

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

SIERRA CLUB,  
2101 Webster Street, Suite 1300  
Oakland, California 94612,

Plaintiff,

vs.

Civil Action No.:

GINA MCCARTHY, in her official capacity as  
Administrator of the United States  
Environmental Protection Agency,  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460,

Defendant.

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**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

**I. STATEMENT OF THE CASE**

1. This is a civil action for declaratory and injunctive relief brought by plaintiff Sierra Club pursuant to the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, against defendant Gina McCarthy (“Administrator McCarthy”) in her official capacity as the Administrator of the United States Environmental Protection Agency (“EPA”). The action challenges Administrator McCarthy’s failure to perform a non-discretionary, mandatory duty imposed by the Clean Air Act.

2. This action seeks an order requiring defendant Administrator McCarthy to perform her non-discretionary duty to grant or deny a petition filed by the Sierra Club on April 11, 2016 (hereinafter “Petition”) requesting that EPA object to the Title V operating permit issued by the Utah Department of Air Quality (“Utah”) for PacifiCorp’s coal-fired Hunter Plant

located in Castle Dale, Utah. *See* 42 U.S.C. § 7661d(b)(2) (authorizing such petitions).

3. Although more than sixty (60) days have passed, Administrator McCarthy has not granted or denied Sierra Club's Petition, in contravention of a mandatory sixty (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.

4. Accordingly, Sierra Club seeks a declaration that Administrator McCarthy is in violation of the Clean Air Act and an order compelling Administrator McCarthy to grant or deny Plaintiff's Petition by a date certain.

## II. JURISDICTION

5. 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)(2) and 28 U.S.C. §§ 1331, 1361. The relief requested by Sierra Club is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1361, 2201, and 2202.

## III. NOTICE

6. By certified letter dated July 6, 2016, Sierra Club provided Administrator McCarthy with written notice pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.2 and 54.3 of its claim concerning EPA's failure to take action on the Petition and of its intent to bring suit to remedy this Clean Air Act violation. A copy of this notice is provided as Exhibit A to this Complaint.

7. Administrator McCarthy received that notice no later than July 11, 2016.

8. Over sixty (60) days have passed since Sierra Club provided its notice of intent to sue as required under the Clean Air Act, and Administrator McCarthy has not remedied the violation alleged in this Complaint by granting or denying Sierra Club's Petition. Consequently,

a present and actual controversy exists between the parties.

#### **IV. VENUE**

9. 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 Administrator 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**

10. Plaintiff Sierra Club is the oldest and largest grassroots environmental group in the United States, with over 638,000 members nationally, including approximately 4,000 members in Utah. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. 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 and permitting of air pollution sources under the Clean Air Act.

11. 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).

12. Sierra Club has members in Utah whose health, economic, aesthetic, and environmental interests have been, are being, and will be adversely affected by EPA's 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 PacifiCorp's Hunter Plant. Hunter's air pollutants, which include visible emissions, as well as particulate matter, sulfur dioxide, and nitrogen oxides, are associated with a variety of adverse effects on human health, impairment of visibility and damage to wildlife and vegetation.

Hunter's permit allows the plant 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. Administrator McCarthy's acts and omissions injure 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.

13. Sierra Club's 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 Hunter's Title V permit. EPA's failure to respond to Sierra Club's Petition creates doubt and concern for Sierra Club members about whether the Hunter Plant's Title V operating permit complies with the requirements of the Clean Air Act and protects them from exposure to pollutants to the extent required by law.

14. 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 the Hunter Plant, Sierra Club provided comments critical of the terms and conditions of the Hunter Plant's Title V operating permit. 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 benefitting from a favorable decision on the Petition.

15. 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.

16. Gina 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 sixty (60) days. Administrator McCarthy is sued in her official capacity.

## VI. LEGAL BACKGROUND

17. 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.

18. Major sources of air pollution must obtain a valid Title V operating permit, which is designed to include all applicable air pollution control requirements in a single document. *See* 42 U.S.C. §§ 7661a(a) and 7661c(a).

19. 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).

20. EPA fully approved Utah's administration of its Title V permit program in 1995. *See* Air Conservation Act, Utah Code Ann. § 19-2-109.1 *et seq.* and its implementing regulations, Utah Admin. Code r. 307-415-1 *et seq.*; *see also* 40 C.F.R. Part 70, Appendix A Utah (a); 60 Fed. Reg. 30,192, 30,194-95 (June 8, 1995).

21. 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 forty-five (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).

22. 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).

23. 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).

24. 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.*

25. If EPA fails to comply with a non-discretionary duty, such as acting on a petition to object within the statutorily mandated time frame, 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**

26. The Hunter Plant is a major stationary source of air pollution and is located in Castle Dale, Utah. The facility primarily consists of three coal-fired boilers.

27. The Title V Permit for the Hunter Plant was originally issued on January 7, 1998, and that permit was original designated to expire on January 7, 2003.

28. PacifiCorp submitted a Title V permit renewal application in December of 2001, but Utah did not issue a draft Title V renewal permit for the Hunter Plant for public comment until September 15, 2015, after Sierra Club filed a mandamus action in state court seeking to

force the state to issue the renewal. *See Sierra Club vs. Bryce Bird, et al.*, Civil Case No. 150905990 (3rd District Utah) (filed Aug. 21, 2015).

29. Sierra Club submitted extensive public comments to Utah on the draft Hunter Title V renewal permit on November 13, 2015, during the public comment period.

30. Utah issued a brief “Response to Public Comments” memorandum on January 11, 2016, which largely ignored Sierra Club’s comments, and submitted the proposed Title V Permit to EPA for its forty-five (45) day review in accordance with the Clean Air Act on that same date.

31. EPA’s forty-five (45) day review period ended on February 26, 2016.

32. EPA did not object to the proposed Hunter Title V renewal permit and Utah issued the permit in its final form on March 3, 2016.

33. On April 11, 2016, Sierra Club filed a Petition requesting that the Administrator object to the issuance of the Hunter Title V operating permit because the permit failed to include all applicable requirements and/or was otherwise unlawful and because Utah unlawfully failed to provide a meaningful response to the majority of Sierra Club’s public comments.

34. More specifically, the issues addressed in Sierra Club’s Petition involve:

- PacifiCorp’s unlawful performance of projects pertaining to boiler components and turbine upgrades in the late 1990’s that should have been permitted pursuant to the applicable Prevention of Significant Deterioration (PSD) and Approval Order permitting requirements, including emissions limits reflecting Best Available Control Technology (BACT) and assurance of compliance with the national ambient air quality standards (NAAQS) and PSD increments, among other things.
- The unlawful and invalid imposition of Utah’s 10-year Plantwide Applicability Limits (PAL) limits for the Hunter Plant for SO<sub>2</sub> and NO<sub>x</sub>.
- The failure of the Hunter Title V operating permit to impose Utah Approval Order

requirements, including BACT, on Hunter Unit 1 for unpermitted modifications in 2010, including the replacement of Unit 1's economizer, low temperature superheater, finishing superheater, and pulverizer components, as well as high pressure/intermediate pressure/low pressure turbine upgrades.

- Utah's failure to satisfy its obligation to provide a meaningful response to approximately one hundred pages of Sierra Club's detailed comments on crucial permitting issues.

35. Sierra Club's Petition was timely filed within sixty (60) days of the conclusion of EPA's review period, which ended on February 26, 2016. 42 U.S.C. §7661d(b)(2).

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

37. EPA had sixty (60) days, until June 10, 2016, to grant or deny Sierra Club's Petition. 42 U.S.C. § 7661d(b)(2).

38. As of the date of filing of this Complaint, EPA has not yet granted or denied the Petition.

#### **VIII. CAUSE OF ACTION**

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

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

41. It has been more than sixty (60) days since Administrator McCarthy received Sierra Club's April 11, 2016 Petition requesting that EPA object to the Title V Permit for the Hunter Plant.

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

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

44. 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)(2). Administrator McCarthy'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 Administrator McCarthy has violated the Clean Air Act by failing to grant or deny Sierra Club's Petition requesting that EPA object to the Title V operating permit for the Hunter Plant;

B) An order compelling Administrator McCarthy to perform her mandatory duty to grant or deny Sierra Club's Petition for objection to the Title V operating permit for the Hunter Plant, by an expeditious certain date;

C) An order retaining jurisdiction over this matter until such time as Administrator McCarthy has complied with her 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,

s/Neil L. Henrichsen

Neil L. Henrichsen, D.C. Bar No. 420277

HENRICHSEN SIEGEL, P.L.L.C.

1150 Connecticut Avenue NW, Suite 900

Washington, DC 20036

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(e-mail) [nhenrichsen@hslawyers.com](mailto:nhenrichsen@hslawyers.com)

Attorney for Plaintiff Sierra Club

**The Law Office of  
William J. Moore, III**

1648 Osceola Street  
Jacksonville, Florida 32204  
(904) 685-2172  
wmoore@wjmlaw.net

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*via certified U.S. Mail,  
return receipt requested,  
and e-mail ([mccarthy.gina@epa.gov](mailto:mccarthy.gina@epa.gov))*

July 6, 2016

The Honorable Gina A. McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code: 1101A  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

**Re: Sierra Club's Notice of Intent to File Citizen Suit Pursuant to Section 304 of Clean Air Act**

Dear Administrator McCarthy:

I am writing on behalf of the Sierra Club to notify the Administrator of Sierra Club's intent to file suit against the Administrator pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2) for the Administrator's failure to perform a nondiscretionary duty to grant or deny Sierra Club's April 11, 2016 petition filed pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), seeking an objection to Proposed Title V Permit No. 1500101002 for the operation of PacifiCorp's Hunter Power Plant located in Castle Dale, Utah 84513 within the deadline imposed by the Act. 42 U.S.C. § 7661d(b)(2). Section 304(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7404(b)(2), requires that citizens provide at least sixty (60) days notice before bringing suit against the Administrator for failing to perform a nondiscretionary duty. Accordingly, Sierra Club provides notice that it intends to sue the Administrator for the failure to grant or deny Sierra Club's above-referenced petition within the required sixty (60) day period after submission to EPA as mandated by Clean Air Act Section 505(b)(2), 42 U.S.C. § 7661d(b)(2).

**A. Relevant Procedural History**

The first Title V permit for PacifiCorp's Hunter Plant was originally issued on January 7, 1998, and that permit was designated to expire January 7, 2003. PacifiCorp submitted a Title V permit renewal application in December of 2001, but the Utah Division of Air Quality (UDAQ) did not issue a draft Title V renewal for public comment until September 15, 2015, after Sierra

Sierra Club Notice Letter to EPA  
July 6, 2016  
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Club filed a mandamus action in state court to force UDAQ to issue the renewal.<sup>1</sup>

On November 13, 2015, Sierra Club submitted timely comments<sup>2</sup> to UDAQ relating to the PacifiCorp-Hunter draft Title V renewal permit (Permit Number: 1500101002-Draft). On January 11, 2016, UDAQ issued a brief “Response to Public Comments” memorandum and submitted the Proposed Title V Permit No. 1500101002 for the PacifiCorp Hunter Power Plant to EPA for its forty-five (45) day review. EPA’s forty-five (45) day review period concluded on February 25, 2016, with EPA failing to issue any objection to the Draft Permit. On March 3, 2016, UDAQ issued the Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002). On April 11, 2016, Sierra Club filed a timely petition with the Administrator seeking an objection to the Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002). This petition was filed well within the sixty (60) day period following the expiration of EPA’s forty-five (45) day review, which did not expire until April 25, 2016.

**B. Failure to Perform a Nondiscretionary Duty to Grant or Deny Sierra Club’s April 11, 2016 Petition to Object to the Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002) Issued by the Utah Division of Air Quality**

Clean Air Act Section 505(b)(2), 42 U.S.C. § 7661d(b)(2), provides that “[i]f the Administrator does not object in writing to the issuance of a [Title V] permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. . . . [and *t*]he Administrator shall grant or deny such petition within 60 days after the petition is filed.” (emphasis added). Accordingly, since Sierra Club filed its petition regarding Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002) on April 11, 2016, the Administrator was required to act to grant or deny that petition within sixty (60) days (or by June 10, 2016). However, the Administrator has failed to take any action regarding that petition to date, which constitutes a failure to perform a mandatory, non-discretionary duty to take final action on the Title V petition with the Act’s prescribed time period. *See generally New York Pub. Interest Research Group v. Whitman*, 214 F. Supp. 2d 1, 1-2 (D.D.C. 2002). Accordingly, the Administrator is in violation of Clean Air Act Section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and has violated that provision on every day since June 10, 2016, when the Administrator failed to comply with the Clean Air Act’s Section 505(b)(2) deadline to take action on Sierra Club’s Title V petition.

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<sup>1</sup> *See Sierra Club vs. Bryce Bird, et al.*, Civil Case No. 150905990 (3rd District Utah) (filed Aug. 21, 2015).

<sup>2</sup> Stipulated Order Regarding Deadline to Answer the Complaint at ¶ 2, *Sierra Club v. Bryce Bird, et al.*, (filed Oct. 15, 2015) (public comment period on Hunter Title V renewal permit deadline November 13, 2015).

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July 6, 2016

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**C. Notice of Intent to Sue**

Please take notice that if this violation remains unresolved after expiration of the sixty (60) day period from the date of this notice to sue, Sierra Club intends to file suit against the Administrator in federal court for the failure to act in accordance with, and to fulfill the duty created by, Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2).

**D. Sierra Club's Contact Information**

As required by 40 C.F.R. § 54.3, the Sierra Club's address is Sierra Club, 2101 Webster Street, Suite 1300, Oakland, California 94612.

**E. Sierra Club's Counsel**

The Sierra Club has retained the undersigned as legal counsel to represent it. Counsel's contact information is as follows: William J. Moore, III, William J. Moore, III, P.A., 1648 Osceola Street, Jacksonville, Florida 32204, telephone (904) 685-2172, e-mail [wmoore@wjmlaw.net](mailto:wmoore@wjmlaw.net).

This notice provides information sufficient for the Administrator to determine that she have failed to perform a mandatory act or duty. If, however, you or anyone within your agency has any questions relating to this notice, please feel free to give me a call to discuss them.

Sincerely,



William J. Moore, III

cc: Loretta E. Lynch  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Shaun McGrath, Regional Administrator  
U.S. EPA Region 8  
1595 Wynkoop Street  
Mail Code: 8RA  
Denver, CO 80202-1129



<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  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Citizen suit under Clean Air Act, 42 U.S.C. § 7401 et seq. again EPA Administrator to compel action on Title V petition.

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ N/A	Check YES only if demanded in complaint JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" 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: 9/22/16	SIGNATURE OF ATTORNEY OF RECORD: Neil L. Henrichsen
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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/DEFENDANT (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. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Sierra Club,
2101 Webster Street, Suite 1300
Oakland, California 94612,

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as
Administrator of the U.S. EPA, U.S. EPA, 1200
Pennsylvania Ave. N.W., Washington, D.C. 20460,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Channing D. Phillips
United States Attorney
United States Attorney's Office
555 4th Street N.W.
Washington, D.C. 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: Neil L. Henrichsen, Esq., Henrichsen Siegel, P.L.L.C., 1150 Connecticut Avenue NW, Suite 900, Washington, D.C. 20036

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.

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. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Sierra Club,
2101 Webster Street, Suite 1300
Oakland, California 94612,

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as
Administrator of the U.S. EPA, U.S. EPA, 1200
Pennsylvania Ave. N.W., Washington, D.C. 20460,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, D.C. 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: Neil L. Henrichsen, Esq., Henrichsen Siegel, P.L.L.C., 1150 Connecticut Avenue NW,
Suite 900, Washington, D.C. 20036

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.

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. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Sierra Club,
2101 Webster Street, Suite 1300
Oakland, California 94612,

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as
Administrator of the U.S. EPA, U.S. EPA, 1200
Pennsylvania Ave. N.W., Washington, D.C. 20460,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530-0001

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: Neil L. Henrichsen, Esq., Henrichsen Siegel, P.L.L.C., 1150 Connecticut Avenue NW, Suite 900, Washington, D.C. 20036

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.

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: