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VIA CERTIFIED MAIL

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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OFFICE OF THE
EXECUTIVE SECRETARIAT

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

Dear Administrator:

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 seven separate petitions to object to the proposed Title V permits ("Proposed Permits") for seven Pennsylvania power plants, 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 petitions were filed. 42 U.S.C. § 7661d(b)(2). This notice is provided pursuant to 42 U.S.C. § 7604(b). The seven facilities for which Sierra Club filed petitions to object and for which this notice is being provided are as follows:

- (1) GenOn Shawville Generating Station, filed on May 28, 2012;
- (2) Sunbury Generation Power Plant, filed on September 7, 2012;
- (3) AES Beaver Valley Power Station, filed on September 7, 2012;
- (4) AES Mitchell Power Station, filed on September 7, 2012;
- (5) AES Hatfield's Ferry Power Station, filed on September 7, 2012;
- (6) EME Homer City Generating Station, filed on September 7, 2012; and

(7) FirstEnergy Bruce Mansfield Power Station, filed on October 18, 2012.

I. These Facilities are 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). Pennsylvania's state operating permit and Title V permit programs have been approved by EPA and, accordingly, the Pennsylvania Department of Environmental Protection ("PaDEP") is responsible for issuing Title V permits to facilities within the State. 25 Pa. Code Chapter 127, Subchapters F and G; 61 Fed. Reg. 39,597 (July 30, 1996).

GenOn Shawville is subject to Title V/State Operating Permit No. 17-00001, which expired in October 2005. In April 2005, PaDEP received from GenOn Shawville an application for renewal of the Plant's Title V permit. Five and a half years later, in November of 2010, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. On January 4, 2011, Sierra Club submitted timely comments on that Proposed Permit to PaDEP.¹ Sierra Club supplemented those comments on the then still-pending Proposed Permit on September 22, 2011, providing further detail on the sulfur dioxide air pollution issue raised in Sierra Club's original comments. On March 26, 2012, PaDEP issued a final Title V permit for the Plant.

Sunbury Generation is subject to Title V/State Operating Permit No. 55-00001, which expired on November 16, 2005. On May 12, 2005, PaDEP received from Sunbury Generation an application for renewal of the Plant's Title V permit. Six and a half years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 30, 2012, PaDEP issued a final Title V permit for the Plant.

AES Beaver Valley is subject to Title V/State Operating Permit No. 04-00446, which expired on March 8, 2011. On May 26, 2010, PaDEP received from AES Beaver Valley an application for renewal of the Plant's Title V permit. Two years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 29, 2012, PaDEP issued a final Title V permit for the Plant.

AES Mitchell Power is subject to Title V/State Operating Permit No. 63-00016, which expired on March 26, 2007. On September 27, 2006, PaDEP received from AES Mitchell Power

¹ PaDEP granted an extension to the 30-day comment period for the Sierra Club to submit comments on the proposed Title V permit for the Shawville Station. The comment deadline was extended by agreement until January 4, 2011 on the grounds that a file review of documents underlying the draft permit were not available until December 16, 2010.

an application for renewal of the Plant's Title V permit. Over five and a half years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 30, 2012, PaDEP issued a final Title V permit for the Plant.

AES Hatfield's Ferry is subject to Title V/State Operating Permit No. 32-00099, which expired on November 29, 2006. On May 26, 2006, PaDEP received from AES Hatfield's Ferry an application for renewal of the Plant's Title V permit. Six years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on July 20, 2012.² Subsequently, on November 30, 2012, PaDEP issued a final Title V permit for the Plant.

EME Homer City is subject to Title V/State Operating Permit No. 32-00055, which expired on January 30, 2009. On July 31, 2008, PaDEP received from EME Homer City an application for renewal of the Plant's Title V permit. Nearly four years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 16, 2012, PaDEP issued a final Title V permit for the Plant.

FirstEnergy Bruce Mansfield is subject to Title V/State Operating Permit No. 04-00235, which expired on November 22, 2007. On May 22, 2007, PaDEP received from FirstEnergy Bruce Mansfield an application for renewal of the Plant's Title V permit. Five years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on July 20, 2012. Subsequently, on April 2, 2013, PaDEP issued a final Title V permit for the Plant.

II. Citizens May Petition EPA to Object to Proposed Title V Permits

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 Permits

² As noted in Sierra Club's comments, on June 8, 2012, PaDEP granted an extension to the 30-day comment period for the Sierra Club to submit comments on the proposed Title V permit for the Hatfield's Ferry Plant. The comment deadline was extended by agreement until July 20, 2012.

for the seven facilities noted above and for the public to petition EPA to object to the Proposed Permits was as follows:

- EPA's 45-day review period for GenOn Shawville's Proposed Permit ended on March 28, 2012; the 60-day public petition period ended on May 28, 2012.
- EPA's 45-day review period for Sunbury Generation's Proposed Permit ended on July 9, 2012; the 60-day public petition period ended on September 7, 2012.
- EPA's 45-day review period for AES Beaver Valley's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for AES Mitchell's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for AES Hatfield's Ferry's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for EME Homer City's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for FirstEnergy Bruce Mansfield's Proposed Permit ended on August 20, 2012; the 60-day public petition period ended on October 19, 2012.

