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LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

June 5, 2015

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Via Certified Mail (Return Receipt Requested)

OFFICE OF THE
EXECUTIVE SECRETARIAT

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Sixty Day Notice of Intent to File Clean Air Act Citizen Suit Based On Failure of EPA Administrator to Take Timely Final Action Regarding Petition to Object to Hawaii Covered Source Permit No. 0724-01-C (Title V)

Dear Administrator McCarthy:

This office represents Preserve Pepe'keo Health and Environment ("PPHE" or "Petitioners") in a matter before you concerning the Hu Honua Bioenergy, LLC ("Hu Honua") Title V operating permit. PPHE is organized to represent residents of Pepe'keo, including a disproportionate number of low income and minority ethnic persons as well as the public at large from industrial and similar activities that adversely affect the health and well being of the Pepe'keo community on the Big Island of Hawaii. The Hu Hunoa permit, as proposed by the State of Hawaii in covered Source Permit No. 0724-01-C, would result in the emissions of excessive amounts of air pollutants, including hazardous air pollutants, in violation of the Clean Air Act and threatening to cause degradation of air quality in the community of Pepe'keo and impart adverse health effects upon its residents, including Petitioners.

Pursuant to Section 304(b)(2) of the Clean Air Act, 42 U.S.C. § 7604(b)(2), and in accordance with 40 C.F.R. Part 54, Petitioners hereby submit this Notice of Intent to Sue. If no further action is forthcoming in the interim, sixty days after the date of this letter, we intend to file suit in U.S. District Court to redress your failure to take timely final action in response to the Petition submitted by this office on September 13, 2014 concerning the Hu Hunoa Title V Permit, CSP 0724-01-C.

Petitioners and other members of the public commented on Hawaii's proposed action on CSP 0724-01-C, raising a number of issues concerning the adequacy of the analysis and the technical information and assumptions employed in calculating the emissions associated with the proposed activity as well as the types of control technology required by the permit's emissions limits. Rather than establishing specific, enforceable emissions limits, the permit allowed the source to test emissions after construction was completed and operations began to determine if emissions would not exceed major source thresholds. Comments by the public and EPA were addressed through modifications to the permit, but the revised permit was not circulated to the

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public for additional comment, and instead adopted as revised, excluding the public and EPA's consideration of the revisions and the permit's adequacy as a whole. Section 505(b)(1) of the Clean Air Act and 40 Code of Federal Regulations § 70.8(d) require EPA to review this draft permit to determine if the permit contains provisions that are not in compliance with the Clean Air Act, and if EPA determines the permit is not in compliance, the Administrator shall object in writing within 45 days of receiving the proposed permit. If EPA does not object in the 45 day period, any person may petition the Administrator, asking the Administrator to object to the permit. The petition must be filed within 60 days of the end of the 45 day review period, and once filed, the Administrator must grant or deny such a petition within 60 days. § 505(b)(2).

When the Administrator took no action on the Hu Hunoa CSP 07245-01-C draft Title V permit within the 45 day review period, Petitioners timely submitted on September 13, 2014 a petition under § 505(b)(2) asking the Administrator to review the permit and grant their petition. The Administrator has taken no action by the 60th day following such submittal, and as such, has failed to perform a nondiscretionary duty imposed by the Clean Air Act. This letter formally notices the Administrator of Petitioners' demand for timely action on the petition for review of CSP 0724-02-C and the intention to file legal action to enforce the Administrator's obligations in this regard.

This Notice is submitted on behalf of Preserve Pepe'keo Health and Environment, Post Office Box 1019, Pepe'keo, Hawaii 96783. The full name and address of the person giving Notice is Marc Chytilo, Law Office of Marc Chytilo, Post Office Box 92233, Santa Barbara, California 93190, 805.682-0585, fax 805.682-2379, Email marc@lomcsb.com.

Sincerely,



Marc Chytilo

CC:

Mr. Jared Blumenfeld, Regional Administrator, USEPA Region IX (Courtesy Notice)
Clients