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May 7, 2014

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 certified mail*

**RE: Notice of Intent to Sue Administrator McCarthy for her Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. O64 Issued to Luminant Generation Company for Operation of the Monticello Steam Electric Station in Titus County, Texas**

Dear Administrator McCarthy,

I am writing on behalf of the Environmental Integrity Project, and Sierra Club (“Petitioners”) to provide you with notice that we intend to bring suit against the 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 to the Part 70 Operating Permit No. O64 (“Proposed Permit”) issued to Luminant Generation Company (“Luminant”) for operation of the Monticello Steam Electric Station (“Monticello”) in Titus County, Texas (“Petition”).

Our Petition was timely filed on March 3, 2014, within 60 days following the end of EPA’s 45-day review period for the Proposed Permit.<sup>1</sup> 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, Petitioners intend 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 their 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 our 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 the allegations in this notice, 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 us at the address below.

Sincerely,



Gabriel Clark-Leach  
Ilan Levin  
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Attachment

cc:

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