

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SIERRA CLUB	)	
85 Second Street, 2 <sup>nd</sup> Floor	)	
San Francisco, CA 94105	)	
	)	
Plaintiff,	)	
	)	Civ. No.
v.	)	
	)	
REGINA MCCARTHY, in her official capacity as	)	
Administrator of the United States Environmental	)	
Protection Agency	)	
Ariel Rios Building	)	
1200 Pennsylvania Avenue, N.W.	)	
Washington, DC 20460	)	
	)	
Defendant.	)	

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**I. INTRODUCTION**

1. The Administrator of The United States Environmental Protection Agency (“Administrator” or “EPA”) has failed to perform her non-discretionary duty to grant or deny a petition filed by Sierra Club on July 28, 2014 (hereinafter “Petition”), asking EPA to object to the air pollution operating permit (hereinafter “the Permit”) issued by the New Hampshire Department of Environmental Services (“NH DES”) under Title V of the Clean Air Act for Public Service Company of New Hampshire’s (“PSNH”) Schiller Station. *See* 42 U.S.C. § 7661d(b)(2) (authorizing such petitions).

2. Although more than 60 days have passed, the EPA Administrator has not granted or denied Sierra Club's Petition, in contravention of a mandatory 60-day deadline for action. 42 U.S.C. § 7661d(b)(2). She is, therefore, in violation of her nondiscretionary duty under the Clean Air Act. Accordingly, Sierra Club seeks a declaration that the Administrator is in violation of the Clean Air Act and an order compelling the Administrator to grant or deny Sierra Club's Petition.

## **II. JURISDICTION**

3. The instant action arises under the Clean Air Act, 42 U.S.C. § 7661d(b). This Court has jurisdiction over Sierra Club's claims pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 1331, 1361. The relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1361, 2201, and 2202.

## **III. NOTICE**

4. By certified letter dated September 29, 2014, Sierra Club provided the Administrator with written notice of Sierra Club's claim concerning EPA's failure to take action on the Petition and of Sierra Club's intent to bring suit to remedy this Clean Air Act violation. Sierra Club provided notice pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.2, 54.3. A copy of this notice is provided as Exhibit A to this Complaint.

## **IV. VENUE**

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1). A substantial part of the events or omissions giving rise to Sierra Club's claim occurred in the District of Columbia. Defendant Regina McCarthy is an officer of the United States, sued for acts and omissions in her official capacity, and her official residence is in the District of Columbia. In addition, EPA has its principal office in the District of Columbia.

**V. PARTIES**

6. Sierra Club is the oldest and largest grassroots environmental group in the United States, with over 621,000 members nationally, including over 3,800 members in New Hampshire, and over 3,900 members in Maine. Sierra Club's mission is to protect and enhance the quality of the natural and human environment, and its activities include public education, advocacy, and litigation to enforce environmental laws. Sierra Club and its members are greatly concerned about the effects of air pollution on human health and the environment and have a long history of involvement in activities related to air quality.

7. Sierra Club is a "person" within the meaning of 42 U.S.C. § 7602(e). As such, Sierra Club may commence a civil action under 42 U.S.C. § 7604(a).

8. Sierra Club has members in New Hampshire and Maine whose health, economic, aesthetic and environmental interests have been, are being, and will be adversely affected by the EPA acts and omissions complained of herein. Sierra Club members live, raise their families, work, attend school, travel, and recreate in areas where they are exposed to dangerous air pollutants emitted from Schiller Station. Such air pollutants, which include sulfur dioxide and particulate matter, are associated with a variety of adverse effects on human health and impairment of visibility and damage to wildlife and vegetation. The Permit upon which Sierra Club's Petition is based allows Schiller Station to release such air pollutants, thereby threatening the health of Sierra Club members and their use and enjoyment of the air, environment, wildlife, scenery, and outdoor views adversely impacted by such pollutants. The Administrator's acts and omissions complained of herein cause injury to Sierra Club members by threatening their health and welfare, and by denying them measures and procedures provided under the Clean Air Act to protect their health and welfare from air pollution in places where they live, work, recreate, and

conduct other activities. The health, recreational, aesthetic, organizational, and procedural interests of Sierra Club and its members have been and continue to be adversely affected by the EPA acts and omissions complained of herein.

9. Sierra Club's interests and its members' interests have been, are being, and will continue to be, harmed by EPA's failure to act on Sierra Club's Petition for objection to the Permit issued to Schiller Station. EPA's failure to respond to Sierra Club's Petition creates doubt and concern for Sierra Club members about whether the Schiller Station Permit complies with the requirements of the Clean Air Act and protects them from exposure to pollutants to the extent required by law.

