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VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 6, 2013

The Honorable Regina McCarthy
Administrator
Environmental Protection Agency
1101A EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to Sue Concerning Clean Air Act Deadlines

Dear Administrator McCarthy:

This letter 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 Section 304(a)(2) 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 Section 304(b)(2), 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54, as a prerequisite to bringing a civil action.

The organization giving this notice is the Auto Industry Forum, Robert J. Morehouse, Director, 1301 McKinney Street, Suite 3000, Houston, Texas 77010-3033, (713) 907-8080.

Clean Air Act Section 112(f)(2), captioned, *Standards to Protect Health and Environment*, provides:

(A) [T]he Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to [Section 112(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 [Section 112(d)] and applicable to a category or subcategory of sources emitting a pollutant (or pollutants)

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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 [Section 112(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 Clean Air Act Section 112(d) for the following categories of major sources of hazardous air pollutants:

- (1) Iron and Steel Foundries, 69 Fed. Reg. 21,906 (Apr. 22, 2004) (40 C.F.R. Part 63 Subpart EEEEE);
- (2) Engine Test Cells/Standards, 68 Fed. Reg. 28,774 (May 27, 2003) (40 C.F.R. Part 63 Subpart P PPPP);
- (3) Surface Coating of Miscellaneous Metal Parts and Products, 69 Fed. Reg. 130 (Jan. 2, 2004) (40 C.F.R. Part 63 Subpart M MMMM);
- (4) Surface Coating of Plastic Parts and Products, 69 Fed. Reg. 20,968 (Apr. 19, 2004) (40 C.F.R. Part 63 Subpart P PPPP); and
- (5) Surface Coating of Automobiles and Light-Duty Trucks, 69 Fed. Reg. 22,602 (Apr. 26, 2004) (40 C.F.R. Part 63 Subpart IIII).

EPA has not completed the residual risk review for these categories pursuant to Clean Air Act Section 112(f). 42 U.S.C. § 7412(f)(2). Accordingly, EPA has failed to perform a nondiscretionary duty within the meaning of Clean Air Act Section 304(a)(2) for each of the above-listed standards and source categories.

Under Clean Air Act Section 112(d)(6) EPA must “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [Section 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 Section 112 regulations for the following categories:

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- (1) Iron and Steel Foundries, 69 Fed. Reg. 21,906 (Apr. 22, 2004) (40 C.F.R. Part 63 Subpart EEEEE);
- (2) Engine Test Cells/Stands, 68 Fed. Reg. 28,774 (May 27, 2003) (40 C.F.R. Part 63 Subpart PEEEE);
- (3) Surface Coating of Miscellaneous Metal Parts and Products, 69 Fed. Reg. 130 (Jan. 2, 2004) (40 C.F.R. Part 63 Subpart MMMM);
- (4) Surface Coating of Plastic Parts and Products, 69 Fed. Reg. 20,968 (Apr. 19, 2004) (40 C.F.R. Part 63 Subpart PEEE); and
- (5) Surface Coating of Automobiles and Light-Duty Trucks, 69 Fed. Reg. 22,602 (Apr. 26, 2004) (40 C.F.R. Part 63 Subpart III).

EPA has not reviewed to determine if advances warrant revision of emission standards for these categories, under Clean Air Act Section 112(d)(6) even though more than 8 years has passed since their promulgation. Accordingly, EPA has failed to perform a nondiscretionary duty within the meaning of Clean Air Act Section 304(a)(2).

60-Day Notice. Under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, the Auto Industry Forum may commence a citizen suit to compel EPA 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 6, 2013. See 40 C.F.R. § 54.2(d).

Contact Information

We are acting as attorneys for the Auto Industry Forum 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 above in the letterhead.

Sincerely,



Shannon S. Broome
Julia A. Miller
Counsel to the Auto Industry Forum

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SSB:

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December 2013, I caused to be served the foregoing Notice of Intent to Sue Concerning Clean Air Act Deadlines by certified mail by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows:

The Honorable Regina McCarthy *(Via Certified Mail)*
Administrator
Environmental Protection Agency
1101A EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

December 6, 2013

Date

Printed Name

Signature

Katten

KattenMuchinRosenman LLP

1999 Harrison Street
Suite 700
Oakland, CA 94612-4704

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Administrator EPA
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WASHINGTON D.C. 20460

Route **EPA**

To: McCarthy.Gina

Mailstop ARIEL RIOS N

Department: 1101A

Certified