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July 7, 2016

VIA CERTIFIED MAIL

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building
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, pursuant to 42 U.S.C. § 7604(b), 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 a proposed Title V Operating Permit (“Proposed Permit”) for a Pennsylvania power plant, filed by the Sierra Club pursuant to CAA section 505(b)(2) of the Act within 60 days after the petition was filed. 42 U.S.C. § 7661d(b)(2). Specifically, Sierra Club petitioned EPA to object to Proposed Permit No. 61-00181 issued by the Pennsylvania Department of Environment Protection (“DEP”) for Scrubgrass Generating Company L.P. facility (“Scrubgrass”) located near Kennerdell, Pennsylvania. The petition was delivered via electronic mail and hand delivery to EPA on May 3, 2016. As of today, more than 60 days have elapsed without EPA taking action on said petition, in violation of the Administrator’s nondiscretionary duty under CAA section 505(b)(2) to grant or deny the petition within 60 days after it was filed. *See id.*

I. Scrubgrass 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). Pennsylvania's state operating permit and Title V permit programs have been approved by EPA and, accordingly, DEP 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).

Scrubgrass's current Title V permit was issued on February 25, 2013, and is set to expire on February 25, 2018. On January 23, 2016, DEP noticed a proposed permit modification to the Scrubgrass Title V permit in the Pennsylvania Bulletin, initiating a 30-day public comment period. On February 21, 2016, Sierra Club submitted timely comments on the Proposed Permit. In pertinent part, the comments raised issue with the Proposed Permit's improper and illegal application of the Mercury and Air Toxics Standards ("MATS") rule, noting, in particular, that the permit's proposed grant of an additional three-year extension of the MATS compliance date—to April 16, 2019—for the applicable hydrochloric acid (HCl) and sulfur dioxide (SO₂) requirements was ultra vires and invalid.

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). Accordingly, the timing for EPA to object to the Proposed Permit for Scrubgrass and for the public to petition EPA to object to the Proposed Permit was as follows: EPA's 45-day review period ended on March 8, 2016; the 60-day public petition period ended on May 9, 2016. See EPA Region 3 Title V Operating Permit Public Petition Deadlines Webpage, <https://www.epa.gov/caa-permitting/title-v-operating-permit-public-petition-deadlines>, March 17, 2016 version, attached hereto as Exhibit 1.

EPA did not object to the Scrubgrass Proposed Permit within the allotted 45-day time frame. Consequently, Sierra Club filed a petition to object to the Proposed Permit on May 3, 2016, within 60 days after the expiration of EPA's 45-day review period, in accordance with 42 U.S.C. § 7661d(b)(2). The Petition to EPA was properly based on issues raised during the public comment period for the Proposed Permit. Specifically, the Petition raised objection with the Proposed Permit's impermissible grant of an additional three-year extension of the compliance deadline for certain aspects of the MATS rule.

According to CAA section 505(b)(2) of the CAA, the Administrator was required to respond to Sierra Club's May 3, 2016 petition to object within 60 days, either granting or denying the petition. 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed."). However, as of July 7, 2016, EPA has yet to respond to the petition to object to the Scrubgrass Title V Permit.

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 petition to object] 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.

IV. Sierra Club Intends to File a Citizen Suit

Sierra Club filed a timely petition to object to the Proposed Title V Permit for Scrubgrass on May 3, 2016. The Administrator had 60 days—until July 2, 2016—to grant or deny the petition to object to the Proposed Permit. *See* 42 U.S.C. § 7661(b)(2). As of July 7, 2016, the Administrator has not yet granted or denied the Petition to Object. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Sierra Club's Petition within the statutorily mandated time frame, 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 CAA section 304(a)(2) 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(b)(2); *see also* 40 C.F.R. 54.2(a). Accordingly, through this letter, 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 May 3, 2016 petition to object to the proposed Title V permit modification for Scrubgrass. If the violation remains 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 Petition 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 this issue, please contact me directly at kmalawoffice@gmail.com or (703) 771-8394.

Sincerely,

/s Kathryn Amirpashaie

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cc via e-mail only:

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Michael Lee (lee.michaelg@epa.gov)

Exhibit 1

Related Topics: [Permitting Under the Clean Air Act](#)

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Title V Operating Permit Public Petition Deadlines

The table below lists proposed Title V permits submitted to EPA and undergoing EPA's 45 day review, including the start and expiration dates for EPA's 45 day review period. It also shows the start and expiration dates for the public's 60 day petition period following EPA's review period.

CAA Permitting Links

[CAA Permitting in EPA's Mid-Atlantic Region](#)

Hint: Click on a column heading to sort the table by that column. Table data last updated on March 17, 2016.

Show entries

Search:

Title V Operating Permit Public Petition Deadlines in Region 3

State	Facility Name	FRS No.	AFS No.	Permit No.	EPA 45-day Review Period Start Date	EPA 45-day Review Period End Date	60-day Public Petition Period Start Date	60-day Public Petition Period End Date	Permit Action
PA	Scrubgrass Generating Co, LP	110005981296	42-121-00025	61-00181	01/23/2016	03/08/2016	03/09/2016	05/09/2016	SIGNIFICANT PERMIT REVISION

Showing 1 to 1 of 1 entries (filtered from 72 total entries)

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Please note that the above information is derived from the EPA Region 3 Title V database. It is recommended that data for permits of particular interest be confirmed with EPA Region 3. Please contact David Campbell at 215-814-2196, campbell.dave@epa.gov.

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