10. The acts and omissions of EPA alleged herein further deprive Sierra Club and its members of procedural rights and protections to which they are entitled. During the permitting process for Schiller Station, Sierra Club provided comments critical of the Permit's terms and limits. Subsequently, Sierra Club petitioned EPA to object to the issuance of the Permit. The Clean Air Act gives Sierra Club a procedural right to a timely decision on its Petition. EPA's failure to take action on Sierra Club's Petition prevents Sierra Club and its members from challenging an unfavorable EPA decision or from benefiting from a favorable decision on the Petition.

11. The Clean Air Act violations alleged in this Complaint have injured and continue to injure the interests of Sierra Club and its members. Granting the relief requested in this lawsuit would redress these injuries.

12. Regina McCarthy is the Administrator of the EPA. The Administrator is responsible for implementing the Clean Air Act, including the requirement to grant or deny Sierra Club's Petition within 60 days. Regina McCarthy is sued in her official capacity.

## **VI. LEGAL BACKGROUND**

13. The Clean Air Act aims “to protect and enhance the quality of the Nation’s air resources.” 42 U.S.C. § 7401(b)(1). To help meet this goal, the 1990 amendments to the Clean Air Act created the Title V permit program, an operating permit program that applies to all major sources of air pollution. *See* 42 U.S.C. §§ 7661-7661f.

14. Major sources of air pollution must obtain a valid Title V operating permit, which records applicable air pollution control requirements in a single document. *See* 42 U.S.C. §§ 7661a(a), 7661c(a).

15. The Clean Air Act provides that the EPA Administrator may approve state programs to administer the Title V permitting program with respect to sources within their borders. *See* 42 U.S.C. § 7661a(d). The Administrator fully approved New Hampshire’s administration of its Title V permit program in 2001. *See* Clean Air Act Final Approval of Operating Permits Program; State of New Hampshire (Direct Final Rule), 66 Fed. Reg. 48,806 (September 24, 2001).

16. Before a state with an approved Title V permit program may issue a Title V permit, the state must forward the proposed Title V permit to EPA. 42 U.S.C. § 7661d(a)(1)(B). EPA then has 45 days to review the proposed permit. 42 U.S.C. § 7661d(b). EPA must object to the issuance of the permit if EPA finds that the permit does not comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1).

17. After EPA’s 45-day review period expires, “any person may petition the Administrator within 60 days” to object to the Title V permit. 42 U.S.C. § 7661d(b)(2).

18. The Clean Air Act requires that “[t]he Administrator shall grant or deny such petition within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2).

19. If EPA objects to a permit, the permitting authority may not issue the permit unless it is revised. 42 U.S.C. § 7661d(b)(3). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator, the Administrator shall modify, terminate, or revoke such permit. *Id.*

20. If EPA fails to comply with a non-discretionary duty, such as acting on a petition within the statutorily mandated timeframe, the Clean Air Act allows any person to bring suit to compel EPA to perform its duty. *See* 42 U.S.C. § 7604(a).

## **VII. FACTUAL BACKGROUND**

21. Schiller Station is a major stationary source of air pollution and is located in Portsmouth, New Hampshire, just across the border from Maine. The facility's operation consists primarily of two coal-fired boilers and one biomass-fired boiler.

22. On October 7, 2013, NH DES issued a proposed Title V renewal permit for Schiller Station. Sierra Club submitted detailed comments on November 6, 2013, during the public comment period for the proposed permit.

23. NH DES submitted Schiller Station's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit began on April 14, 2014, and ended on May 29, 2014. EPA did not raise any objections to the permit.

24. On July 28, 2014, Sierra Club filed a petition requesting that the Administrator object to the issuance of Schiller Station's Title V permit on the basis that the permit failed to:

- impose sufficiently stringent sulfur dioxide (SO<sub>2</sub>) numerical emission limits;
- include proper averaging periods for its sulfur dioxide emission limits;

- include required emissions limits for particulate matter that is equal to or less than 2.5 micrometers in diameter (PM<sub>2.5</sub>); and
- require adequate monitoring to assure compliance with particulate matter emissions limits.

The Petition was timely filed within 60 days following the conclusion of EPA's review period. 42 U.S.C. § 7661d(b)(2).

25. Sierra Club's Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit, in accordance with 42 U.S.C. § 7661d(b)(2).

26. EPA had 60 days, until September 26, 2014, to grant or deny Sierra Club's Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the Petition.

### **VIII. CLAIM FOR RELIEF**

27. Sierra Club incorporates the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.

28. The Administrator had a mandatory duty to grant or deny Sierra Club's Petition within 60 days after it was filed. *See* 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed").