EPA did not object to any of the seven Proposed Permits within the respective 45-day time frames. Accordingly, Sierra Club filed petitions to object as follows:

- GenOn Shawville on May 25, 2012;
- Sunbury Generation on September 7, 2012;
- AES Beaver Valley on September 7, 2012;
- AES Mitchell on September 7, 2012;
- AES Hatfield's on September 7, 2012;
- EME Homer City on September 7, 2012; and
- FirstEnergy Bruce Mansfield on October 18, 2012.

Sierra Club's petitions to EPA were properly based on issues raised in Sierra Club's prior comments to PaDEP on the Proposed Permit for each of these seven facilities. Specifically, Sierra Club's petitions sought EPA objection on the basis that the Proposed Permits, among other things, failed to: (1) include numerical emission limits and monitoring sufficient to prevent the Plants from causing impermissible air pollution in the form of harmful concentrations of sulfur dioxide and violations of an applicable acid rain provision; (2) require adequate monitoring to assure compliance with particulate matter emission limits; and (3) require adequate monitoring to assure compliance with opacity limits. According to Section 505(b)(2) of the CAA, the Administrator was required to respond to Sierra Club's petitions to

object within 60 days, either granting or denying the petitions. 42 U.S.C. § 7661d(b)(2) (“The Administrator shall grant or deny such petition within 60 days after the petition is filed.”).

Through a letter dated March 26, 2012, PaDEP provided the Sierra Club with its Comments and Response Document and the final Title V Operating Permit for Shawville. Letter attached hereto as Exhibit 1. On December 4, 2012, PaDEP emailed a copy of its Comments and Response Document and the final Title V Operating Permit for Sunbury to Sierra Club. Email attached hereto as Exhibit 2. Likewise, on December 12, 2012 PaDEP emailed a copy of its Comments and Response Document and the final Title V Operating Permit for AES Mitchell to Sierra Club. Email attached hereto as Exhibit 3. On December 20, 2012, Sierra Club emailed PaDEP in an effort to obtain the Comments and Response Document and Title V Operating Permit for the four remaining facilities: Beaver Valley, Hatfield’s Ferry, Homer City, and Bruce Mansfield. In response, on December 21, 2012, PaDEP emailed a copy of its Comments and Response Document and the final Title V Operating Permit for Beaver Valley and Hatfield’s Ferry to Sierra Club. Emails attached hereto as Exhibits 4 and 5, respectively. Likewise, on December 24, 2012, PaDEP emailed a copy of its Comments and Response Document for Homer City to Sierra Club. Email attached hereto as Exhibit 6. PaDEP has yet to provide Sierra Club with its Comments and Reponse Document for Bruce Mansfield.

On May 15, 2013, Sierra Club submitted, via USPS Express Mail, supplements to its petitions to EPA to object to the Proposed Permits for GenOn Shawville, Sunbury Generation, AES Mitchell, AES Hatfield’s Ferry, and EME Homer City, addressing the Comments and Response Documents provided by PaDEP after Sierra Club’s filings of the initial petitions to object. Likewise, on May 16, 2013, Sierra Club submitted a supplement to its petition to EPA to object to the Title V permit for AES Beaver Valley.³

As of May 21, 2013, EPA has yet to respond to any of Sierra Club’s petitions to object to the Title V permits for these seven facilities.

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.

³ Sierra Club has not yet received from PaDEP its Comments and Response Document or the final Title V permit for Bruce Mansfield and, therefore, reserves the right to supplement its previously filed petition upon review of that document.

IV. Sierra Club Intends to File a Citizen Suit

As stated above, Sierra Club filed timely petitions to object to the Proposed Title V Permits for GenOn Shawville, Sunbury Generation, AES Beaver Valley, AES Mitchell Power, AES Hatfield's Ferry, EME Homer City, and FirstEnergy Bruce Mansfield. The Administrator had 60 days—until July 24, 2012—to grant or deny Sierra Club's petition to object to the Proposed Permit for GenOn Shawville. 42 U.S.C. § 7661d(b)(2). Likewise, the Administrator had 60 days—until November 6, 2012—to grant or deny Sierra Club's petitions to object to the permits for Sunbury Generation, AES Beaver Valley, AES Mitchell, AES Hatfield's, and EME Homer City. *Id.* Finally, the Administrator had 60 days—until December 18, 2012—to grant or deny Sierra Club's Petition to the Proposed Permit for FirstEnergy Bruce Mansfield. *Id.* As of May 21, 2013, the Administrator has not yet granted or denied any of these seven petitions to object. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Sierra Club's petitions to object and is in violation of 42 U.S.C. § 7661d(b)(2).

The CAA requires citizens to provide the Administrator with 60 days notice prior to bringing an action under Section 304(a)(2). 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. 54.2(a). Accordingly, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit against EPA and the Administrator of the EPA, under CAA Section 304(a)(2) for failing to perform the nondiscretionary duty of granting or denying Sierra Club's petitions to object to the Proposed Title V Permits for these seven facilities. If these violations remain unresolved at the end of the 60-day notice period, Sierra Club intends to seek the following relief:

1. An order compelling EPA and the Administrator to grant or deny Sierra Club's petitions within 60 days from the date of the order;
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matters identified in this letter or offer a proposal for resolving these issues, please contact Sierra Club attorney Zachary Fabish directly at zachary.fabish@sierraclub.org or (202) 675-7917.

Sincerely,

/s Kathryn Amirpashaie

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CC. VIA E- MAIL:

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