



March 10, 2017

VIA ELECTRONIC MAIL AND HAND DELIVERY

Administrator Scott Pruitt
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 Scott Pruitt:

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 Section 126 of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7426(b), to either grant or deny the Connecticut Department of Energy and Environmental Protection’s (“Connecticut”) June 1, 2016 petition concerning the Brunner Island Steam Electric Station (“Brunner Island” or “the Plant”) in York County, Pennsylvania. This notice is provided pursuant to 42 U.S.C. § 7604(b).

On June 1, 2016, Connecticut petitioned EPA to make a finding that Brunner Island is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standards (“NAAQS”) in Connecticut. Pursuant to 42 U.S.C. § 7426(b), EPA was required to grant or deny the petition within 60 days. On July 25, 2016, in order to complete its technical analyses and public notice and comment processes, EPA extended its response deadline to January 25, 2017.

I. Citizens May Sue EPA for Failure to Timely Grant or Deny a Section 126 Petition

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 126 of the CAA expressly provides that “[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator *shall* make such a finding or deny the petition.” 42 U.S.C. § 7426(b) (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. EPA extended the deadline to January 25, 2017, but has still failed to perform this nondiscretionary duty. Accordingly, citizens may bring suit to compel such action.

II. Sierra Club Intends to File a Citizen Suit

As stated above, Connecticut filed a Section 126 petition to make a finding that Brunner Island is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in Connecticut. EPA extended its 60 day response deadline to January 25, 2017. Yet, as of the date of this notice, the Administrator has not yet granted or denied Connecticut's petition. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Connecticut's Petition and is in violation of 42 U.S.C. § 7426(b).

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 Connecticut's Section 126 petition. 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 Connecticut'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 these issues, please contact me directly at zachary.fabish@sierraclub.org or (202) 675-7917.

Sincerely,

 /s/
Zachary M. Fabish, Esq.
The Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20009
Tel.: 202.675.7917
E-mail: zachary.fabish@sierraclub.org
Counsel for the Sierra Club

Philip M. Goo, Esq.
Law Office of Philip M. Goo, PLLC
1805 Newton St NW
Washington, DC 20010
Tel: 404.583.9451
E-mail: goolawoffice@gmail.com
Counsel for the Sierra Club