29. It has been more than 60 days since the Administrator received Sierra Club's Petition requesting that EPA object to the Title V Permit for Schiller Station.

30. As of date of filing this Complaint, the Administrator has not granted or denied Sierra Club's Petition.

31. Therefore, the Administrator has violated and continues to violate the Clean Air Act, 42 U.S.C. § 7661d(b)(2).

32. This Clean Air Act violation constitutes 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’s citizen suit provision. 42 U.S.C. § 7604(a). EPA’s violation is ongoing, and will continue unless remedied by this Court.

**IX. REQUEST FOR RELIEF**

WHEREFORE, Sierra Club respectfully requests that this Court enter judgment providing the following relief:

A) A declaration that EPA has violated the Clean Air Act by failing to grant or deny Sierra Club’s Petition requesting that EPA object to the Title V Permit for Schiller Station;

B) An order compelling EPA to perform its mandatory duty to grant or deny Sierra Club’s Petition for objection to the Title V Permit for Schiller Station, by an expeditious certain date;

C) An order retaining jurisdiction over this matter until such time as EPA has complied with its non-discretionary duties under the Clean Air Act;

D) An order awarding Sierra Club its costs of litigation, including reasonable attorneys’ fees; and

E) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 18, 2014

/s/ Zachary M. Fabish  
Zachary M. Fabish  
D.C. Bar No. 986127  
The Sierra Club  
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kmalawoffice@gmail.com

*Counsel for Plaintiff*



September 29, 2014

VIA CERTIFIED MAIL

Administrator Gina McCarthy  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**RE: Notice of Intent to Sue under the Federal Clean Air Act**

Dear Administrator Gina McCarthy:

This letter provides notice that the Sierra Club intends to file a citizen suit against the United States Environmental Protection Agency (“EPA”) and the Administrator of the EPA, based on EPA’s failure to perform a nondiscretionary duty pursuant to 42 U.S.C. § 7661d(b)(2) of the Clean Air Act (“CAA” or “Act”), to either grant or deny a petition to object to the proposed Title V permit (“Proposed Permit”) for a New Hampshire power plant, filed by Sierra Club pursuant to Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), within 60 days after the petition was filed. 42 U.S.C. § 7661d(b)(2). This notice is provided pursuant to 42 U.S.C. § 7604(b). Specifically, Sierra Club petitioned EPA to object to the proposed Title V permit issued by New Hampshire Department of Environmental Services (“NH DES”) for Public Service Company of New Hampshire’s (“PSNH”) Schiller Station power plant in Portsmouth, New Hampshire. This petition was delivered via certified mail to EPA on July 28, 2014, and more than 60 days have elapsed since without EPA taking action on the petition.

I. Schiller Station Is Subject to Title V of the Clean Air Act

Title V of the CAA requires specified sources of air pollution to obtain an operating permit from a permitting authority. 42 U.S.C. § 7661a(a). New Hampshire’s state operating permit and Title V permit programs have been approved by EPA and, accordingly, NH DES is responsible for issuing Title V permits to facilities within the state. New Hampshire Code of Admin. Rules Part ENV-A 609 *et seq.*; 66 Fed. Reg. 48,806 (Sept. 24, 2001).

PSNH’s Schiller Station is subject to Title V Permit No. TV-OP-053, which was issued on March 9, 2007, and expired five years later on March 9, 2012. On October 2, 2013, NH DES finalized a draft Title V permit to replace the one that expired in the spring of 2012, and opened a public comment period on the draft until November 6, 2013. The Sierra Club submitted timely comments on the draft. In pertinent part, the Sierra Club argued that the draft permit set sulfur

dioxide (“SO<sub>2</sub>”) limits in dramatically higher than what is necessary to adequately protect human health in either New Hampshire or in neighboring Maine, failed to set limits to capture small-particle particulate matter (“PM<sub>2.5</sub>”) and condensable PM, and failed to require sufficiently frequent stack testing for PM.

II. Sierra Club’s July 2014 Petition to EPA to Object to Proposed Title V Permit

As per CAA section 505(b)(1), within 45 days of receipt of a proposed Title V permit, the Administrator of the EPA “shall . . . object” to the permit’s issuance if it “contains provisions that are determined by the Administrator as not in compliance with the applicable requirements” of the CAA and “the requirements of an applicable implementation plan.” 42 U.S.C. § 7661d(b)(1). If EPA does not object during this period, any person may petition the Administrator for issuance of an objection within 60 days after the expiration of the 45-day review period. 42 U.S.C. § 7661d(b)(2). The timing for EPA to object to the Proposed Permit for Schiller Station and for the public to petition EPA to object to the Proposed Permit was as follows: EPA’s 45-day review period began on April 14, 2014 and ended on May 29, 2014; the 60 day public petition period accordingly did not end before July 28, 2014.

EPA did not object to the Schiller Station Proposed Permit within the allotted 45-day time frame. Accordingly, Sierra Club filed a Petition to Object on July 28, 2014.

Sierra Club’s Petition to EPA was properly based on issues raised in Sierra Club’s prior comments to NH DES on the Proposed Permit for Schiller Station. Specifically, the Petition notes that the permit (1) fails to impose sufficiently stringent SO<sub>2</sub> limits to prevent Schiller Station from causing exceedances of the National Ambient Air Quality Standard (“NAAQS”) within New Hampshire; (2) fails to impose sufficiently stringent SO<sub>2</sub> limits to prevent exceedances of the NAAQS in neighboring Maine; (3) fails to include required emissions limits for PM<sub>2.5</sub>; and (4) the proposed permit requirements for stack testing are impermissibly infrequent.

As of September 29, 2014, EPA has yet to respond to the Petition to Object.

III. Citizens May Sue EPA for Failure to Timely Grant or Deny a Petition to Object

Section 304(a)(2) of the CAA provides that any person can sue the Administrator of the EPA “where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.” 42 U.S.C. § 7604(a)(2). Section 505(b)(2) of the CAA expressly provides that the “Administrator shall grant or deny [a Title V petition] within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2) (emphasis added). This provision imposes a mandatory, nondiscretionary duty upon EPA to act within 60 days of the filing of a petition under this section. Accordingly, in the event that the Administrator fails to perform this nondiscretionary duty, citizens may bring suit to compel such action.



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**CIVIL COVER SHEET**

JS-44 (Rev. 7/13 DC)

<p><b>I. (a) PLAINTIFFS</b> Sierra Club</p>	<p><b>DEFENDANTS</b> Regina McCarthy, in her official capacity as Administrator, U.S. Environmental Protection Agency</p>
<p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN STANDARD REPLY PROCESSES, USE THE COUNTY OF THE TRACT OR LAND INVOLVED</small></p>
<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Zachary M. Fabish The Sierra Club 50 F Street NW, Eighth Floor Washington, DC 20009 Tel. 202.675.7917</p>	<p>ATTORNEYS (IF KNOWN):</p>

<p><b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%; border: none;"> <tr> <td style="border: none;"></td> <td style="border: none; text-align: center;"><b>PTF</b></td> <td style="border: none; text-align: center;"><b>DFT</b></td> <td style="border: none;"></td> <td style="border: none; text-align: center;"><b>PTF</b></td> <td style="border: none; text-align: center;"><b>DF1</b></td> </tr> <tr> <td style="border: none;">Citizen of this State</td> <td style="border: none; text-align: center;"><input type="radio"/> 1</td> <td style="border: none; text-align: center;"><input type="radio"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in This State</td> <td style="border: none; text-align: center;"><input type="radio"/> 4</td> <td style="border: none; text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="radio"/> 2</td> <td style="border: none; text-align: center;"><input type="radio"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="radio"/> 5</td> <td style="border: none; text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="radio"/> 3</td> <td style="border: none; text-align: center;"><input type="radio"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="radio"/> 6</td> <td style="border: none; text-align: center;"><input type="radio"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DFT</b>		<b>PTF</b>	<b>DF1</b>	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input checked="" type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 TLA (4306(f))</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input checked="" type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input type="radio"/> <b>E. General Civil (Other)</b></p> <p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> <p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 27 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p>	<p style="text-align: center;"><b>OR</b></p> <p><input type="radio"/> <b>F. Pro Se General Civil</b></p> <p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organization</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>
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<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Failure to perform nondiscretionary duty to grant or deny petition to object in accordance with the Clean Air Act

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 12/18/2014	SIGNATURE OF ATTORNEY OF RECORD:
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF-DEMANDANT (b) County of residence. Use 11001 to indicate plaintiff if resident of Washington, DC. 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES. This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT. The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION. Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY. If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Sierra Club

Plaintiff

v.

Regina McCarthy, Administrator, United States Environmental Protection Agency, in official capacity

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Regina McCarthy, Administrator of the U.S. Environmental Protection Agency
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Zachary M. Fabish
The Siera Club
50 F Street NW, Eighth Floor
Washington, DC 20009

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify):* \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Sierra Club

Plaintiff

v.

Regina McCarthy, Administrator, United States Environmental Protection Agency, in official capacity

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

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

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Zachary M. Fabish
The Siera Club
50 F Street NW, Eighth Floor
Washington, DC 20009

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



Civil Action No. \_\_\_\_\_

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: