) Mercury Emissions from Mercury Cell Chlor-Alkali Plants, 68 Fed. Reg. 70,904 (Dec. 19, 2003) (40 C.F.R. Part 63 Subpart IIIII);
- (13) Lime Manufacturing Plants, 69 Fed. Reg. 394 (Jan. 5, 2004) (40 C.F.R. Part 63 Subpart AAAAA);

- (14) Iron and Steel Foundries, 69 Fed. Reg. 21,906 (Apr. 22, 2004) (40 C.F.R. Part 63 Subpart EEEEE); and
- (15) Plywood and Composite Wood Products, 69 Fed. Reg. 45,944 (July 30, 2004) (40 C.F.R. Part 63 Subpart DDDD).

Nonetheless, you have not reviewed and revised EPA's emission standards for these categories, as Clean Air Act § 7412(d)(6) requires. There are no revised, final standards promulgated as a result of the requisite § 7412(d)(6) review, or a § 7412(d)(6) determination currently in force or effect after publication in the Federal Register for these sources. Accordingly, you have failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 7604(a)(2).

**60-Day Notice.** Under § 7604 of the Clean Air Act, the above-listed organizations may commence a citizen suit to compel you to perform any or all of the above duties at any time beginning sixty days from the postmark date of this letter, which is December 23, 2015. *See* 40 C.F.R. § 54.2(d).

**Contact Information.** We are acting as attorneys for the above-listed organizations in this matter. Please contact us at your earliest convenience regarding this matter. Please address any communications to us at the address and telephone number set forth below.

Sincerely,



Nicholas Morales  
Emma C. Cheuse  
James S. Pew  
Earthjustice  
1625 Massachusetts Ave., NW, Suite 702  
Washington, D.C. 20036-2243  
Tel: (202) 667-4500  
nmorales@earthjustice.org  
echeuse@earthjustice.org  
jpew@earthjustice.org

cc: Avi S. Garbow, General Counsel, Office of General Counsel, EPA  
Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation, EPA  
Steve Page, Director, Office of Air Quality Planning and Standards, EPA